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FOR IMMEDIATE RELEASE

July 19, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

TEXT OF A LETTER FROM THE
 PRESIDENT TO THE SPEAKER OF THE
 HOUSE OF REPRESENTATIVES
 AND THE PRESIDENT OF THE SENATE

July 19, 1976

Dear Mr. Speaker: (Dear Mr. President:)

One of the foremost objectives of my Administration has been to restore public faith and trust in the integrity of all three branches of our government, the executive, the legislative and the judicial. Much progress has been made, but we must take additional steps to insure that public concerns are fully satisfied.

The Senate now has before it a bill, S. 495, which could serve these important objectives. However, as drafted, S. 495 contains serious Constitutional and practical problems, and it is so narrowly drawn that it does not fairly and adequately meet the objectives of such legislation.

I am writing to you today to propose a substitute to S. 495 that would correct the Constitutional deficiencies in the bill and would also expand its scope so that it would apply in equal force to the President, the Vice President, major appointees of the Federal government, and members of the Congress of the United States. I believe this new bill represents a sound, constructive approach and I would urge its adoption by the Congress.

In its current form, S. 495 provides for the appointment of temporary special prosecutors to deal with allegations of wrongdoing by key members of the government. The proposed legislation also would establish the Office of Congressional Legal Counsel to represent Congress before the Courts, and it provides for public financial disclosure by high level personnel in the government.

While I strongly support the principles underlying this legislation, I am especially concerned about three particular aspects of the bill in its present form:

- . Title I, which provides for a series of different independent and special prosecutors for separate cases of alleged wrongdoing, is of highly questionable constitutionality because it would invest in the judiciary the

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power to review the role of the Attorney General in conducting prosecutions and the power to appoint special prosecutors not subject to Executive direction. To grant the judiciary such authority is contrary to the fundamental principles of separation of powers. Moreover, S. 495 requires the appointment of a different special prosecutor for each case, all on an ad hoc basis. The Department of Justice estimates that if S. 495 were now law, approximately half a dozen special prosecutors would have to be appointed, and close to 50 other matters possibly requiring appointment would be under advisement by a special court. This extraordinary result of the present bill would almost certainly produce inconsistency and inequity of prosecutorial action. I must also point out that Title I would not require direct referral to a special prosecutor of allegations of wrongdoing by most members of Congress, while it would require referral for all high level officers of the executive branch. I do not believe that such difference in treatment should be allowed to exist if public confidence in the government is to be maintained.

- . Title II attempts to preempt certain law enforcement powers accorded to the President by the Constitution and vest them in the Congress.
- . Title III, requiring financial disclosure by numerous government officers and employees, allows certain loopholes in reporting procedures, and has certain other deficiencies.

To remedy these defects, while advancing the principles of accountability by officers and employees in all three branches of the Federal government, I am transmitting today a substitute for S. 495. I urge the Senate to consider my modifications in proposals at the same time it considers S. 495. I also urge the House Judiciary Committee to consider my proposal at the time of its initial hearings on this matter later this week.

The highlights of my proposed legislation to maintain the public's confidence in the integrity of our government are as follows:

Title I --- Reorganization of the Department of Justice

To avoid the problems in Title I, my legislative proposal would establish a permanent Office of Special Prosecutor to investigate and prosecute criminal wrongdoing committed by high level government officials. The Special Prosecutor would be appointed by the President, by and with the advice and consent of the Senate, for a single three-year term. Individuals who hold a high level position of trust and responsibility on the personal campaign staff of, or in

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an organization or political party working on behalf of a candidate for any elective Federal office would be ineligible for appointment. The bill would sanction removal of the Special Prosecutor only for extraordinary improprieties and in the event of removal, the President would be required to submit to the Committees on the Judiciary a report describing with particularity the grounds for such action.

Any allegation of criminal wrongdoing concerning the President, Vice President, members of Congress, or persons compensated at the rate of Level I or II of the Executive Schedule would be referred directly to the Special Prosecutor for investigation and, if warranted, prosecution. The Attorney General could refer to the Special Prosecutor any other allegation involving a violation of criminal law whenever he found that it was in the best interest of the administration of justice. The Special Prosecutor could, however, decline to accept the referral of any allegation. In that event, the allegation would be investigated by the Department of Justice.

The Special Prosecutor would have plenary authority to investigate and prosecute matters within his jurisdiction, including the authority to appeal adverse judicial rulings. However, in the event of a disagreement with the Special Prosecutor on an issue of law, the Attorney General would be free to present his position to the court before which the prosecution or appeal is lodged.

My proposal would also institutionalize, by statute, the investigation and prosecution of violations of law by government officials and employees which do not fall within the jurisdiction of the Special Prosecutor. Title I would also establish by statute a Section on Government Crimes and an Office of Professional Responsibility within the Department of Justice.

Title II --- Congressional Legal Counsel

I have also proposed a revised Title II that creates an Office of Congressional Legal Counsel and assigns the powers and duties of that Office. Like S. 495, this proposal gives Congress the legal assistance necessary to the proper discharge of its functions, but it does so in a manner consistent with the Constitution of the United States. Under my proposal, when the Attorney General certifies that he cannot represent Congress or a congressional entity, Congress or the appropriate house of Congress may direct the Congressional Legal Counsel to defend any legal action, enforce subpoenas, bring described civil actions, intervene in cases or appear as amicus curiae to defend the constitutionality of any law of the United States or the powers and responsibilities of Congress. Congressional Legal Counsel may request grants of immunity under the Organized Crime Control Act of 1970.

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In all of these matters, my proposal like S. 495, provides for exclusive congressional control and direction of the activities of the Congressional Legal Counsel.

Title III --- Government Personnel, Financial Disclosure Requirements

My proposed bill recognizes and protects the public's right to be assured that public officials, regardless of which branch of government they serve in, disclose personal financial matters which could give rise to a conflict of interest in the performance of their official duties.

My proposal would require Federal public officers and employees to file financial reports with a designated office in their branch of government. In addition, public disclosure would be made of the financial statements of (i) all elected officials, (ii) high ranking officers or employees appointed by such officials, (iii) significant policy making and confidential employees, and (iv) other employees compensated at the rate of GS 16 or above (but not those in competitive civil service or who, save for certain legal exemptions, would be in the competitive civil service). My proposed legislation would also give the Comptroller General oversight authority to audit such statements as well as the authority to make findings of a conflict of interest and if the problem is not corrected, to make those findings public. Thus, the public's right to have accountability from public officers and employees is doubly protected: first, by the executive, legislative or judicial branch office with which reports are filed, and secondly, by the Comptroller General.

In addition, my proposal would close certain loopholes contained in the current Senate bill. For example, the present proposal requires the reporting of any item received in kind whose fair market value "for such item" exceeds \$500. Such provision would allow a series of gifts from the same source, each valued at less than \$500 to go unreported. Under my proposed legislation such gifts would be aggregated and hence require reporting. Moreover, my proposal would make clear that while property owned for personal use, such as the family home, furniture, jewelry, the family car, etc., need not be inventoried in disclosure forms, property of a business or investment nature must be reported. Assets unknown to the individual because they are held in a bona fide "blind trust" need not be identified, but the trust interest must be disclosed.

I believe these provisions better serve the public interest than those contained in S. 495. Therefore, I urge the Congress to give prompt and favorable consideration to my proposal.

Sincerely,

GERALD R. FORD

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TITLE I - AMENDMENTS TO TITLE 28, UNITED STATES CODE

Reorganization of the Department of Justice

Sec. 101(a) Title 28, United States Code, is amended by adding after chapter 37 the following new chapter:

Chapter 39 -- Appointment of Special Prosecutor and Establishment of Government Crimes Section and Office of Professional Responsibility

§591. Special Prosecutor: Appointment and Removal

(a) There is established within the Department of Justice an Office of Special Prosecutor which shall be headed by a Special Prosecutor appointed by the President, by and with the advice and consent of the Senate.

(b) The Special Prosecutor shall be appointed for a term of three years and shall be compensated at a rate provided for level IV of the Executive Schedule under section 5315 of Title 5, United States Code. No person shall serve as Special Prosecutor for more than a single term.

(c) A person shall not be appointed Special Prosecutor if he has at any time during the five years preceding such appointment held a high level position of trust and responsibility on the personal campaign staff of, or in an organization or political party working on behalf of, a candidate for any elective Federal office. This provision shall not, however, form the basis for any challenge of the legitimacy of a Special Prosecutor or the validity of any of his actions, once he has been appointed.

(d) The grounds for removal of a Special Prosecutor should be, and to the maximum extent permitted by the Constitution shall be, limited to those which constitute extraordinary impropriety. In the event of any removal, the President shall promptly submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report describing with particularity the grounds for such action.

§592. Jurisdiction

(a) There shall be referred to the Special Prosecutor for investigation and, if warranted, prosecution all information, allegations or complaints indicating a possible violation of Federal criminal law by a person who holds or who at the time of such possible violation held any of the following positions in the Federal Government: (i) President, Vice President, Attorney General, or Director of the Federal Bureau of Investigation; (ii) any position compensated at a rate equal to level I or level II of the Executive Schedule under sections 5312 or 5313 of Title 5, United States Code; or (iii) Member of Congress.

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(b) When the Attorney General determines that it is in the interest of the administration of justice, he may refer any other matter which he deems appropriate to the Special Prosecutor for investigation and, if warranted, prosecution.

(c) The Special Prosecutor may in his discretion decline to accept referrals under subsection (b) of this section. The Special Prosecutor may decline to assert jurisdiction under subsection (a) of this section when the matter over which he has jurisdiction is a peripheral or incidental part of an investigation or prosecution already being conducted elsewhere in the Department of Justice, or when for some other reason he determines it would be in the interest of the administration of justice to permit the matter to be handled elsewhere in the Department; provided, however, that any such declination shall be accompanied by the establishment of such procedures as the Special Prosecutor considers necessary and appropriate to keep him informed of the progress of the investigation or prosecution as it relates to such matter; and provided further that the Special Prosecutor may at any time assume responsibility for investigation and prosecution of such matter.

§593. Authority

(a) As to the matters described in section 592 of this Chapter for which he has assumed responsibility, the Special Prosecutor shall have authority (1) to conduct proceedings before grand juries and other investigations he deems necessary; (2) to review all documentary evidence available to the Department of Justice from any source, to which he shall have full access; (3) to determine whether or not to contest the assertion of Executive Privilege and any other testimonial privilege; (4) to determine whether or not application should be made to any Federal court for a grant of immunity to any witness, consistently with applicable statutory requirements, or for warrants, subpoenas, or other court orders; (5) to decide whether or not to prosecute any individual, firm, corporation or group of individuals; (6) to initiate and conduct prosecutions, frame indictments, file information, and handle all aspects of any cases within his jurisdiction, including any appeals; (7) to coordinate and direct the activities of all Department of Justice personnel, including United States Attorneys; (8) to deal with, appear before, and provide information to Congressional committees having jurisdiction over any aspect of the above matters.

