

The original documents are located in Box 59, folder “Regulatory Agencies - White House Contacts With” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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September 8, 1974

To: Dean Burch

From: Phil Buchen

FYI -- and comments or action.



THE WHITE HOUSE
WASHINGTON

September 5, 1974

MEMORANDUM FOR: PHILIP BUCHEN
FROM: DUDLEY CHAPMAN *DC*
SUBJECT: Allegation of Political Interference
with National Transportation Safety Board

The attached article appears to be something we should look into, if something has not been done already. I have no knowledge of this other than the newspaper report.



P. 16

THE NEW YORK TIMES, THURSDAY, SEPTEMBER 5, 1974

Air Accident Investigator Quits In Dispute Over Role of Politics

By ROBERT LINDSEY

Charles O. Miller, the Federal Government's senior aircraft accident investigator, resigned yesterday and said that steps by the White House to tighten control over his agency, the National Transportation Safety

could prevent accidents. Mr. Spears denied the allegations. Previously, Mr. Miller has said that such pressures may have played a role, indirectly, in the crash March 3 of a Turkish Airlines DC-10 jet in Paris



THE WHITE HOUSE
WASHINGTON

9/19/74

Phill A:

Here is more
material re
relation of Exec.
Office to ~~admin~~
regulatory or
quasi-regulatory
bodies.

P.



THE WHITE HOUSE

WASHINGTON

September 19, 1974

MEMORANDUM FOR: PHILIP BUCHEN

FROM: DEAN BURCH *DB*

SUBJECT: Attached Clipping and Background Information

You sent me the attached news item on September 8 with the request that I look into the matter.

I've enclosed a brief background report from the staff of the Domestic Council -- Mike Duval to be specific -- who are the people around here who tend to live with these problems. I am inclined to accept Mike's explanation of the source of the Times piece and the lack of substantiation of the allegations contained therein.

Mike's closing point gets to a matter of broader application. We might want to discuss some day this question of further insulating regulatory and quasi-regulatory bodies from Executive Office influence. It has been raised in connection with the Consumer Products Safety Commission, for example, and also with regard to the traditional regulatories (FCC, FTC, etc.) and their budgets and personnel processes. I do not know whether the President has ever had a chance to focus on this question.

Attachments



FOLLOWING INFORMATION PROVIDED BY THE DOMESTIC
COUNCIL STAFF:

The allegations in this newspaper article are a recap of about a year of controversy. Miller is a disgruntled civil servant who refused to accept any criticism or supervision in his work for the Board. Because of the absolutely horrible administrative record of the Board (delays on cases, etc.), an Executive Director was sent over there in 1971 by the name of Richard Spears. Spears, formerly Senator Murphy's Administrative Assistant, was recommended by the White House Personnel Office. He is hard-working and aggressive which makes him a good complement to the NTSB Chairman Reed who is generally weak. Spears has been effective in increasing the productivity of the Board's staff.

Miller fed some information to the Senate Commerce Committee staff and the Committee held hearings on alleged White House interference and the activities of Spears. After the hearings, the Justice Department, at Senator Cannon's request, looked into the possibility that Reed had perjured himself, but the whole thing has come to nothing. Justice and the Commerce Committee were unable to substantiate any of the allegations.

The New York Times article apparently constitutes Miller's parting shot, although the issue could come up again in connection with the pending Railroad Safety Bill. The Commerce Committee staff is trying to add a new title to that bill which would guarantee the independence of the NTSB. So far, the Administration has strenuously opposed such legislation.



p. 16

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Air Accident Investigator Quits In Dispute Over Role of Politics

By ROBERT LINDSEY

Charles O. Miller, the Federal Government's senior aircraft accident investigator, resigned yesterday and said that steps by the White House to tighten control over his agency, the National Transportation Safety Board, had disrupted efforts could prevent accidents. Mr. Spears denied the allegations. Previously, Mr. Miller has said that such pressures may have played a role, indirectly, in the crash March 3 of a Turkish Airlines DC-10 jet in Paris in which 346 people were killed. He contended that his

COUNCIL ON INTERNATIONAL ECONOMIC POLICY

February 5, 1975

**FOR: EVA DAUGHTREY
MR. BUCHEN'S OFFICE
2ND FLOOR, WW**

Per our telephone conversation, attached is a copy of the memo we discussed re Guidelines re Contacts with Regulatory Agencies.

Doreen

MEMORANDUM

Regulatory

COUNCIL ON INTERNATIONAL ECONOMIC POLICY

October 8, 1974

FOR : CIEP PROFESSIONAL STAFF

FROM : SKIP HARTQUIST *SH*

SUBJECT: Guidelines re Contacts with Regulatory Agencies

Donald Rumsfeld announced yesterday that no contacts should be made with regulatory agencies by members of the White House staff unless they are first cleared with either Philip Buchen or Phillip Areeda. I called Mr. Buchen this morning for a clarification of that policy. He advised that if we are simply requesting documents or other information which has been made public, we can contact the agency directly without getting clearance. With respect to other staff contacts involving substantive matters, he said that no guidelines have as yet been prepared and asked for our help in cataloging the nature of the contacts we would ordinarily have with regulatory agencies.