(b) In exercising his authority hereunder, the Special Prosecutor shall not be subject to the direction or control of the Attorney General, except as to those matters which by statute specifically require the Attorney General's personal action, approval, or concurrence; provided, however, that nothing in this chapter shall prevent the Attorney General or the Solicitor General from presenting to any court views of the United States as to issues of law raised by any case or appeal.

§594. Section on Government Crimes

(a) There is established within the Criminal Division of the Department of Justice a Section on Government Crimes, which shall be headed by a Director appointed by the Attorney General. The Director shall be subordinate to the Assistant Attorney General for the Criminal Division, but shall also report directly to the Attorney General on a regular basis and when he deems it necessary.

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(b) A person shall not be appointed Director of the Section on Government Crimes if he has at any time during the five years preceding such appointment held a high level position of trust and responsibility on the personal campaign staff of, or in an organization or political party working on behalf of, a candidate for any elective Federal office. This provision shall not, however, form the basis for any challenge of the legitimacy of a Director or the validity of any of his actions, once he has been appointed.

§595. Jurisdiction

(a) The Attorney General shall, except as to matters referred to the Special Prosecutor pursuant to section 592 of this Chapter, delegate to the Section on Government Crimes jurisdiction of (1) criminal violations of Federal law committed by any elected or appointed Federal Government officer, employee or special employee (other than members of the military) related directly or indirectly to his government position, employment, or compensation; (2) criminal violations of Federal laws relating to lobbying, campaigns, and election to public office committed by any person except insofar as such violations relate to matters involving discrimination or intimidation on the grounds of race, color, religion or national origin; and (3) such other matters as the Attorney General may deem appropriate.

(b) Jurisdiction delegated to the Section on Government Crimes pursuant to subsection (a) of this subsection may be concurrently delegated by the Attorney General to, or concurrently reside in, the United States Attorneys or other units of the Department of Justice. This section shall not limit any authority conferred upon the Attorney General, the Federal Bureau of Investigation, or any other department or agency of government to investigate any matter.

§596. Reporting

At the beginning of each regular session of the Congress the Attorney General shall report to the Congress on the activities and operation of the Section on Government Crimes for the preceding fiscal year.

Such report shall specify the number and type of investigations and prosecutions subject to the jurisdiction of such unit and the disposition thereof but shall not include any information which would impair an ongoing investigation, prosecution, or proceeding, or which the Attorney General determines would constitute an improper invasion of personal privacy.

§597. Office of Professional Responsibility

There is established within the Department of Justice an Office of Professional Responsibility, which shall be headed by a Counsel on Special Responsibility appointed by the Attorney General. The Counsel shall be subject to the general supervision and direction of the Attorney General, and shall report directly to the Attorney General or, in appropriate cases, to the Deputy Attorney General or the Solicitor General.

§598. Functions

(a) Except as to matters which are to be referred to the Special Prosecutor under Section 592 of this Chapter, the Counsel on Professional Responsibility shall be responsible for

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reviewing any information or allegation presented to him concerning conduct by an employee of the Department of Justice that may be in violation of law, of Department Regulations or orders, or of applicable standards of conduct, and shall undertake a preliminary investigation to determine what further steps should be taken. On the basis of such investigation the Counsel shall refer the matter to the appropriate unit within the Department or shall recommend to the Attorney General or, in appropriate cases, to the Deputy Attorney General or Solicitor General, what other action, if any should be taken. The Counsel shall undertake such other responsibilities as the Attorney General may direct.

(b) Nothing in this section shall derogate from the authority of internal inspection units of the Department of Justice and the heads of other units to receive, investigate and act upon information or allegations concerning unlawful or improper conduct.

TITLE II -- CONGRESSIONAL LEGAL COUNSEL

Establishment of Office of Congressional Legal Counsel

Sec. 201. (a)(1) There is established, as an office of the Congress, the Office of Congressional Legal Counsel (hereinafter referred to as the "Office"), which shall be headed by a Congressional Legal Counsel; and there shall be a Deputy Congressional Legal Counsel who shall perform such duties as may be assigned to him by the Congressional Legal Counsel and, during any absence, disability, or vacancy in the office of the Congressional Legal Counsel, the Deputy Congressional Legal Counsel shall serve as Acting Congressional Legal Counsel.

(2) The Congressional Legal Counsel and the Deputy Congressional Legal Counsel each shall be appointed by the President pro tempore of the Senate and the Speaker of the House of Representatives from among recommendations submitted by the majority and minority leaders of the Senate and the House of Representatives. Any appointment made under this subsection shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the Office. Any person appointed as Congressional Legal Counsel or Deputy Congressional Legal Counsel shall be learned in the law, a member of the bar of a State or the District of Columbia, and shall not engage in any other business, vocation, or employment during the term of such appointment.

(3)(A) Any appointment made under this subsection shall become effective upon approval, by concurrent resolution, of the Senate and the House of Representatives. The Congressional Legal Counsel and the Deputy Congressional Legal Counsel shall each be appointed for a term which shall expire at the end of the Congress following the Congress during which the Congressional Legal Counsel is appointed except that the Congress may, by concurrent resolution, remove either the Congressional Legal Counsel or the Deputy Congressional Legal Counsel prior to the termination of his term of office. The Congressional Legal Counsel and the Deputy Congressional Legal Counsel may be reappointed at the termination of any term of office.

(B) The first Congressional Legal Counsel and the first Deputy Congressional Legal Counsel shall be appointed and take office within ninety days after the enactment of this title, and thereafter the Counsel shall be appointed and take office within thirty days after the beginning of the session of Congress immediately following the termination of the Congressional Legal Counsel's term of office.

(4) The Congressional Legal Counsel shall receive compensation at a per annum gross rate equal to the rate of basic pay for level III of the Executive Schedule under section 5314 of title 5, United States Code. The Deputy Congressional Legal Counsel shall receive compensation at a per annum gross rate equal to the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(b)(1) The Congressional Legal Counsel shall appoint and fix the compensation of such Assistant Congressional Legal Counsels and of such other personnel as may be necessary to carry out the provisions of this title and may prescribe the duties and responsibilities of such personnel. Any appointment

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made under this subsection shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the Office. Any person appointed as Assistant Congressional Legal Counsel shall be learned in the law, a member of the bar of a State or the District of Columbia, and shall not engage in any other business, vocation, or employment during the term of such appointment. All such employees shall serve at the pleasure of the Congressional Legal Counsel.

(2) For purpose of pay (other than pay of the Congressional Legal Counsel and Deputy Congressional Legal Counsel) and employment benefits, rights, and privileges, all personnel of the Office shall be treated as if they were employees of the Senate.

(c) In carrying out the functions of the Office, the Congressional Legal Counsel may procure the temporary (not to exceed one year) or intermittent services of individual consultants (including outside counsel), or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72 (a)(i)).

(d) The Congressional Legal Counsel may establish such procedures as may be necessary to carry out the provisions of this title.

(e) The Congressional Legal Counsel may delegate authority for the performance of any function imposed by this Act except any function imposed upon the Congressional Legal Counsel under section 203(d)(2) of this title.

Duties and Functions

Sec. 202. (a) Whenever the Joint Committee on Congressional Operations (hereinafter referred to in this title as the "Joint Committee") is performing any of the responsibilities set forth in subsection (b), the Speaker of the House of Representatives, the majority and minority leaders of the House of Representatives, the President pro tempore of the Senate, and the majority and minority leaders of the Senate shall be ex officio members of the Joint Committee.

(b) The Joint Committee shall ---

(1) oversee the activities of the Office of Congressional Legal Counsel, including but not limited to, consulting with the Congressional Legal Counsel with respect to the conduct of litigation in which the Congressional Legal Counsel is involved,

(2) pursuant to section 207 of this title, recommend the appropriate action to be taken in resolution of a conflict or inconsistency;

(3) pursuant to section 203(d)(2), cause the publication in the Congressional Record of the notification required of the Congressional Legal Counsel under that section.

(c)(1) Whenever the Congress is not in session, the Joint Committee may, in accordance with the provisions in section 203(b)(2), authorize the Congressional Legal Counsel to undertake its responsibilities under section 203(a) in the absence of an appropriate resolution for a period not to exceed ten days after the Congress or the appropriate House of Congress reconvenes.

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(2) The Joint Committee may poll its members by telephone in order to conduct a vote under this subsection.

Legal Actions Instituted or Defended
by the Congressional Legal Counsel

Sec. 203. Upon written certification by the Attorney General declining to provide legal representation in matters described in this section, the Congressional Legal Counsel, at the direction of Congress or the appropriate House of Congress shall -----

(a)(1) defend Congress, a House of Congress, an office or agency of Congress, a committee or subcommittee, or any Member, officer, or employee of a House of Congress in any civil action pending in any court of the United States or of a State or political subdivision thereof in which Congress, such House, committee, subcommittee, Member, officer, employee, office, or agency is made a party defendant and in which there is placed in issue the validity of any proceeding of, or action, including issuance of any subpoena or order, taken by Congress, such House, committee, subcommittee, Member, officer, employee, office, or agency; or

(2) defend Congress, a House of Congress, an office or agency of Congress, a committee or subcommittee, or a Member, officer, or employee of a House of Congress in any civil action pending in any court of the United States or of a State or political subdivision thereof with respect to any subpoena or order directed to Congress, such House, committee, subcommittee, Member, officer, employee, office, or agency.

(b)(1) Representation of a Member, officer, or employee under section 203(a) shall be undertaken by the Congressional Legal Counsel only upon the consent of such Member, officer, or employee. The resolution directing the Congressional Legal Counsel to represent a Member, officer, or employee may limit such representation to constitutional issues relating to the powers and responsibilities of Congress.

(2) The Congressional Legal Counsel may undertake its responsibilities under subsection (a) in the absence of an appropriate resolution by the Congress or by one House of the Congress if -----

(A) Congress or the appropriate House of Congress is not in session;

(B) the interest to be represented would be prejudiced by a delay in representation; and

(C) the Joint Committee authorizes the Congressional Legal Counsel to proceed in its representation as provided under section 202.

(c)(1) The Congressional Legal Counsel, at the direction of Congress or the appropriate House of Congress, shall bring a civil action under any statute conferring jurisdiction on any court of the United States to enforce, or issue a declaratory judgment concerning the validity of any subpoena or order issued by Congress, or a House of Congress, a committee, or a subcommittee of a committee authorized to issue a subpoena or order.

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(2) Nothing in subsection (a) shall limit the discretion of ---

(A) the President pro tempore of the Senate or the Speaker of the House of Representatives in certifying to the United States Attorney for the District of Columbia any matter pursuant to section 104 of the Revised Statutes (2 U.S.C. 194); or

(B) either House of Congress to hold any individual or entity in contempt of such House of Congress.