For example, the President has specific review and decision-making responsibilities with respect to international air route decisions of the CAB. The question is whether we must refrain from contacting the CAB about such matters until the CAB decision is sent to the White House or whether we can keep ourselves currently informed before any decision is actually made.

In order to assist Messrs. Buchen and Areeda in the development of guidelines, I would appreciate it if each of you would provide me with the following information by Thursday, October 10:

(1) The nature of contacts you would ordinarily have with regulatory agencies in the absence of restrictive guidelines.

(2) An indication as to whether such contacts are based on the President's statutory responsibilities for review and/or decision-making, or whether the contacts are for informational purposes.

(3) The stage at which you would ordinarily have contact with the regulatory agency, i. e., during the formulation of agency regulations or guidelines, or after agency decisions have been reached.

CC:
Mr. Alan Wolff, STR



*Regulatory
Agencies*

10/21/74

To: Mr. Areeda

From: Eva

Attached is a copy of the
attachment to the 10/8
memo from John Niehuss.



THE WHITE HOUSE

WASHINGTON

Copy note:

Phil A:

Please review and propose response.
I assume you have (or it is in our
files) the attachment to the
Niehuss memo of 10/8.

P

COUNCIL ON INTERNATIONAL ECONOMIC POLICY

October 16, 1974

FOR : PHILIP BUCHEN
FROM : SKIP HARTQUIST *SH*
SUBJECT: CIEP Contacts with Regulatory Agencies

Pursuant to our recent telephone conversation, this memorandum is designed to outline the nature of contacts CIEP normally has with regulatory agencies.

Most of CIEP's contacts with regulatory agencies involve exchanges of information on broad issues rather than discussions of specific cases pending before the respective agencies. Less frequently, we have contact with the CAB with respect to the status of a pending decision regarding route cases or fares and schedules.

Examples of our contacts follow:

Civil Aeronautics Board

CIEP staff members dealing with airline matters have frequent contact with the staff of the CAB on a wide range of international aviation issues. The vast majority of the contacts are to exchange information on broad issues and do not relate to discussion of specific cases pending before the CAB. For example, in connection with our bilateral and multilateral negotiations with foreign governments, CIEP staff (along with State and DOT staff) meet frequently with CAB representatives to discuss the U. S. position.



CIEP staff also has contact (on a less frequent basis) with the CAB for the exchange of information regarding the status (e.g. when a particular decision might be expected) with respect to (1) pending route cases and (2) CAB action on fares and schedules.

Contacts with respect to pending route cases and fare and scheduling decisions are based on the President's statutory responsibility under Section 801 or 1002(j) of the Federal Aviation Act. Because the President is an essential part of the decision making process in certain CAB cases some contact with the CAB is unavoidable. However, to our knowledge there have been no CIEP contacts with Board members concerning pending decisions and only very occasional contacts on the staff level concerning the merits of a pending case.

In the case of a CAB decision requiring Presidential action, CIEP contacts with the CAB staff generally occur after the CAB has reached its decision. However, occasionally we do have staff contact during the formulation of agency recommendations. Perhaps the best example of this is the recently enacted revisions to Part 213 of the CAB Economic Regulations where CIEP, State and DOT all played an active role in formulating an agreed amendment to the CAB regulations.

Securities and Exchange Commission and Federal Reserve Board

CIEP staff has occasional contact with the SEC and Federal Reserve staff in connection with our work on foreign investment in the U.S. This contact is purely informational and does not relate to the President's statutory responsibility under any act. We have not had contact during the formulation of SEC or FRB regulations in the past. However, the SEC has announced its intention to hold investigative hearings on cash tender offers (including those by foreign investors). Some of the issues arising in these hearings are of direct interest to our work in foreign investment in the U.S. and we may wish to have contact with the SEC staff during the course of this investigation. In addition, the SEC -- by minor changes in its forms and procedures -- can obtain a substantial amount of information on foreign investment in the U.S. We may wish to have discussions with the SEC staff concerning such changes.



Federal Maritime Commission

The only contact we have had with the Federal Maritime Commission involved clearance of a briefing paper the Commission was preparing for visits to Japan and the Soviet Union by Chairman Bentley.

On October 8th, John Niehuss sent you a memorandum with respect to proposed contacts with regulatory agencies regarding foreign investment in the United States. A copy of the memorandum is attached for your reference.

I believe that contacts such as those outlined are proper and important to enable CIEP to keep informed on issues we have a responsibility to advise the President on under our statute (Title 22, USC 2841 et seq).