(d)(1) The Congressional Legal Counsel, at the direction of Congress, shall intervene or appear as amicus curiae in any legal action pending in any court of the United States or of a State or political subdivision thereof in which ---

(A) the constitutionality of any law of the United States is challenged, the United States is a party; or

(B) the powers and responsibilities of Congress under article I of the Constitution of the United States are placed in issue.

(2) The Congressional Legal Counsel shall notify the Joint Committee of any legal action in which the Congressional Legal Counsel is of the opinion that intervention or appearance as amicus curiae by Congress is necessary to carry out the purposes of this section. Such notification shall contain a description of the legal proceeding together with the reasons that the Congressional Legal Counsel is of the opinion that Congress should intervene or appear as amicus curiae. The Joint Committee shall cause said notification to be published in the Congressional Record for the Senate and House of Representatives.

Immunity Proceedings

Sec. 204. The Congressional Legal Counsel, at the direction of the appropriate House of Congress or any committee of Congress, shall serve as the duly authorized representative of such House or committee in requesting a United States district court to issue an order granting immunity pursuant to section 201(a) of the Organized Crime Control Act of 1970 (18 U.S.C. 6005).

Advisory and Other Functions

Sec. 205.(a) The Congressional Legal Counsel shall advise, consult, and cooperate ---

(1) with the United States Attorney for the District of Columbia with respect to any criminal proceeding for contempt of Congress certified pursuant to section 104 of the Revised Statutes (2 U.S.C. 194);

(2) with the Joint Committee on Congressional Operations in identifying any court proceeding or action which is of vital interest to Congress or to either House of Congress under section 402(a)(2) of the Legislative Reorganization Act of 1970 (2 U.S.C. 412 (a)(2)),

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(3) with the Comptroller General, General Accounting Office, the Office of Legislative Counsel of the Senate, the Office of the Legislative Counsel of the House of Representatives, and the Congressional Research Service, except that none of the responsibilities and authority granted by this title to the Congressional Legal Counsel shall be construed to affect or infringe upon any functions, powers, or duties of the Comptroller General of the United States;

(4) with any Member, officer, or employee of Congress not represented under section 203 with regard to obtaining private legal counsel for such Member, officer, or employee;

(5) with the President pro tempore of the Senate, the Speaker of the House of Representatives, and the Parliamentarians of the Senate and House of Representatives regarding any subpoena, order, or request for withdrawal of papers presented to the Senate and House of Representatives or which raises a question of the privileges of the Senate or House of Representatives; and

(6) with any committee or subcommittee in promulgating and revising their rules and procedures for the use of congressional investigative powers and questions which may arise in the course of any investigation.

(b) The Congressional Legal Counsel shall compile and maintain legal research files of materials from court proceedings which have involved Congress, a House of Congress, an office or agency of Congress, or any committee, subcommittee, Member, officer, or employee of Congress. Public court papers and other research memoranda which do not contain information of a confidential or privileged nature shall be made available to the public consistent with any applicable procedures set forth in such rules of the Senate and House of Representatives as may apply and the interests of Congress.

(c) The Congressional Legal Counsel shall perform such other duties consistent with the purposes and limitations of this title as the Congress may direct.

Defense of Certain Constitutional Powers

Sec. 206. In performing any function under section 203, the Congressional Legal Counsel shall defend vigorously when placed in issue

(1) the constitutional privilege from arrest or from being questioned in any other place for any speech or debate under section 6 of article I of the Constitution of the United States;

(2) the constitutional power of each House of Congress to be judge of the elections, returns, and qualifications of its own Members and to punish or expel a Member under section 5 of article I of the Constitution of the United States;

(3) the constitutional power of each House of Congress to except from publication such parts of its journal as in its judgment may require secrecy;

(4) the constitutional power of each House of Congress to determine the rules of its proceedings;

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(5) the constitutional power of Congress to make all laws as shall be necessary and proper for carrying into execution the constitutional powers of Congress and all other powers vested by the Constitution in the Government of the United States, or in any department or office thereof;

(6) all other constitutional powers and responsibilities of Congress; and

(7) the constitutionality of statutes enacted by Congress.

Conflict or Inconsistency

Sec. 207. (a) In the carrying out of the provisions of this title, the Congressional Legal Counsel shall notify the Joint Committee and any party represented or entitled to representation under this title, of the existence and nature of any conflict or inconsistency between the representation of such party and the carrying out of any other provisions of this title, or compliance with professional standards and responsibilities.

(b) Upon receipt of such notification, the Joint Committee shall recommend the action to be taken to avoid or resolve the conflict or inconsistency. The Joint Committee shall cause the notification of conflict or inconsistency and the Joint Committee's recommendation with respect to resolution thereof to be published in the Congressional Record of the appropriate House or Houses of Congress. If Congress or the appropriate House of Congress does not direct the Joint Committee within fifteen days from the date of publication in the Record to resolve the conflict in another manner, the Congressional Legal Counsel shall take such action as may be necessary to resolve the conflict or inconsistency as recommended by the Joint Committee. Any instruction or determination made pursuant to this subsection shall not be reviewable in any court of law.

(c) The appropriate House of Congress may by resolution authorize the reimbursement of any Member, officer, or employee who is not represented by the Congressional Legal Counsel as a result of the operation of subsection (b) or who declines to be represented pursuant to section 203(b) for costs reasonably incurred in obtaining representation. Such reimbursement shall be from funds appropriated to the contingent fund of the appropriate House.

Procedure for Direction of Congressional Legal Counsel

Sec. 208. (a) Directives made pursuant to sections 203 (a), (c)(1), (d)(1), and 204, of this title shall be made as follows:

(1) Directives made by Congress pursuant to sections 203(a), (c)(1), and (d)(1) of this title shall be authorized by a concurrent resolution of Congress.

(2) Directives made by either House of Congress pursuant to sections 203(a), (c)(1), and 204 of this title shall be authorized by passage of a resolution of such House.

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(3) Directives made by a committee of Congress pursuant to section 204 of this title shall be in writing and approved by an affirmative vote of two-thirds of the members of the full committee.

(b)(1) A resolution or concurrent resolution introduced pursuant to subsection (a) shall not be referred to a committee, except as otherwise required under subsection (c)(1). Upon introduction or when reported as required under subsection (c)(2), it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such resolution or concurrent resolution. A motion to proceed to the consideration of a resolution or concurrent resolution shall be highly privileged and not debatable. An amendment to such motion shall not be in order, and it shall not be in order to move to reconsider the vote by which such motion is agreed to or disagreed to.

(2) If the motion to proceed to the consideration of the resolution or concurrent resolution is agreed to, debate thereon shall be limited to not more than five hours, which shall be divided equally between, and controlled by, those favoring and those opposing the resolution or concurrent resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution or concurrent resolution shall be in order, except an amendment pursuant to section 203(b) to limit representation by the Congressional Legal Counsel to constitutional issues relating to the powers and responsibilities of Congress. No motion to recommit the resolution or concurrent resolution shall be in order, and it shall not be in order to reconsider the vote by which the resolution or concurrent resolution is agreed to or disagreed to.

(3) Motions to postpone, made with respect to the consideration of the resolution or concurrent resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to the resolution or concurrent resolution shall be decided without debate.

(c) It shall not be in order in the Senate or House of Representatives to consider a resolution to direct the Congressional Legal Counsel to bring a civil action pursuant to section 203(c)(1) to enforce or secure a declaratory judgment concerning the validity of a subpoena or order issued by a committee or subcommittee unless (1) such resolution is reported by a majority vote of the members of such committee or committee of which such subcommittee is a subcommittee, and (2) the report filed by such committee or committee of which such subcommittee is a subcommittee contains a statement of ---

(A) the procedure followed in issuing such subpoena;

(B) the extent to which the party subpoenaed has complied with such subpoena;

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(C) any objections or privileges raised by the subpoenaed party; and

(D) the comparative effectiveness of bringing a civil action to enforce the subpoena, certification of a criminal action for contempt of Congress, and initiating a contempt proceeding before a House of Congress.

(d) The extent to which a report filed pursuant to subsection (c)(2) is in compliance with such subsection shall not be reviewable in any court of law.

(e) For purposes of the computation of time in sections 202(c)(1) and 207(b) ---

(1) continuity of session is broken only by an adjournment of Congress sine die, and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period.

(f) For purposes of this title, when referred to herein, the term "committee" shall include standing, select, special, or joint committees established by law or resolution and the Technology Assessment Board.

(g) The provisions of this section are enacted by Congress ---

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and, as such, they shall be considered as part of the rules of each House, respectively, and such rules shall supersede any other rule of each House only to the extent that rule is inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(h) Any directive to the Congressional Legal Counsel to bring a civil action pursuant to section 203(c)(1) of this title in the name of a committee, or subcommittee of Congress shall constitute authorization for such committee, or subcommittee to bring such action within the meaning of any statute conferring jurisdiction on any court of the United States.

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Procedural Provisions

Sec. 209. (a) Permission to intervene as a party or to file a brief amicus curiae under section 203(d) of this title shall be of right and may be denied by a court only upon an express finding that such intervention or filing is untimely and would significantly delay the pending action.

(b) The Congressional Legal Counsel, the Deputy Congressional Legal Counsel or any designated Assistant Congressional Legal Counsel, shall be entitled, for the purpose of performing his functions under this title, to enter an appearance in any such proceeding before any court of the United States without compliance with any requirement for admission to practice before such court, except that the authorization conferred by this paragraph shall not apply with respect to the admission of any person to practice before the United States Supreme Court.

(c) Nothing in this title shall be construed to confer standing on any party seeking to bring, or jurisdiction on any court with respect to, any civil or criminal action against Congress, either House of Congress, a Member of Congress, a committee or subcommittee of Congress, or any officer, employee, office, or agency of Congress.

(d) In any civil action brought pursuant to section 203(c) of this title, the court shall assign the case for hearing at the earliest practicable date and cause the case in every way to be expedited. Any appeal or petition for review from any order or judgment in such action shall be expedited in the same manner.

Technical and Conforming Amendments

Sec. 210.(a) Section 3210 of title 39, United States Code, is amended ---

(1) by striking out "and the Legislative Counsels of the House of Representatives and the Senate" in subsection (b)(1) and inserting in lieu thereof "the Legislative Counsels of the House of Representatives and the Senate, and the Congressional Legal Counsel"; and

(2) by striking out "or the Legislative Counsel of the House of Representatives or the Senate" in subsection (b)(2) and inserting in lieu thereof "the Legislative Counsel of the House of Representatives or the Senate, or the Congressional Legal Counsel".

(b) Section 3216(a)(1)(A) of such title is amended by striking out "and the Legislative Counsels of the House of Representatives and the Senate" and inserting in lieu thereof "the Legislative Counsels of the House of Representatives and the Senate, and the Congressional Legal Counsel".