We will, of course, be happy to clear with you such individual contacts with regulatory agencies as you deem appropriate. If we can be of any further help to you in the development of the guidelines, please let me know.

Attachment



COUNCIL ON INTERNATIONAL ECONOMIC POLICY
WASHINGTON, D.C. 20500

October 8, 1974

MEMORANDUM

FOR: PHILIP BUCHEN
FROM: JOHN NIEHUSS *JN*
SUBJECT: CIEP Request For Information From
Independent Regulatory Agencies Re
Foreign Investment in the U.S.

Ambassador Eberle has instructed the CIEP staff to refrain from any contact with independent regulatory agencies unless approval has been obtained from your office. The purpose of this memo is to seek permission to obtain information from a number of independent regulatory agencies as a part of a review of reporting requirements with respect to foreign investment in the U.S.

CIEP has an established Interagency Task Force on Foreign Investment in the U.S. and, as part of its ongoing operations, Ambassador Eberle has asked the group to undertake a review of all U.S. Government reporting requirements with respect to foreign investment in the U.S. The objective of the review is to catalogue existing requirements, identify gaps and deficiencies and to consider ways of improving government information on foreign investment.

A number of the independent agencies gather information on the identity of the major stockholders and debtholders of the corporations under their regulatory jurisdiction. As a part of the CIEP task force review, we feel it is essential to obtain information from these agencies to determine the extent to which foreign investors are (or could be) specifically identified through their existing reporting requirements.

I have attached a copy of the proposed study outline for your consideration and will be glad to answer any questions that you or your staff may have with respect to our proposed review.

Approve Proposed CIEP Task Force Review: _____ Disapprove Proposed CIEP Task Force Review: _____

Please See Me: _____



10/8/74

Phil A:

~~Kindly review
& then let's get
together on how
to treat requests
like this & others
on which Counsel
is to pass.~~

✓ Ewj P. ^{top page}
Send on but keep
copy for our files.

COUNCIL ON INTERNATIONAL ECONOMIC POLICY

WASHINGTON, D.C. 20500

October 8, 1974

10/11/74
Ret'd to
John Niehuss

MEMORANDUM

FOR: PHILIP BUCHEN
FROM: JOHN NIEHUSS *JN*
SUBJECT: CIEP Request For Information From
Independent Regulatory Agencies Re
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Approve Proposed CIEP Task Force Review: T.W.B. Disapprove Proposed CIEP Task Force Review: _____

Please See Me: _____



COUNCIL ON INTERNATIONAL ECONOMIC POLICY

WASHINGTON, D.C. 20500

MEMORANDUM

FOR: See Attached List

FROM: W. D. Eberle
Executive Director *WDE*

SUBJECT: Interagency Review of Current U.S.
Reporting Requirements with Respect
to Foreign Investment in the U.S.

On September 18 I testified on behalf of the Administration in Senate hearings on S.3955, "The Foreign Investment Review Act of 1974," sponsored by Senator Metzenbaum. As you may know, this bill provides for the establishment of a reporting system under which foreigners would have to make greater public disclosures of information concerning their investments in the U.S. than are presently required under existing regulations administered by such agencies as the SEC, DOD, and the Commerce Department's Bureau of Economic Analysis.

In my testimony I pointed out that U.S. Government agencies already collect a significant amount of data on foreign investors which, if improved and made public, would go a long way toward satisfying congressional and public desires for better information on foreign investment in the U.S. In addition, it emphasized that (1) the Inouye/Culver Bill, which has passed both Houses of Congress, requires the Administration to review the adequacy of existing reporting and disclosure requirements and to make recommendations on methods whereby data on foreign investment activities in the U.S. can be kept current and (2) the Metzenbaum Bill prejudices the result of this review.

In addition to the Metzenbaum Bill, there have been a number of other measures introduced which reflect a widespread concern in Congress regarding foreign investment in the U.S. and the adequacy of our data-collection capabilities with respect to it. Accordingly, during the September 18 hearings I offered, on behalf of the Administration, to work with the relevant Congressional staff to undertake



the review provided for in the Inouye/Culver Bill on an accelerated basis. Our objective would be to come up with specific proposals for possible changes in existing reporting requirements to provide the Government and the public with adequate information on foreign investment in the U.S.

In line with this commitment, I have asked the existing CIEP Interagency Task Force on Foreign Investment in the U.S. (on which some of you are represented) to undertake a review of all existing reporting requirements that apply to foreign investors in the U.S. I would appreciate your assistance in carrying out this review so that we can have these proposals ready for presentation as soon as possible.

Our principal concern in this review will be to determine:

- (1) The extent to which existing reporting requirements yield adequate information as to (i) the true identity of the ultimate beneficial owner of foreign-owned shares of U.S. corporations and (ii) foreign ownership of real estate; and
- (2) what means we might propose (e.g., revision of existing statutes and/or regulations or enactment of new ones) to strengthen our capability to obtain and disclose such information.

In our preliminary investigations we have already identified some aspects of our existing reporting requirements that we think deserve attention. They are:

- (1) Lack of data re investment in real estate,
- (2) The difficulty in determining the identity of the foreign party (or parties) who ultimately receive dividends and/or exercise the voting rights in cases where securities are held by a nominee or in a street name, and
- (3) Confidentiality requirements which limit public disclosure of data collected by government.



We intend to identify and explore those and other problems in some detail. Hopefully, we will be able to devise some means of correcting these problems at minimum cost.

Study Proposal

As an initial step, we need to undertake a comprehensive survey of our existing reporting requirements and disclosure policy. To do this, I am hereby requesting that each Government agency which now collects information dealing with (1) foreign investment in the United States, or (2) the identity of investors (domestic and foreign) in companies under their regulatory jurisdiction, or (3) foreign investment in sectors of the U.S. economy in which such investment is restricted or prohibited by statute, to furnish a comprehensive, detailed statement of its existing reporting regulations and procedures. (The attached Annex outlines the specific information which should be included in the report).

I am aware that in early 1973 the GAO prepared a report on the reporting requirements of seven regulatory agencies for Senator Metcalfe entitled "Reporting Requirements and Dissemination of Information on Corporate Ownership and Structure." To avoid duplication of effort those agencies which contributed information for that report could build on their respective submissions--updating as necessary and noting the extent to which foreign investors (government, as well as private) are (or could be) specifically identified.

I am also aware that the SEC has begun a public investigatory proceeding which would cover, inter alia, questions relating to the beneficial ownership of securities and the takeover and acquisition of corporations by foreign and domestic persons. I would hope the CIEP Task Force will cooperate with the SEC staff and take into account its findings in conducting this study and making any recommendations.

The reports I have requested should be submitted by October 30 to Gene Clapp of my staff. I would also appreciate it if each agency would designate a staff contact to facilitate communications in connection with the study. Any questions on this request can be directed to either Mr. Clapp (456-6597) or to Mr. John Niehuss (456-2273), also of my staff.



ADDRESSEES

THE SECRETARY OF STATE
THE SECRETARY OF TREASURY
THE SECRETARY OF DEFENSE
THE SECRETARY OF AGRICULTURE
THE SECRETARY OF COMMERCE
THE SECRETARY OF LABOR
THE SECRETARY OF INTERIOR
THE SECRETARY OF TRANSPORTATION
THE ADMINISTRATOR, ENVIRONMENTAL PROTECTION
AGENCY
THE ADMINISTRATOR, FEDERAL ENERGY ADMINISTRATION
THE CHAIRMAN, ATOMIC ENERGY COMMISSION
THE CHAIRMAN, CIVIL AERONAUTICS BOARD
THE CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION
THE CHAIRMAN, FEDERAL MARITIME COMMISSION
THE CHAIRMAN, FEDERAL POWER COMMISSION
THE CHAIRMAN, FEDERAL RESERVE BOARD
THE CHAIRMAN, FEDERAL TRADE COMMISSION
THE CHAIRMAN, INTERSTATE COMMERCE COMMISSION
THE CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION

Information copy:

THE ATTORNEY GENERAL
THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET
THE CHAIRMAN, COUNCIL OF ECONOMIC ADVISORS
ASSISTANT TO THE PRESIDENT FOR
NATIONAL SECURITY AFFAIRS



ANNEX

Outline of Information Which Should be Included In Report on Reporting and Disclosure Requirements re Foreign Investments in the United States

Existing Reporting Requirements

1. All laws, rules, regulations or other procedures that require reporting of information as to the identity, location, and/or nature (i.e., beneficial vs. record owner) of (a) shareholders (or partners) of U.S. corporations (or firms), (b) the holders of short- and long-term debt of U.S. corporations; and (c) holders of real estate.
2. Any laws, rules, regulations or other procedures that establish special reporting requirements (in addition to the general requirements in (1) above) for (1) foreign investors in general and/or (2) foreign governments or government-controlled institutions.
3. In responding to (1) and (2) above, the precise legal basis for the requirements should be cited and copies of all relevant statutes and reporting forms should be supplied.

Enforcement of Reporting Requirements

1. A statement of the enforcement powers (e.g., penalties or subpoena or injunctive powers) which exist to ensure compliance with the agency's data collection.
2. A discussion of the degree to which such laws, rules, regulations or procedures are effective or ineffective, including information on the extent to which they are being responded to voluntarily or must be enforced. (Cite examples where existing enforcement powers have been used to ensure compliance).

Public Disclosure of Data

1. The extent to which information collected is made available to the public.
2. Sample copies of the reports or other publications in which the data collected is made public.



3. The confidentiality requirements (citing relevant statutes and/or administrative regulations) under which the collecting agency operates, as well as any other restrictions on the use of data collected.