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(c) Section 3219 of such title is amended by striking out "or the Legislative Counsel of the House of Representatives or the Senate" and inserting in lieu thereof "the Legislative Counsel of the House of Representatives or the Senate, or the Congressional Legal Counsel".

(d) Section 8 of the Act entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and sixty-six, and for other purposes", approved March 3, 1875, as amended (2 U.S.C. 118), is repealed.

Separability

Sec. 211. If any part of this title is held invalid, the remainder of the title shall not be affected thereby. If any provision of any part of this title, or the application thereof to any person or circumstance is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

Authorization of Appropriations

Sec. 212. There are authorized to be appropriated for each fiscal year through October 30, 1981, such sums as may be necessary to carry out the provisions of this title. Amounts so appropriated shall be disbursed by the Secretary of the Senate upon vouchers signed by the Congressional Legal Counsel, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

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TITLE III - GOVERNMENT PERSONNEL;
FINANCIAL DISCLOSURE REQUIREMENTS

Definitions

Sec. 301. As used in this title --

- (1) the term "agency" means each authority of the Government of the United States;
- (2) the term "commodity future" means commodity future as defined in sections 2 and 5 of the Commodity Exchange Act, as amended (7 U.S.C. 2 and 5);
- (3) the term "Comptroller General" means the Comptroller General of the United States;
- (4) the term "dependent" means dependent as defined in section 152 of the Internal Revenue Code of 1954;
- (5) the term "employee" includes any employee designated under section 2105 of title 5, United States Code, and any employee of the United States Postal Service or of the Postal Rate Commission;
- (6) the term "immediate family" means -- (A) the spouse of an individual, (B) the child, parent, grandparent, grandchild, brother, or sister of an individual or of the spouse of such individual, and (C) the spouse of any individual designated in clause (B);
- (7) the term "income" means gross income as defined in section 61 of the Internal Revenue Code of 1954;
- (8) the term "Member of Congress" means a Senator, a Representative, a Resident Commissioner, or a Delegate;
- (9) the term "officer" includes any officer designated under section 2104 of title 5, United States Code, any elected or appointed officer of the Congress or of either House of Congress, and any officer of the United States Postal Service or of the Postal Rate Commission;
- (10) the term "security" means security as defined in section 2 of the Securities Act of 1933, as amended (15 U.S.C. 77b);
- (11) the term "transactions in securities and commodities" means any acquisition, transfer, or other disposition involving any security or commodity;
- (12) the term "uniformed services" means any of the armed forces, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration;
- (13) the term "political contribution" means a contribution as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431); and
- (14) the term "expenditure" means an expenditure as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431).

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Individuals Required to File Report

Sec. 302. (a) Any individual who is or was an officer or employee designated under subsection (b) shall file each calendar year a report containing a full and complete financial statement for the preceding calendar year if such individual has occupied the office or position for a period in excess of ninety days in such calendar year.

(b) The officers and employees referred to in subsection (a) are --

- (1) the President;
- (2) the Vice President;
- (3) each Member of Congress;
- (4) each justice or judge of the United States;
- (5) each officer or employee of the United States who is compensated at a rate equal to or in excess of the minimum rate prescribed for employees holding the grade of GS-16 under section 5332(a) of title 5, United States Code; and

(6) each member of a uniformed service who is compensated at a rate equal to or in excess of the monthly rate of pay prescribed for grade O-6, as adjusted under section 1009 of title 37, United States Code.

(c) Any individual who seeks nomination for election, or election, to the Office of President, Vice President, or Member of Congress shall file in any year in which such individual has --

(1) taken the action necessary under the law of a State to qualify for nomination for election, or election, or

(2) received political contributions or made expenditures, or has given consent for any other person to receive political contributions or make expenditures, with a view to bringing about such individual's nomination for election or election, to such office,

a report containing a full and complete financial statement for the preceding calendar year.

Contents of Reports

Sec. 303. (a) Each individual shall include in each report required to be filed by him under section 302 a full and complete statement, in such manner and form as the Comptroller General may prescribe, with respect to --

(1) the amount and source of each item of income, each item of reimbursement for any expenditure, and each gift or aggregate of gifts from one source (other than gifts received from any member of his immediate family) received during the preceding calendar year which exceeds \$100 in amount or value, including any fee or other honorarium received for or in connection with the preparation or delivery of any speech, attendance at any convention or other assembly of individuals, or the preparation of any article or other composition for publication;

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(2) the fair market value and source of any item received in kind or aggregate of such items received from one source (other than items received in kind from any member of his immediate family), including, but not limited to, any transportation or entertainment received, during the preceding calendar year if such fair market value for such item exceeds \$500;

(3) the identity and the category of value, as designated under subsection (b), of each asset known to him, held during the preceding calendar year for business or investment purposes and which has a value in excess of \$1,000 as of the close of the preceding calendar year;

(4) the identity and the category of amount, as designated under subsection (b), of each liability owed which is in excess of \$1,000 as of the close of the preceding calendar year;

(5) the identity, the category of amount, as designated under subsection (b), and date of any transaction in securities of any business entity or any transaction in commodities futures during the preceding calendar year which is in excess of \$1,000;

(6) the identity and the category of value, as designated under subsection (b), of any purchase or sale of real property or any interest in any real property which was held for business or investment purposes during the preceding calendar year if the value of property involved in such purchase or sale exceeds \$1,000;

(7) any patent right or any interest in any patent right, and the nature of such patent right, held during the preceding calendar year; and

(8) a description of, the parties to, and the terms of any contract, promise, or other agreement between such individual and any person with respect to his employment after such individual ceases to occupy his office or position with the Government, including any agreement under which such individual is taking a leave of absence from an office or position outside of the Government in order to occupy an office or position of the Government, and a description of and the parties with any unfunded pension agreement between such individual and any employer other than the Government.

Each individual designated under paragraphs (5) and (6) of section 302(b) shall also include in such report the identity of any person, other than the Government, who paid such individual compensation in excess of \$5,000 in any of the five years prior to the preceding calendar year and the nature and term of the services such individual performed for such person. The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

(b)(1) For purposes of paragraphs (3) through (6) of subsection (a), an individual need not specify the actual amount or value of each asset, each liability, each transaction in securities

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of any business entity or in commodities futures, or each purchase or sale required to be reported under such paragraphs, but such individual shall indicate which of the following categories such amount or value is within --

- (A) not more than \$5,000,
- (B) greater than \$5,000 but not more than \$15,000,
- (C) greater than \$15,000 but not more than \$50,000, or
- (D) greater than \$50,000.

(2) Each individual shall report the actual amount or value of any other item required to be reported under this section.

(c) For purposes of paragraphs (1) through (7) of subsection (a), an individual shall include each item of income or reimbursement and each gift received, each item received in kind, each asset held, each liability owed, each transaction in commodities futures and in securities, each purchase or sale of real property or interest in any real property, and each patent right or interest in any real property, and each patent right or interest in any patent right held by him, his spouse, or any of his dependents, or by him and his spouse jointly, him and any of his dependents jointly, or his spouse and any of his dependents jointly, or by any person acting on his behalf.

Filing of Reports

Sec. 304. (a)(1) Not later than May 15 of each year, reports will be filed as follows: officers and employees of the Executive Branch, other than an individual excepted under paragraph (3) of this subsection, shall file their reports with the Chairman of the Civil Service Commission; Justices, judges, officers and employees of any Court of the United States shall file their reports with the Director of the Administrative Office of the United States Courts; members, officers and employees of the Legislative Branch shall file their reports with the Secretary of the Senate or the Clerk of the House of Representatives, respectively. The Comptroller General shall have access to such reports for the purpose of carrying out this title.

(2) Each such individual, other than the President, Vice President, a Member of Congress, a justice or judge of the United States, any officer or employee of the Senate or the House of Representatives or any court of the United States, the head of each agency, each Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in the Executive Office, or each full-time member of a committee, board, or commission appointed by the President, shall file a copy of such report with the head of the agency in which such individual occupies any office or position at the same time as such report is filed pursuant to paragraph (1).

(3) The President may exempt any individual in the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or any individual engaged in intelligence activities in any agency of the United States from the requirement to file a report with the Civil Service Commission if the President finds that, due to the nature of the office or position occupied by such individual, public disclosure of such report would reveal the identity of an undercover agent of the Federal Government. Each individual exempted by the President from such requirements shall file such report with the head of the agency in which he occupies an office or position.

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(b)(1) Each individual who seeks nomination for election, or election, to the office of President or Vice President and is required to file a report under section 302(c) shall file such report with the Chairman of the Federal Election Commission within one month after the earliest of either action which such individual takes under section 302(c)(1) or (2).

(2) Each individual who seeks nomination for election, or election, to the Office of Member of Congress and is required to file a report under section 302(c) shall file such report with the Clerk of the House or the Secretary of the Senate within one month after the earliest of either action which such individual takes under section 302(c)(1) or (2).

(c)(1) Any individual who ceases prior to May 15 of any calendar year to occupy the office or position the occupancy of which imposes upon him the reporting requirement contained in section 302(a) shall file such report for the preceding calendar year and the period of such calendar year for which he occupies such office or position on or before May 15 of such calendar year.

(2) Any individual who ceases to occupy such office or position after May 15 of any calendar year shall file such report for the period of such calendar year which he occupies such office or position on the last day he occupies such office or position.

(d) Persons with whom reports are to be filed may grant one or more reasonable extensions of time for filing any report but the total of such extensions in any case shall not exceed ninety days.

Failure to File or Falsifying Reports;

Procedure

Sec. 305. (a)(1) Any individual who willfully fails to file a report as required under section 302, or who knowingly and willfully falsifies or fails to report any information such individual is required to report under section 303, shall be fined in any amount not exceeding \$10,000, or imprisoned for not more than one year, or both.

(2) The Attorney General may bring a civil action in any district court of the United States against any individual who fails to file a report which such individual is required to file under section 302 or who fails to report any information which such individual is required to report under section 303. The court in which such action is brought may assess against such individual a penalty in any amount not to exceed \$5,000.

(b) The head of each agency, the Clerk of the House of Representatives with respect to any Member, officer, or employee of the House of Representatives, the Secretary of the Senate with respect to any Member, officer or employee of the Senate, and the Director of the Administrative Office of the United States Courts with respect to any justice, judge, officer, or employee of any court of the United States shall submit annually to the Comptroller General a complete list of individuals who are required to file a report under

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section 302 and shall submit at the close of each calendar quarter a list of individuals who have begun or have terminated employment with such agency, the House of Representatives, the Senate, or any court in such calendar quarter.

(c) The Comptroller General or the person with whom a report is required to be filed pursuant to this title shall refer to the Attorney General the name of any individual which he has reasonable cause to believe has failed to file a report or has falsified or failed to file information required to be reported. In addition, if such individual is a Member, officer, or employee of the Senate or the House of Representatives, the Comptroller General shall refer the name of such individual to the Senate Select Committee on Standards and Conduct or the Committee on Standards of Official Conduct of the House of Representatives, whichever is appropriate.