Adequacy of Existing Reporting

1. Gaps in the scope or coverage of reporting (e.g., extent of exceptions or exemptions).
2. Factors which make it difficult or impossible to determine the true identity of the foreign beneficial owner who ultimately receives the dividends and/or exercises the voting rights (especially in cases where foreign nominees are used).
3. Deficiencies in existing enforcement powers which make it difficult to overcome the gaps in (2) above or which hinder effective data collection generally.

Recommendations for Improvement

1. The changes which could be made administratively in existing regulations or reporting forms to correct the deficiencies identified above.
2. Any additional legislative authority (either by amendment to existing laws or totally new legislation) that would be necessary, in your view, to improve the program of your agency relating to the collection and disclosure of information dealing with foreign investment in the U.S.
3. Any special reporting requirements that might be needed to deal with problems peculiar to investment by foreign governments or government-controlled institutions.

Compliance with Existing Laws Restricting Foreign Investment in the U. S.

1. List of laws restricting or otherwise limiting foreign investment in the U.S. administered by your agency (see attachment for partial list).
2. Statement of procedures used by your agency to ensure compliance with these laws.



3. Any suggestions for revision of statutes (or regulations) which are necessary to ensure compliance.

Attachment



I. General Restrictions on Foreign Controlled Enterprises

Foreign controlled enterprises operating in the United States, whether in branch or subsidiary form, may not:*

(a) engage in operations involving the utilization or production of atomic energy (42 USC 2133(d))

(b) own vessels which transport merchandise or passengers between U.S. ports, or which tow U.S. vessels carrying such merchandise or passengers between U.S. ports. (46 USC 802, 883, 888) There are exceptions to this general rule, one of which permits a foreign controlled U.S. manufacturing or mining company to engage in shipping activities related to its principal business. (46 USC 883-1)

(c) acquire rights of way for oil pipe-lines, or leases or interests therein for mining coal, oil or certain other minerals, on federal lands other than the outer continental shelf, if the foreign investor's home country does not permit such mineral leasing to U.S. controlled enterprises (30 USC 181, 185; 43 CFR 3300.1)

(d) engage in radio or television broadcasting, unless the Federal Communications Commission finds the grant of a license to be in the public interest (47 USC 310) (The FCC has granted licenses for broadcasting activities ancillary to another business of a foreign controlled enterprise.)

(e) acquire a controlling interest in a telegraph company (47 USC 222(d)).

(f) acquire control of a company engaged in any phase of aeronautics, unless approval is granted by the Civil Aeronautics Board (49 USC 1301(1), (13); 78A(4); (1378(f))

(g) be issued permits for intra-United States air commerce or navigation (49 USC 1371, 1401(b), 1508)

(h) obtain special government loans for the financing or refinancing of the cost of purchasing, constructing or operating commercial fishing vessels or gear (16 USC 742(c)(7))

(i) sell obsolete vessels to the Secretary of Commerce in exchange for credit towards new vessels (46 USC 1160(b))

(j) receive a preferred ship mortgage (46 USC 922)

*In certain cases foreign enterprises can acquire a minority interest in corporations engaging in the activities noted, but certain management requirements may have to be met. (Cf. Sec. II)



(k) purchase vessels converted by the government for commercial use or surplus war-built vessels at a special statutory sales price (50 USC App. 1737, 1745).

(l) obtain special government emergency loans for agricultural purposes after a natural disaster (7 USC 1961) or government loans to individual farmers or ranchers to purchase and operate family farms (7 USC 1922, 1941)

(m) establish an Edge Act corporation to engage in international or foreign banking (12 USC 619)*

(n) purchase Overseas Private Investment Corporation insurance or guarantees (22 USC 2198(c))

(o) obtain construction-differential or operating-differential subsidies for vessel construction or operation (46 USC 1151 ff., 1171 ff., 802)

(p) acquire or charter, without the approval of the Secretary of Commerce, U.S. flag vessels, vessels owned by a U.S. citizen, or shipyard facilities (46 USC 835)

(q) acquire the controlling interest in corporations owning the vessels or facilities described in (p) above (46 USC 835)

(r) obtain war-risk insurance for aircraft (49 USC 1531, 1401)

* In addition to its limitations on stock ownership by foreign enterprises, the Edge Act requires that all the directors of the corporation be United States citizens.



II. Management-related Restrictions on Foreign Enterprises

In certain cases a foreign controlled enterprise operating in the United States must meet certain requirements relating to management in order to engage in particular activities. The foreign investor, however, can continue to own all the equity in the enterprise, because the laws in question do not contain limitations relating to stock ownership. Unless these management requirements are met, foreign controlled enterprises may not:

(a) organize a national bank (all the directors must be United States citizens) (12 USC 72)

(b) engage in dredging or salvaging operations in U.S. waters. (To register a vessel to engage in these activities, the President or chief executive officer of a domestic corporation, and the chairman of its board, must be U.S. citizens, and foreign citizens serving as directors cannot be more than a minority of the number necessary to constitute a quorum). (46 USC 316, 11)*

(c) fish in the territorial waters of the United States, land fish caught on the high seas, and, except for corporations of countries with traditional fishing rights), fish in the United States fishing zone. (See (b) above for the management requirements.) (16 USC 1081, 1091; 46 USC 231)*

(d) transport certain commodities procured by or financed for export by the United States government or an instrumentality thereof. (See (b) above for the management requirements.) There are certain statutory exceptions to this rule. (15 USC 616(a); 46 USC 1241)

(e) obtain certain types of vessel insurance. (See (b) above for the management requirements.) (46 USC 1281 ff.)

(f) obtain licenses to operate as customs-house brokers (19 USC 1641) (At least two of the officers must be U.S. citizens.)

* To the extent that these activities involve the coast-wise trade, certain limitations on stock ownership would have to be met. (Cf. Sec. I)



III. Restrictions Applicable to Foreign Branches or Individuals

In certain cases the form of business organization chosen by a foreign controlled enterprise will determine whether it will be treated differently from an enterprise controlled by United States citizens. If a foreign controlled enterprise chooses to operate through a sole proprietorship or a branch office, rather than a corporation organized under the laws of one of the states, it may not:

(a) obtain licenses to construct dams, reservoirs, power houses, and transmission lines (16 USC 797(e))

(b) obtain licenses to develop and utilize geothermal steam and associated resources on federal lands (30 USC 1001 ff.).

(c) obtain certain rights of way, mining rights, leases, or other rights on federal lands (See generally 43 CFR Subchapters A & D)

These restrictions would not apply if the foreign controlled enterprise operated through a domestic subsidiary.

In addition to restrictions previously noted, foreign citizens may not:

(a) act as officers and serve in certain other positions on certain vessels (Cf. 46 USC 221)

(b) function as operators in radio or television stations (47 USC 303(1))

(c) practise before the Tax Court or the Court of Claims (Tax Court Rules, 2; Court of Claims Rules, 201)



CIEP

Tuesday 10/8/74

9:00 Skip Hartquist, General Counsel for CIEP, said they had received instructions through Ambassador Eberle about contacts with regulatory agencies. They are instructed that all contacts with the agencies are to be handled through you or Mr. Areeda.

Hartquist says they need informatinn from CAB concerning a public release that they put out last Friday on postal rates -- international air carriers. Wants to know what the regular operating procedures ought to be with staff contacts with the agencies. They would ordinarily have a continuing dialogue with CAB staff people. He feels that under these instructions this would not be permitted without first getting instructions from you or Mr. Areeda.

They need guidance on how they should operate.

I asked if the instructions were written -- which he indicated were from Ambassador Eberle -- and he said he thought they came out of an 8 o'clock staff meeting yesterday.

Called him 10/8 & he
will prepare memo.



*Regulatory
Agencies*

Supervision of White House
(And Other Executive Branch?) Contacts
with Regulatory and Certain Other Agencies: Issues

1. Which agencies:

a) Independent Regulatory Agencies: CAB, FCC, FPC, FTC, ICC, SEC.

b) Other regulatory agencies? AEC; Federal Maritime Board.

c) Other agencies with quasi-judicial responsibilities: Renegotiation Board?

d) Any licensing agency, such as Comptroller of the Currency?

e) Any "litigating" arm of the federal government: IRS; Criminal, Tax, and Antitrust Divisions at the Justice Department.

f) Other?

2. General rule: No contact (or class of contacts) without the approval of Counsel to the President. More detailed provisions with respect to certain classes of contacts follow.

3. General correspondence or other inquiries concerning particular pending or prospective cases or applications within the jurisdiction of any such agency, including requests for "status" reports or help in arranging visits with agency members or staff.

a) Communications from Members of Congress: Legislators should be told that we cannot involve ourselves in particular cases.

b) Letters from others should be forwarded to the agency with the following kind of routine buck slip: "The attached letter received by the White House concerns matters within your jurisdiction. Please reply directly. The White House interest in this matter is that citizens writing the President receive a courteous, thoughtful, and responsive answer from their government."



4. Correspondence or other inquiries raising more general matters within the jurisdiction of the agency, including requests for assistance in arranging visits to agency personnel.

- a) Independent agencies: Handle in the paragraph 3 manner.
- b) Executive branch agencies: Congressional requests will require some White House handling. Citizen requests should be handled in the paragraph 3 manner.

5. Correspondence or other inquiries complaining of agency insensitivity, error, or misconduct. A difficult situation: Although most complaints simply seek another level of review, error might occasionally be outrageous and malfeasance cause.

Nevertheless, it is simply not worthwhile to review all of the complaints received in order to uncover the occasional case of impropriety. Absent a fairly clear charge of wrongdoing -- not to be inferred merely from a claim of grievous error -- these inquiries should be handled in the paragraph 4 manner.