(d) The President, the Vice President, either House of Congress, the Director of the Administrative Office of the United States Courts, the head of each agency or the Civil Service Commission may take any appropriate personnel or other action against any individual failing to file a report or information or falsifying information.

Custody and Audit of, and Public Access to, Reports

Sec. 306.(a)(1) Except as provided in (2), the person with whom a report is required to be filed shall make such report available for public inspection within fifteen days after the receipt thereof and shall provide a copy of such report to any person upon a written request.

(2) The foregoing paragraph shall not apply to individuals in the competitive service, individuals in Schedules A and B of the excepted service, or other individuals who are determined by the Civil Service Commission to be in career positions.

(b) Any person requesting a copy of a report under subsection (a) (1) shall supply his name and address and the name of the person or organization, if any, on whose behalf he is requesting such copy and may be required to pay a reasonable fee in an amount necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing.

(c)(1) It shall be unlawful for any person to inspect or obtain a copy of any report --

- (A) for any unlawful purpose;
- (B) for any commercial purpose;
- (C) to determine or establish the credit rating of any individual;
- (D) to compile any mailing list, or
- (E) for use directly or indirectly in the solicitation of money for any political, charitable or other purpose.

(2) The Attorney General may bring a civil action in any district court of the United States against any person

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who inspects or obtains such report for any purpose prohibited in paragraph (1). The court in which such action is brought may assess against such individual a penalty in any amount not to exceed \$1,000.

(d) Reports shall be held and made available to the public for a period of five years after receipt. After such five-year period, the reports shall be destroyed.

(e)(1) The House of Representatives, the Senate, the Director of the Administrative Office of the United States Courts, the Chairman of the Civil Service Commission, and the head of each agency shall make provisions to assure that each report shall be reviewed in accordance with any law or regulation with respect to conflicts of interest or confidential financial information of officers or employees of the House of Representatives, the Senate, the United States courts or each such agency or in accordance with rules and regulations as may be prescribed.

(2) Notwithstanding any law or resolution, whenever in any criminal case pending in any competent court in which a Member, officer, or employee of the Senate is a defendant, or in any proceeding before a grand jury of any competent court in which alleged criminal conduct of a Member, officer, or employee of the Senate is under investigation, a subpoena is served upon the Secretary of the Senate directing him to appear and produce any reports filed pursuant to any financial disclosure requirement, then he shall --

(1) if such report is in a sealed envelope, unseal the envelope containing such report and have an authenticated copy made of such report, replace such report in such envelope and reseal it, and note on such envelope that it was opened pursuant to this paragraph in response to a subpoena, a copy of which shall be attached to such envelope, and

(ii) appear in response to such subpoena and produce the authenticated copy so made.

For purposes of this paragraph, the term "competent court" means a court of the United States, a State, or the District of Columbia which has general jurisdiction to hear cases involving criminal offenses against the United States, such State, or the District of Columbia, as the case may be.

(f)(1) The Comptroller General shall, under such regulations as he may prescribe, conduct on a random basis audits of not more than 5 per centum of the reports filed under section 304(a)(1).

(2) The Comptroller General shall audit during each term of an individual holding the office of President or Vice President at least one report filed by such individual under section 304(a)(1) during such term.

(3) The Comptroller General shall, during each six-year period beginning after the date of enactment of this Act, audit at least one report filed by each Member of the Senate and the House of Representatives during such six-year period.

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(4)(A) In conducting an audit under paragraph (1), (2), or (3), the Comptroller General is authorized to require by subpoena the production of books, papers, and other documents. All such subpoenas shall be issued and signed by the Comptroller General.

(B) In case of a refusal to comply with a subpoena issued under subparagraph (A) --

(1) the Comptroller General is authorized to seek an order by any district court of the United States having jurisdiction of the defendant to require the production of the documents involved; and

(ii) such district court may issue such order and enforce it by contempt proceedings.

(5) Whenever the Comptroller General finds that a report filed under Section 304(a) (1) discloses the existence of a conflict of interest or a potential conflict of interest, he shall report his finding to the person with whom such report has been filed with a copy to the individual who filed such report. In the event an issue raised by such a report is not resolved to the satisfaction of the Comptroller General, he may, after the lapse of 90 days from the date of his report, make public the report filed under Section 304(a) (1), together with his finding and all comments made or actions taken in respect of his finding.

Separability

Sec. 307. If any part of this title is held invalid, the remainder of the title shall not be affected thereby. If any provision of any part of this title, or the application thereof to any person or circumstance, is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

Authorization of Appropriations

Sec. 308. There are authorized to be appropriated for each fiscal year through October 30, 1981, such sums as may be necessary to carry out the provisions of this title.

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July 19, 1976

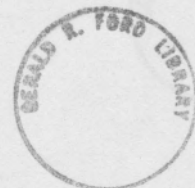
Dear Mr. Speaker:

One of the foremost objectives of my Administration has been to restore public faith and trust in the integrity of all three branches of our government, the executive, the legislative and the judicial. Much progress has been made, but we must take additional steps to insure that public concerns are fully satisfied.

The Senate now has before it a bill, S. 495, which could serve these important objectives. However, as drafted, S. 495 contains serious Constitutional and practical problems, and it is so narrowly drawn that it does not fairly and adequately meet the objectives of such legislation.

I am writing to you today to propose a substitute to S. 495 that would correct the Constitutional deficiencies in the bill and would also expand its scope so that it would apply in equal force to the President, the Vice President, major appointees of the Federal government, and members of the Congress of the United States. I believe this new bill represents a sound, constructive approach and I would urge its adoption by the Congress.

In its current form, S. 495 provides for the appointment of temporary special prosecutors to deal with allegations of wrongdoing by key members of the government. The proposed legislation also would establish the Office of Congressional Legal Counsel to represent Congress before the Courts, and it provides for public financial disclosure by high level personnel in the government.



While I strongly support the principles underlying this legislation, I am especially concerned about three particular aspects of the bill in its present form:

- Title I, which provides for a series of different independent and special prosecutors for separate cases of alleged wrongdoing, is of highly questionable constitutionality because it would invest in the judiciary the power to review the role of the Attorney General in conducting prosecutions and the power to appoint special prosecutors not subject to Executive direction. To grant the judiciary such authority is contrary to the fundamental principles of separation of powers. Moreover, S. 495 requires the appointment of a different special prosecutor for each case, all on an ad hoc basis. The Department of Justice estimates that if S. 495 were now law, approximately half a dozen special prosecutors would have to be appointed, and close to 50 other matters possibly requiring appointment would be under advisement by a special court. This extraordinary result of the present bill would almost certainly produce inconsistency and inequity of prosecutorial action. I must also point out that Title I would not require direct referral to a special prosecutor of allegations of wrongdoing by most members of Congress, while it would require referral for all high level officers of the executive branch. I do not believe that such difference in treatment should be allowed to exist if public confidence in the government is to be maintained.
- Title II attempts to preempt certain law enforcement powers accorded to the President by the Constitution and vest them in the Congress.



- Title III, requiring financial disclosure by numerous government officers and employees, allows certain loopholes in reporting procedures, and has certain other deficiencies.

To remedy these defects, while advancing the principles of accountability by officers and employees in all three branches of the Federal government, I am transmitting today a substitute for S. 495. I urge the Senate to consider my modifications in proposals at the same time it considers S. 495. I also urge the House Judiciary Committee to consider my proposal at the time of its initial hearings on this matter later this week.

The highlights of my proposed legislation to maintain the public's confidence in the integrity of our government are as follows:

Title I -- Reorganization of the Department of Justice

To avoid the problems in Title I, my legislative proposal would establish a permanent Office of Special Prosecutor to investigate and prosecute criminal wrongdoing committed by high level government officials. The Special Prosecutor would be appointed by the President, by and with the advice and consent of the Senate, for a single three-year term. Individuals who hold a high level position of trust and responsibility on the personal campaign staff of, or in an organization or political party working on behalf of a candidate for any elective Federal office would be ineligible for appointment. The bill would sanction removal of the Special Prosecutor only for extraordinary improprieties and in the event of removal, the President would be required to submit to the Committee on the Judiciary a report describing with particularity the grounds for such action.

Any allegation of criminal wrongdoing concerning the President, Vice President, members of Congress, or persons compensated at the rate of Level I or II of the Executive Schedule would be referred directly to the Special Prosecutor for investigation and, if warranted, prosecution. The Attorney General could



refer to the Special Prosecutor any other allegation involving a violation of criminal law whenever he found that it was in the best interest of the administration of justice. The Special Prosecutor could, however, decline to accept the referral of any allegation. In that event, the allegation would be investigated by the Department of Justice.

The Special Prosecutor would have plenary authority to investigate and prosecute matters within his jurisdiction, including the authority to appeal adverse judicial rulings. However, in the event of a disagreement with the Special Prosecutor on an issue of law, the Attorney General would be free to present his position to the court before which the prosecution or appeal is lodged.

My proposal would also institutionalize, by statute, the investigation and prosecution of violations of law by government officials and employees which do not fall within the jurisdiction of the Special Prosecutor. Title I would also establish by statute a Section on Government Crimes and an Office of Professional Responsibility within the Department of Justice.

Title II -- Congressional Legal Counsel

I have also proposed a revised Title II that creates an Office of Congressional Legal Counsel and assigns the powers and duties of that Office. Like S. 495, this proposal gives Congress the legal assistance necessary to the proper discharge of its functions, but it does so in a manner consistent with the Constitution of the United States. Under my proposal, when the Attorney General certifies that he cannot represent Congress or a congressional entity, Congress or the appropriate house of Congress may direct the Congressional Legal Counsel to defend any legal action, enforce subpoenas, bring described civil actions, intervene in cases or appear as amicus curiae to defend the constitutionality of any law of the United States or the powers and responsibilities of Congress. Congressional Legal Counsel may request grants of immunity under the Organized Crime Control Act of 1970.



In all of these matters, my proposal like S. 495, provides for exclusive congressional control and direction of the activities of the Congressional Legal Counsel.

Title III -- Government Personnel; Financial Disclosure Requirements

My proposed bill recognizes and protects the public's right to be assured that public officials, regardless of which branch of government they serve in, disclose personal financial matters which could give rise to a conflict of interest in the performance of their official duties.

My proposal would require Federal public officers and employees to file financial reports with a designated office in their branch of government. In addition, public disclosure would be made of the financial statements of (i) all elected officials, (ii) high ranking officers or employees appointed by such officials, (iii) significant policy making and confidential employees, and (iv) other employees compensated at the rate of GS 16 or above (but not those in competitive civil service or who, save for certain legal exemptions, would be in the competitive civil service). My proposed legislation would also give the Comptroller General oversight authority to audit such statements as well as the authority to make findings of a conflict of interest and if the problem is not corrected, to make those findings public. Thus, the public's right to have accountability from public officers and employees is doubly protected: first, by the executive, legislative or judicial branch office with which reports are filed, and secondly, by the Comptroller General.

In addition, my proposal would close certain loopholes contained in the current Senate bill. For example, the present proposal requires the reporting of any item received in kind whose fair market value "for such item" exceeds \$500. Such provision would allow



a series of gifts from the same source, each valued at less than \$500 to go unreported. Under my proposed legislation such gifts would be aggregated and hence require reporting. Moreover, my proposal would make clear that while property owned for personal use, such as the family home, furniture, jewelry, the family car, etc., need not be inventoried in disclosure forms, property of a business or investment nature must be reported. Assets unknown to the individual because they are held in a bona fide "blind trust" need not be identified, but the trust interest must be disclosed.

I believe these provisions better serve the public interest than those contained in S. 495. Therefore, I urge the Congress to give prompt and favorable consideration to my proposal.

Sincerely,

The Honorable
The Speaker
U.S. House of Representatives
Washington, D.C. 20515



July 19, 1976

Dear Mr. Speaker:

One of the foremost objectives of my Administration has been to restore public faith and trust in the integrity of all three branches of our government, the executive, the legislative and the judicial. Much progress has been made, but we must take additional steps to insure that public concerns are fully satisfied.

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I am writing to you today to propose a substitute to S. 495 that would correct the Constitutional deficiencies in the bill and would also expand its scope so that it would apply in equal force to the President, the Vice President, major appointees of the Federal government, and members of the Congress of the United States. I believe this new bill represents a sound, constructive approach and I would urge its adoption by the Congress.

In its current form, S. 495 provides for the appointment of temporary special prosecutors to deal with allegations of wrongdoing by key members of the government. The proposed legislation also would establish the Office of Congressional Legal Counsel to represent Congress before the Courts, and it provides for public financial disclosure by high level personnel in the government.



While I strongly support the principles underlying this legislation, I am especially concerned about three particular aspects of the bill in its present form:

- Title I, which provides for a series of different independent and special prosecutors for separate cases of alleged wrongdoing, is of highly questionable constitutionality because it would invest in the judiciary the power to review the role of the Attorney General in conducting prosecutions and the power to appoint special prosecutors not subject to Executive direction. To grant the judiciary such authority is contrary to the fundamental principles of separation of powers. Moreover, S. 495 requires the appointment of a different special prosecutor for each case, all on an ad hoc basis. The Department of Justice estimates that if S. 495 were now law, approximately half a dozen special prosecutors would have to be appointed, and close to 50 other matters possibly requiring appointment would be under advisement by a special court. This extraordinary result of the present bill would almost certainly produce inconsistency and inequity of prosecutorial action. I must also point out that Title I would not require direct referral to a special prosecutor of allegations of wrongdoing by most members of Congress, while it would require referral for all high level officers of the executive branch. I do not believe that such difference in treatment should be allowed to exist if public confidence in the government is to be maintained.
- Title II attempts to preempt certain law enforcement powers accorded to the President by the Constitution and vest them in the Congress.



- Title III, requiring financial disclosure by numerous government officers and employees, allows certain loopholes in reporting procedures, and has certain other deficiencies.

To remedy these defects, while advancing the principles of accountability by officers and employees in all three branches of the Federal government, I am transmitting today a substitute for S. 495. I urge the Senate to consider my modifications in proposals at the same time it considers S. 495. I also urge the House Judiciary Committee to consider my proposal at the time of its initial hearings on this matter later this week.

The highlights of my proposed legislation to maintain the public's confidence in the integrity of our government are as follows:

Title I -- Reorganization of the Department of Justice

To avoid the problems in Title I, my legislative proposal would establish a permanent Office of Special Prosecutor to investigate and prosecute criminal wrongdoing committed by high level government officials. The Special Prosecutor would be appointed by the President, by and with the advice and consent of the Senate, for a single three-year term. Individuals who hold a high level position of trust and responsibility on the personal campaign staff of, or in an organization or political party working on behalf of a candidate for any elective Federal office would be ineligible for appointment. The bill would sanction removal of the Special Prosecutor only for extraordinary improprieties and in the event of removal, the President would be required to submit to the Committees on the Judiciary a report describing with particularity the grounds for such action.

Any allegation of criminal wrongdoing concerning the President, Vice President, members of Congress, or persons compensated at the rate of Level I or II of the Executive Schedule would be referred directly to the Special Prosecutor for investigation and, if warranted, prosecution. The Attorney General could



refer to the Special Prosecutor any other allegation involving a violation of criminal law whenever he found that it was in the best interest of the administration of justice. The Special Prosecutor could, however, decline to accept the referral of any allegation. In that event, the allegation would be investigated by the Department of Justice.

The Special Prosecutor would have plenary authority to investigate and prosecute matters within his jurisdiction, including the authority to appeal adverse judicial rulings. However, in the event of a disagreement with the Special Prosecutor on an issue of law, the Attorney General would be free to present his position to the court before which the prosecution or appeal is lodged.

My proposal would also institutionalize, by statute, the investigation and prosecution of violations of law by government officials and employees which do not fall within the jurisdiction of the Special Prosecutor. Title I would also establish by statute a Section on Government Crimes and an Office of Professional Responsibility within the Department of Justice.

Title II -- Congressional Legal Counsel

I have also proposed a revised Title II that creates an Office of Congressional Legal Counsel and assigns the powers and duties of that Office. Like S. 495, this proposal gives Congress the legal assistance necessary to the proper discharge of its functions, but it does so in a manner consistent with the Constitution of the United States. Under my proposal, when the Attorney General certifies that he cannot represent Congress or a congressional entity, Congress or the appropriate house of Congress may direct the Congressional Legal Counsel to defend any legal action, enforce subpoenas, bring described civil actions, intervene in cases or appear as amicus curiae to defend the constitutionality of any law of the United States or the powers and responsibilities of Congress. Congressional Legal Counsel may request grants of immunity under the Organized Crime Control Act of 1970.



In all of these matters, my proposal like S. 495, provides for exclusive congressional control and direction of the activities of the Congressional Legal Counsel.

Title III -- Government Personnel; Financial Disclosure Requirements

My proposed bill recognizes and protects the public's right to be assured that public officials, regardless of which branch of government they serve in, disclose personal financial matters which could give rise to a conflict of interest in the performance of their official duties.

My proposal would require Federal public officers and employees to file financial reports with a designated office in their branch of government. In addition, public disclosure would be made of the financial statements of (i) all elected officials, (ii) high ranking officers or employees appointed by such officials, (iii) significant policy making and confidential employees, and (iv) other employees compensated at the rate of GS 16 or above (but not those in competitive civil service or who, save for certain legal exemptions, would be in the competitive civil service). My proposed legislation would also give the Comptroller General oversight authority to audit such statements as well as the authority to make findings of a conflict of interest and if the problem is not corrected, to make those findings public. Thus, the public's right to have accountability from public officers and employees is doubly protected: first, by the executive, legislative or judicial branch office with which reports are filed, and secondly, by the Comptroller General.

In addition, my proposal would close certain loopholes contained in the current Senate bill. For example, the present proposal requires the reporting of any item received in kind whose fair market value "for such item" exceeds \$500. Such provision would allow



a series of gifts from the same source, each valued at less than \$500 to go unreported. Under my proposed legislation such gifts would be aggregated and hence require reporting. Moreover, my proposal would make clear that while property owned for personal use, such as the family home, furniture, jewelry, the family car, etc., need not be inventoried in disclosure forms, property of a business or investment nature must be reported. Assets unknown to the individual because they are held in a bona fide "blind trust" need not be identified, but the trust interest must be disclosed.

I believe these provisions better serve the public interest than those contained in S. 495. Therefore, I urge the Congress to give prompt and favorable consideration to my proposal.

Sincerely,

The Honorable
The Speaker
U.S. House of Representatives
Washington, D.C. 20515



*Watergate
Reform Bill*

Question:

Why have you now proposed revisions to S. 495 when the Department of Justice witnesses had previously opposed the concept of the bill?

Answer:

Assistant Attorney General Michael Uhlmann testified in December 1975 before the Senate Government Operations Committee and the Deputy Attorney General testified in May of this year before the Senate Judiciary Committee. The thrust of their testimony was to point out the Department of Justice was already performing functions without need for the reorganization proposed by the bill. In addition, the testimony pointed out the constitutional and practical deficiencies of the legislation. This Administration has not been in opposition to the basic objectives of the bill but thinks that it should apply equally to both high level officials of the Executive Branch and members of the Congress.



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*Watergate
Reform - Legis*

Friday 7/23/76

9:10 Jackie McMahan in the Research Office
had called Friedersdorf's office and they referred
her to us ----

6506

She needs to know why the President decided to
change his position on the Watergate Reform
Legislation -- after not supporting it in the past --
and especially since it was opposed by Attorney General Levi.

(I asked who was requesting the information --
and she indicated it had come from someone on
Hartmann's staff.)



OFFICE OF
THE ATTORNEY GENERAL



7/21/76

TO: Mr. Buchen
FROM: Doug Marvin

The staff of the Government Operations Committee has made a number of amendments to the President's proposal on Title I of S. 495. We have not offered to the Committee or the staff any comments on these changes. Indeed, we just received a copy of the draft this morning.



TITLE I - AMENDMENTS TO TITLE 28, UNITED STATES CODE

Reorganization of the Department of Justice

Sec. 101 (a) Title 28, United States Code, is amended by adding after chapter 37 the following new chapter:

Chapter 39 -- Office of Special Prosecutor and Office of Government Crimes and Office of Professional Responsibility.

SEC.

"591. Special Prosecutor: Appointment and Removal

"592. Jurisdiction

"593. Authority

"594. Office of Government Crimes

"595. Jurisdiction

"596. Reporting

"597. Disqualification of Officers and Employees of the Department of Justice

"598. Office of Professional Responsibility

§ 591. Special Prosecutor: Appointment and Removal

(a) There is established within the Department of Justice an independent Office of Special Prosecutor which shall be headed by a Special Prosecutor appointed by the President, by and with the advice and consent of the Senate.

(b) The Special Prosecutor shall be appointed for a term of three years and shall be compensated at

No person shall serve as Special Prosecutor for more than a single term.



(c) A person shall not be appointed Special Prosecutor if he has at any time during the five years preceding such appointment held a high level position of trust and responsibility on the personal campaign staff of, or in an organization or political party working on behalf of, a candidate for any elective Federal office. The confirmation by the Senate of a Presidential nomination of a Special Prosecutor shall constitute a final determination that such officer meets the requirements of this subsection.