One possibility would be the appointment of an official who would, on an experimental basis, be charged with the responsibility for handling such complaints and making more detailed inquiries wherever warranted by his judgement. To avoid any charge of political favoritism, he would be located outside the White House, probably at Justice.

6. Even where the matter in question ultimately comes by statute to the President for his final decision, our relations with the agency must be circumspect.

Illustration. In the case of CAB international route awards, the statute conferring final decision making power on the President might be understood to impose a foreign affairs supervisory safety valve over CAB awards. That understanding would leave the CAB highly independent in the making of its recommendation to the President. On the other side is this obvious fact: The whole process of international route and fare decisions is intimately



involved with ~~the~~ issues of international economic relations and with the processes of international diplomacy. These conflicting thrusts could be resolved in the following way: Executive branch officials with responsibility for international economic relations, diplomacy, and international aviation in particular -- but no one else ^{may} communicate with the CAB about those matters, but not about the relative merits of particular applicants (except insofar as carrier identity is itself a diplomatic factor).

7. Where the general policy is clearly relevant to Presidential responsibility: (a) within the executive branch: general executive branch policies are subject to Presidential supervision and decision. ~~It is~~ clearly the President's prerogative to determine general issues of, for example, antitrust policy. But even here care is dictated:

- (i) Most of the policies and procedures of such agencies as the IRS or the Justice Department litigating arms are widely considered to be "professional" matters. White House direction may appear merely "political".
- (ii) Some agencies don't make "policy" in the abstract but make their policies by deciding which cases to bring and which ~~cases~~ ^{theories} to pursue. Antitrust is a good example and the Nixon ITT intervention a perfect case in point.

No absolute prohibition is recommended, but channeling all White House requests for contacts or classes of contacts through counsel should assure proper control.

(b) Independent agencies. Among the broad range of possible contacts a few obvious distinctions may be drawn:

(i) It is clearly all right to seek disclosable information for valid ~~governmental~~ ^{governmental} purposes, including an evaluation of agency effectiveness or the need for new legislation.

(ii) It is clearly all right to discuss general policies bearing on internal management matters.

(iii) It is clearly all right to discuss general matters that do not infringe on agency independence in making the decisions committed by statute to agency discretion.



For example, the possible utility of an inflation impact statement could clearly be discussed with an independent agency.

Again, however, decisions would have to be made by counsel only for particular cases or classes of cases.

8. Format. A memorandum to the staff would cover paragraphs 1 and 2 with a statement of the rationale for the general rule and a caution for avoiding the most frequently encountered compromising situations.

9. Addressees. White House staff, Domestic Council staff, other executive agency offices? A courtesy copy might also be provided to the several cabinet departments.

10. Nominal author. The memorandum to be circulated could come from the President, from Rumsfeld, or from counsel.



Supervision of White House
(And Other Executive Branch?) Contacts
with Regulatory and Certain Other Agencies: Issues

1. Which agencies:

a) Independent Regulatory Agencies: CAB, FCC, FPC, FTC, ICC, SEC.

b) Other regulatory agencies? AEC; Federal Maritime Board.

c) Other agencies with quasi-judicial responsibilities: Renegotiation Board?

d) Any licensing agency, such as Comptroller of the Currency?

e) Any "litigating" arm of the federal government: IRS; Criminal, Tax, and Antitrust Divisions at the Justice Department.

f) Other?

2. General rule: No contact (or class of contacts) without the approval of Counsel to the President. More detailed provisions with respect to certain classes of contacts follow.

3. General correspondence or other inquiries concerning particular pending or prospective cases or applications within the jurisdiction of any such agency, including requests for "status" reports or help in arranging visits with agency members or staff.

a) Communications from Members of Congress: Legislators should be told that we cannot involve ourselves in particular cases.

b) Letters from others should be forwarded to the agency with the following kind of routine buck slip: "The attached letter received by the White House concerns matters within your jurisdiction. Please reply directly. The White House interest in this matter is that citizens writing the President receive a courteous, thoughtful, and responsive answer from their government."



4. Correspondence or other inquiries raising more general matters within the jurisdiction of the agency, including requests for assistance in arranging visits to agency personnel.

- a) Independent agencies: Handle in the paragraph 3 manner.
- b) Executive branch agencies: Congressional requests will require some White House handling. Citizen requests should be handled in the paragraph 3 manner.

5. Correspondence or other inquiries complaining of agency insensitivity, error, or misconduct. A difficult situation: Although most complaints simply seek another level of review, error might occasionally be outrageous and malfeasance cause.

Nevertheless, it is simply not worthwhile to review all of the complaints received in order to uncover the occasional case of impropriety. Absent a fairly clear charge of wrongdoing -- not to be inferred merely from a claim of grievous error -- these inquiries should be handled in the paragraph 4 manner.

One possibility would be the appointment of an official who would, on an experimental basis, be charged with the responsibility for handling such complaints and making more detailed inquiries wherever warranted by his judgement. To avoid any charge of political favoritism, he would be located outside the White House, probably at Justice.

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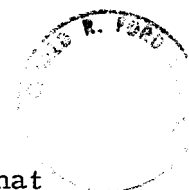
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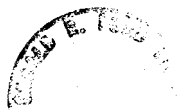
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10. Nominal author. The memorandum to be circulated could come from the President, from Rumsfeld, or from counsel.



THE WHITE HOUSE
WASHINGTON

September 8, 1975

MEMORANDUM FOR:

PHIL BUCHEN

FROM:

MAX FRIEDERSDORF *m.f.*

SUBJECT:

White House Contacts with Regulatory Agencies

Pursuant to Don Rumsfeld's reminder that absolutely no White House contacts should be made with regulatory agencies, Jack Marsh and I would appreciate your listing these agencies and commissions.

Our problem is that we receive a sizable number of Congressional inquiries concerning the Federal Energy Administration.

There are other such quasi-regulatory agencies about which we need clarification.

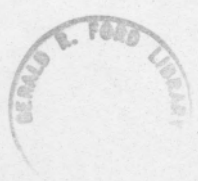
A listing of all prohibited agencies for contact would be helpful in instructing our staffs.

cc: Don Rumsfeld
Jack Marsh

Regulatory

Original

*Wudley
9/9*



THE WHITE HOUSE

WASHINGTON

September 9, 1975

MEMORANDUM FOR: DON RUMSFELD
THROUGH: PHIL BUCHEN *P.W.B.*
FROM: DUDLEY CHAPMAN *DC*
SUBJECT: List of Independent Regulatory Agencies

You requested a list of the independent regulatory agencies that people in the White House should not contact without prior clearance from the Counsel's office. The following agencies fall within this category:

Civil Aeronautics Board
Commodity Futures Trading Commission
Consumer Product Safety Commission
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Election Commission
Federal Maritime Commission
Federal Reserve System
Federal Trade Commission
Interstate Commerce Commission
National Credit Union Administration
National Labor Relations Board
National Transportation Safety Board
Nuclear Regulatory Commission
Occupational Safety and Health Review Commission
Renegotiation Board
Securities and Exchange Commission
United States International Trade Commission



The foregoing agencies are regarded by the Justice Department as clearly falling within the category of independent regulatory agencies, in that they are both independent and exercise regulatory authority over some class of persons or businesses.

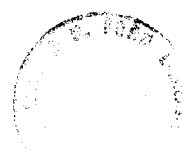
The following agencies perform a mixture of executive and regulatory functions. They should be treated as independent agencies on issues involving the regulatory functions (i. e., rule making and adjudication):

Environmental Protection Agency
Federal Energy Administration
United States Civil Service Commission

In addition, the following agencies do not exercise regulatory powers comparable to the independent regulatory agencies but do have comparable independence and should be treated as equivalent to the regulatory agencies with respect to commenting on particular cases, applications and the like:

Equal Employment Opportunity Commission
Federal Home Loan Bank Board
Foreign Claims Settlement Commission of the United States
Indian Claims Commission
Overseas Private Investment Corporation
Pension Benefit Guaranty Corporation
National Selective Service Appeal Board

In addition, the ban on contacts extends to the litigating and adjudicatory divisions of the Department of Justice and the IRS.



THE WHITE HOUSE
WASHINGTON

For Dudley to
prepare list promptly.
P.

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

September 2, 1975

*orig to
Dudley
9/4*

MEMORANDUM FOR:

JIM CONNOR
PHIL BUCHEN ✓

action →

FROM:

DONALD RUMSFELD

Please give me a list of the regulatory agencies that fall within the rule that nobody in the White House is to call and that all dealings with them are supposed to be through the Counsel's Office. They are the so-called "independent regulatory agencies" I would like a list of them--the ones that fit that category.

9/9 Chapman's ^{Office} said reply is on the way



THE WHITE HOUSE

WASHINGTON

September 9, 1975

Reg. Agency

MEMORANDUM FOR: MAX FRIEDERSDORF
THROUGH: PHIL BUCHEN *T.W.B.*
FROM: DUDLEY CHAPMAN *DC*
SUBJECT: White House Contacts with
Regulatory Agencies

Attached is a copy of a memorandum for Don Rumsfeld which lists the independent regulatory agencies as you requested.

You indicated that your main problem concerns the Federal Energy Administration. This is one of three which has both the characteristics of an independent regulatory agency and of an executive agency. This means that the permissibility of contacts will depend on the nature of the communication: If it concerns a regulatory function of the FEA, the policy toward independent regulatory agencies applies; if it concerns the FEA's policy-making role, it may be treated the same as any other executive agency. Since the choice will not always be obvious, you should consult the Counsel's office the same as you would for the independent regulatory agencies.



September 9, 1975

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WASHINGTON

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