(d) A Special Prosecutor shall only be removed by the President for extraordinary improprieties for malfeasance in office, or for any conduct constituting a felony. An action may be brought in the United States District Court for the District of Columbia to challenge the action of the President under this subsection by seeking reinstatement or other appropriate relief. In the event of any removal, the President shall promptly submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report describing with particularity the grounds for such action. The Committees shall make available to the public such report, except that each Committee may, if necessary to avoid prejudicing the legal rights of any individual, delete or postpone publishing such portions of the report, or the whole report, or any name or other identifying details.

(e)

e) The special prosecutor shall report no less than annually to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives and shall include in such reports information concerning his relationship with the Attorney General, United States Attorneys, other agencies of government, the degree of independence exercised under section 593, the types and numbers of matters of which he has declined jurisdiction under section 592(b) and such other matters as he deems appropriate. However, the report shall not include any information which might impair or compromise an ongoing matter, or which the special prosecutor determines would constitute an improper invasion of personal privacy or other improper disclosure.

§ 592. Jurisdiction

(a)(1) The Special Prosecutor shall have jurisdiction to investigate and prosecute possible violations of Federal criminal law by a person who holds or who at the time of such possible violation held any of the following positions in the Federal Government: (i) President, Vice President, Attorney General, or Director of the Federal Bureau of Investigation; (ii) any position compensated at a rate equal to/level I or level II of the Executive Schedule under sections 5312 of 5313 of Title 5, United States Code, (iii) Member of Congress, or (iv) any member of the Federal judiciary.

(2) The Attorney General shall promptly refer to the Special Prosecutor for investigation and, if warranted, prosecution any information, allegations or complaints relating to any violation specified in paragraph (1). In addition, the Attorney General shall promptly refer to the Special Prosecutor for investigation and if warranted prosecution any matter where the Attorney General determines that in the interest of the administration of justice it would be inappropriate for the Department of Justice (other than the Office of Special Prosecutor) to conduct such investigation or prosecution.

(b) The Special Prosecutor may in his discretion decline to accept referrals under subsection(a)(2) of this section. The Special Prosecutor may decline to assert jurisdiction under subsection(a)(1) of this section when the matter over which he has jurisdiction is a peripheral or incidental part of an investigation or prosecution already being conducted elsewhere in the Department of Justice, or when for some other reason he determines it

would be in the interest of the administration of justice to permit the matter to be handled elsewhere in the Department; provided, however, that any such declination shall be accompanied by the establishment of such procedures as the Special Prosecutor considers necessary and appropriate to keep him informed of the progress of the investigation or prosecution as it relates to such matter; and provided further that the Special Prosecutor may at any time assume responsibility for investigation and prosecution of such matter. If the Special Prosecutor declines to accept a referral under subsection(a)(2) or declines to assert jurisdiction under subsection(a)(1) he shall submit his reasons for taking such action in writing to the Attorney General.

§. 593 Authority

(a)(.) The temporary special prosecutor shall have, within the jurisdiction specified by section 592 over matters which he has assumed responsibility, full power and independent authority, (subject only to the power of the President under section 591(d)) to ---

"(1) conduct proceedings before grand juries and other investigations;

"(2) participate in court proceedings and engage in any litigation, including civil and criminal matters, as he deems necessary;

"(3) appeal any decision of a court in which he is a party;

"(4) review all documentary evidence available from any source;

"(5) determine whether or not to contest the assertion of any testimonial privilege;

"(6) receive appropriate national security clearances and, if necessary contest in court, including where appropriate participation in in camera proceedings, any claim of privilege or attempt to withhold evidence on grounds of national security;

"(7) make applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and for purposes of sections 6003, 6004, and 6005, of title 18, United States Code, as amended, the special prosecutor may exercise the authority vested in a

United States Attorney, or the Attorney General;

"(8) inspect, obtain, or use the original or copy of any tax return, in accordance with the applicable statutes and regulations, and for purposes of section 6103, of title 26, United States Code, as amended, and the regulations thereunder, a special prosecutor may exercise the powers vested in a United States Attorney or the Attorney General;

"(9) initiate and conduct prosecutions in any court of competent jurisdiction, frame and sign indictments, file information, and handle all aspects of any case in the name of the United States;

"(10) / ^{communicate} with, and appear before, and provide information to appropriate Congressional committees;

"(11) exercise all other powers as to the conduct of criminal investigations and prosecutions which would otherwise be vested in the Attorney General or the United States Attorneys under the provisions of chapters 31 and 35 of title 28 of the United States Code, as amended, and the regulations thereunder, coordinate and direct the activities of all Department of Justice personnel, including United States Attorneys, and act as attorney for the Government in such investigations and prosecutions except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under ^{section 2514 of} title 18, United States Code.

✓
The
"(b) A special prosecutor shall have power to appoint, fix the compensation, and assign the duties of such employees as he deems necessary, including but not limited to investigators, attorneys, and part-time consultants, without regard to the provisions of title 5, United States Code, governing appointments in the competitive civil service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title. The Department of Justice shall provide assistance to the Special Prosecutor which shall include but not be limited to, the special prosecutor full access to any records, files, or other materials relevant to matters within his jurisdiction, providing to the special prosecutor the resources and personnel required to perform his duties, and use by the special prosecutor of the investigative and other services of the Federal Bureau of Investigation."

✓
"(c) The special prosecutor may from time to time make public such statements or reports as he deems appropriate. The special prosecutor may present reports, statements, or recommendations to the Congress, the President or the Attorney General.

"(d) Nothing in this chapter shall prevent the Attorney General or the Solicitor General from presenting to any court the views of the Department of Justice as to issues of law raised by any case or appeal.

§ 594. Office on Government Crimes

(a) There is established within the Department of Justice an Office of Government Crimes, which shall be headed by a Director appointed by the President by and with the advice and consent of the Senate. The Director shall report directly to the Attorney General on a regular basis and when he deems it necessary, any shall report to any other person the Attorney General directs. The Attorney General shall determine the organizational placement of the Office within the Department.

(b) A person shall not be appointed Director of the Office of Government Crimes if he has at any time during the five years preceding such appointment held a high level position of trust and responsibility on the personal campaign staff of, or in an organization or political party working on behalf of, a candidate for any elective Federal office. The confirmation by the Senate of a Presidential nomination of a Director shall constitute a final determination that such officer meets the requirements of this subsection.

§ 595. Jurisdiction

(a) The Attorney General shall, except as to matters referred to the Special Prosecutor pursuant to section 592 of this Chapter, delegate to the Office on Government Crimes jurisdiction of (1) criminal violations of Federal law related directly or indirectly to his government position, employment, or compensation, by any individual who holds or who at the time of such possible violation held position as an elected or appointed Federal Government officer, employee or special employee; (2) criminal violations of Federal laws relating to lobbying, conflicts of interest, campaigns, and election to public office committed by any person except insofar as such violations relate to matters involving discrimination or intimidation on the grounds of race, color, religion or national origin; and (3) such other matters as the Attorney General may deem appropriate.

(b) Jurisdiction delegated to the Office of Government Crimes pursuant to subsection (a) of this subsection may be concurrently delegated by the Attorney General to, or concurrently reside in, the United States Attorneys or other units of the Department of Justice. In the event of such concurrent delegation, the Director shall supervise the United States Attorneys or other units in the performance of such duties. This section shall not limit any authority conferred upon the Attorney General, the Federal Bureau of Investigation, or any other department or agency of government to investigate any matter.

§ 596. Reporting

At the beginning of each regular session of the Congress, the Attorney General shall report to the Congress on the activities and operation of the Office of Government Crimes for the preceding fiscal year.

Such report shall specify the number and type of investigations and prosecutions subject to the jurisdiction of such unit and the disposition thereof but shall not include any information which would impair an ongoing investigation, prosecution, or proceeding, or which the Attorney General determines would constitute an improper invasion of personal privacy.

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At the beginning of each regular session of the Congress, the Attorney General shall report to the Congress on the activities and operation of the Office of Government Crimes for the preceding fiscal year.

Such report shall specify the number and type of investigations and prosecutions subject to the jurisdiction of such unit and the disposition thereof but shall not include any information which would impair an ongoing investigation, prosecution, or proceeding, or which the Attorney General determines would constitute an improper invasion of personal privacy.



§ 597. Disqualification of Officers and Employees of the
Department of Justice

"The Attorney General shall promulgate rules and regulations which require any officer or employee of the Department of Justice, including a United States attorney or a member of his staff, to disqualify himself from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or partisan political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.

§598. Office of Professional Responsibility

(a) There is established within the Department of Justice an Office of Professional Responsibility, which shall be headed by a Counsel on Special Responsibility appointed by the Attorney General. The Counsel shall be subject to the general supervision and direction of the Attorney General, and shall report directly to the Attorney General or, in appropriate cases, to the Deputy Attorney General or the Solicitor General.

(b) Except as to matters which are to be referred to the Special Prosecutor under Section 592 of this Chapter, the Counsel on Professional Responsibility shall be responsible for reviewing any information or allegation presented to him concerning conduct by an employee of the Department of Justice that may be in violation of law, of Department Regulations or orders, or of applicable standards of conduct, and shall undertake a preliminary investigation to determine what further steps should be taken. On the basis of such investigation the Counsel shall refer the matter to the appropriate unit within the Department or shall recommend to the Attorney General or, in appropriate cases, to the Deputy Attorney General or Solicitor General, what other action, if any should be taken. The Counsel shall undertake such other responsibilities as the Attorney General may direct.

(c) Nothing in this section shall derogate from the authority of internal inspection units of the Department of Justice and the heads of other units to receive, investigate and act upon information or allegations concerning unlawful or improper conduct.

(b) The analysis of part II of title 28, United States Code, is amended by adding after the item following chapter 37 the following new item:

"39. Office of Special Prosecutor, Office of Government Crimes, and Office of Professional Responsibility-----591".

(c)(1) Section 5315 of title 5, United States Code, is amended by adding "§(105) Director of Office of Government Crimes."

(2) Section 5314 of title 5, United States Code, is amended by adding "Special Prosecutor".

SEPARABILITY

SEC. 102. If any part of this title is held invalid, the remainder of the title shall not be affected thereby. If any provision of any part of this title, or the application thereof to any person or circumstance, is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

- AUTHORIZATION OF APPROPRIATIONS

SEC. 103. There are authorized to be appropriated for each fiscal year through September 30, 1981, such sums as may be necessary to carry out the provisions of this title.

TITLE I - AMENDMENTS TO TITLE 28, UNITED STATES CODE

Reorganization of the Department of Justice

Sec. 101 (a) Title 28, United States Code, is amended by adding after chapter 37 the following new chapter:

Chapter 39 -- Office of Special Prosecutor and Office of Government Crimes and Office of Professional Responsibility.

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"591. Special Prosecutor: Appointment and Removal

"592. Jurisdiction

"593. Authority

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"597. Disqualification of Officers and Employees of the Department of Justice

"598. Office of Professional Responsibility

§ 591. Special Prosecutor: Appointment and Removal

(a) There is established within the Department of Justice an independent Office of Special Prosecutor which shall be headed by a Special Prosecutor appointed by the President, by and with the advice and consent of the Senate.

(b) The Special Prosecutor shall be appointed for a term of three years and shall be compensated at

No person shall serve as Special Prosecutor for more than a single term.

(c) A person shall not be appointed Special Prosecutor if he has at any time during the five years preceding such appointment held a high level position of trust and responsibility on the personal campaign staff of, or in an organization or political party working on behalf of, a candidate for any elective Federal office. The confirmation by the Senate of a Presidential nomination of a Special Prosecutor shall constitute a final determination that such officer meets the requirements of this subsection.

(d) A Special Prosecutor shall only be removed by the President for extraordinary improprieties for malfeasance in office, or for any conduct constituting a felony. An action may be brought in the United States District Court for the District of Columbia to challenge the action of the President under this subsection by seeking reinstatement or other appropriate relief. In the event of any removal, the President shall promptly submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report describing with particularity the grounds for such action. The Committees shall make available to the public such report, except that each Committee may, if necessary to avoid prejudicing the legal rights of any individual, delete or postpone publishing such portions of the report, or the whole report, or any name or other identifying details.

(e)

e) The special prosecutor shall report no less than annually to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives and shall include in such reports information concerning his relationship with the Attorney General, United States Attorneys, other agencies of government, the degree of independence exercised under section 593, the types and numbers of matters of which he has declined jurisdiction under section 592(b) and such other matters as he deems appropriate. However, the report shall not include any information which might impair or compromise an ongoing matter, or which the special prosecutor determines would constitute an improper invasion of personal privacy or other improper disclosure.

§ 592. Jurisdiction

(a)(1) The Special Prosecutor shall have jurisdiction to investigate and prosecute possible violations of Federal criminal law by a person who holds or who at the time of such possible violation held any of the following positions in the Federal Government: (i) President, Vice President, Attorney General, or Director of the Federal Bureau of Investigation; (ii) any position compensated at a rate equal to ^{or greater than} level I or level II of the Executive Schedule under sections 5312 of 5313 of Title 5, United States Code, (iii) Member of Congress, or (iv) any member of the Federal judiciary.

(2) The Attorney General shall promptly refer to the Special Prosecutor for investigation and, if warranted, prosecution any information, allegations or complaints relating to any violation specified in paragraph (1). In addition, the Attorney General shall promptly refer to the Special Prosecutor for investigation and if warranted prosecution any matter where the Attorney General determines that in the interest of the administration of justice it would be inappropriate for the Department of Justice (other than the Office of Special Prosecutor) to conduct such investigation or prosecution.

(b) The Special Prosecutor may in his discretion decline to accept referrals under subsection(a)(2) of this section. The Special Prosecutor may decline to assert jurisdiction under subsection(a)(1) of this section when the matter over which he has jurisdiction is a peripheral or incidental part of an investigation or prosecution already being conducted elsewhere in the Department of Justice, or when for some other reason he determines it

would be in the interest of the administration of justice to permit the matter to be handled elsewhere in the Department; provided, however, that any such declination shall be accompanied by the establishment of such procedures as the Special Prosecutor considers necessary and appropriate to keep him informed of the progress of the investigation or prosecution as it relates to such matter; and provided further that the Special Prosecutor may at any time assume responsibility for investigation and prosecution of such matter. If the Special Prosecutor declines to accept a referral under subsection(a)(2) or declines to assert jurisdiction under subsection(a)(1) he shall submit his reasons for taking such action in writing to the Attorney General.

§. 593 Authority

(a)(.) The temporary special prosecutor shall have, within the jurisdiction specified by section 592 over matters which he has assumed responsibility, full power and independent authority, (subject only to the power of the President under section 591(d)) to ---

"(1) conduct proceedings before grand juries and other investigations;

"(2) participate in court proceedings and engage in any litigation, including civil and criminal matters, as he deems necessary;

"(3) appeal any decision of a court in which he is a party;

"(4) review all documentary evidence available from any source;

"(5) determine whether or not to contest the assertion of any testimonial privilege;

"(6) receive appropriate national security clearances and, if necessary contest in court, including where appropriate participation in in camera proceedings, any claim of privilege or attempt to withhold evidence on grounds of national security;

"(7) make applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and for purposes of sections 6003, 6004, and 6005, of title 18, United States Code, as amended, the special prosecutor may exercise the authority vested in a

United States Attorney, or the Attorney General;

"(8) inspect, obtain, or use the original or copy of any tax return, in accordance with the applicable statutes and regulations, and for purposes of section 6103, of title 26, United States Code, as amended, and the regulations thereunder, a special prosecutor may exercise the powers vested in a United States Attorney or the Attorney General;

"(9) initiate and conduct prosecutions in any court of competent jurisdiction, frame and sign indictments, file information, and handle all aspects of any case in the name of the United States;

"(10) / ^{communicate} with, and appear before, and provide information to appropriate Congressional committees;

"(11) exercise all other powers as to the conduct of criminal investigations and prosecutions which would otherwise be vested in the Attorney General or the United States Attorneys under the provisions of chapters 31 and 35 of title 28 of the United States Code, as amended, and the regulations thereunder, coordinate and direct the activities of all Department of Justice personnel, including United States Attorneys, and act as attorney for the Government in such investigations and prosecutions except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under ^{section 2514 of} title 18, United States Code.



"(b) ^{the} special prosecutor shall have power to appoint, fix the compensation, and assign the duties of such employees as he deems necessary, including but not limited to investigators, attorneys, and part-time consultants, without regard to the provisions of title 5, United States Code, governing appointments in the competitive civil service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title. The Department of Justice shall provide ^{the} assistance to the Special Prosecutor which shall include but not be limited to, ^{the} affording to ^{the} special prosecutor full access to any records, files, or other materials relevant to matters within his jurisdiction, providing to ^{the} special prosecutor the resources and personnel required to perform his duties, and use by ^{the} special prosecutor of the investigative and other services of the Federal Bureau of Investigation."

"(c) The special prosecutor may from time to time make public such statements or reports as he deems appropriate. The special prosecutor may present reports, statements, or recommendations to the Congress, the President or the Attorney General.

"(d) Nothing in this chapter shall prevent the Attorney General or the Solicitor General from presenting to any court the views of the Department of Justice as to issues of law raised by any case or appeal.

§ 594. Office on Government Crimes

(a) There is established within the Department of Justice an Office of Government Crimes, which shall be headed by a Director appointed by the President by and with the advice and consent of the Senate. The Director shall report directly to the Attorney General on a regular basis and when he deems it necessary, ~~any~~ shall report to any other person the Attorney General directs. The Attorney General shall determine the organizational placement of the Office within the Department.

(b) A person shall not be appointed Director of the Office of Government Crimes if he has at any time during the five years preceding such appointment held a high level position of trust and responsibility on the personal campaign staff of, or in an organization or political party working on behalf of, a candidate for any elective Federal office. The confirmation by the Senate of a Presidential nomination of a Director shall constitute a final determination that such officer meets the requirements of this subsection.

§ 595. Jurisdiction

(a) The Attorney General shall, except as to matters referred to the Special Prosecutor pursuant to section 592 of this Chapter, delegate to the Office on Government Crimes jurisdiction of (1) criminal violations of Federal law related directly or indirectly to his government position, employment, or compensation, by any individual who holds or who at the time of such possible violation held position as an elected or appointed Federal Government officer, employee or special employee; (2) criminal violations of Federal laws relating to lobbying, conflicts of interest, campaigns, and election to public office committed by any person except insofar as such violations relate to matters involving discrimination or intimidation on the grounds of race, color, religion or national origin; and (3) such other matters as the Attorney General may deem appropriate.

(b) Jurisdiction delegated to the Office of Government Crimes pursuant to subsection (a) of this subsection may be concurrently delegated by the Attorney General to, or concurrently reside in, the United States Attorneys or other units of the Department of Justice. In the event of such concurrent delegation, the Director shall supervise the United States Attorneys or other units in the performance of such duties. This section shall not limit any authority conferred upon the Attorney General, the Federal Bureau of Investigation, or any other department or agency of government to investigate any matter.

§ 596. Reporting

At the beginning of each regular session of the Congress, the Attorney General shall report to the Congress on the activities and operation of the Office of Government Crimes for the preceding fiscal year.

Such report shall specify the number and type of investigations and prosecutions subject to the jurisdiction of such unit and the disposition thereof but shall not include any information which would impair an ongoing investigation, prosecution, or proceeding, or which the Attorney General determines would constitute an improper invasion of personal privacy.

§ 597. Disqualification of Officers and Employees of the
Department of Justice

"The Attorney General shall promulgate rules and regulations which require any officer or employee of the Department of Justice, including a United States attorney or a member of his staff, to disqualify himself from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or partisan political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.

§598. Office of Professional Responsibility

(a) There is established within the Department of Justice an Office of Professional Responsibility, which shall be headed by a Counsel on Special Responsibility appointed by the Attorney General. The Counsel shall be subject to the general supervision and direction of the Attorney General, and shall report directly to the Attorney General or, in appropriate cases, to the Deputy Attorney General or the Solicitor General.

(b) Except as to matters which are to be referred to the Special Prosecutor under Section 592 of this Chapter, the Counsel on Professional Responsibility shall be responsible for reviewing any information or allegation presented to him concerning conduct by an employee of the Department of Justice that may be in violation of law, of Department Regulations or orders, or of applicable standards of conduct, and shall undertake a preliminary investigation to determine what further steps should be taken. On the basis of such investigation the Counsel shall refer the matter to the appropriate unit within the Department or shall recommend to the Attorney General or, in appropriate cases, to the Deputy Attorney General or Solicitor General, what other action, if any should be taken. The Counsel shall undertake such other responsibilities as the Attorney General may direct.

(c) Nothing in this section shall derogate from the authority of internal inspection units of the Department of Justice and the heads of other units to receive, investigate and act upon information or allegations concerning unlawful or improper conduct.

(b) The analysis of part II of title 28, United States Code, is amended by adding after the item following chapter 37 the following new item:

"39. Office of Special Prosecutor, Office of Government Crimes, and Office of Professional Responsibility-----591".

(c)(1) Section 5315 of title 5, United States Code, is amended by adding "§(105) Director of Office of Government Crimes."

(2) Section 5314 of title 5, United States Code, is amended by adding "Special Prosecutor".

SEPARABILITY

SEC. 102. If any part of this title is held invalid, the remainder of the title shall not be affected thereby. If any provision of any part of this title, or the application thereof to any person or circumstance, is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

- AUTHORIZATION OF APPROPRIATIONS

SEC. 103. There are authorized to be appropriated for each fiscal year through September 30, 1981, such sums as may be necessary to carry out the provisions of this title.