The original documents are located in Box 66, folder "Watergate Reorganization and Reform Act -Memoranda and Correspondence (2)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

July 1, 1976

MEMORANDUM FOR: DICK CHENEY

FROM: ED SCHMULTS

SUBJECT: The Watergate Reform Bill

Here is what we gave to Ron Nessen this morning. A brief information memorandum is being prepared for the President.

Attachment

S. 495, THE "WATERGATE REORGANIZATION AND REFORM ACT OF 1976"

Question:

Does the President have a firm position on S. 495, the so-called "Watergate Reorganization and Reform Act of 1976"?

Answer:

As I indicated yesterday, the White House Counsel's office will soon be presenting a briefing for the President on the background, current status and available options regarding this measure. This briefing will review the development of S. 495 over the course of the last year and the serious concerns which have been rather consistently expressed by various departments, particularly the Department of Justice. In this regard, you may want to examine the testimony of Deputy Attorney General Tyler before the Senate Judiciary Committee on May 26, 1976.

I would at this time, however, like to make three observations regarding the current controversy over S. 495. First, this is not a new proposal -- the key features of the bill have been under consideration in various forms for several years. Second, despite its rather fetching title, the bill, for the most part, attempts to assign inappropriate power to the Judicial branch and provides for congressional representation in litigation. It really has very little to do with "Watergate reform". Third, the concerns which have been consistently expressed by the Department of Justice are based in large measure upon fundamental Constitutional doctrine and do not reflect any lack of sensitivity over the need for public confidence in the institutions of government. The Attorney General will continue to express these concerns to interested members of Congress.

Schmults 7/1/76

THE WHITE HOUSE

WASHINGTON INFORMATION

July 2, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN

SUBJECT: S. 495, the "Watergate Reorganization and Reform Act of 1976"

This is to provide you with a briefing on the legislative and press developments to date with respect to the above-captioned bill.

S. 495 contains three titles which may be summarized as follows:

Title I would create a new Division of Government Crimes within the Department of Justice and also a statutory mechanism for the creation of an "independent" special prosecutor in certain defined instances. A court would be empowered to create and oversee the office of special prosecutor which would clearly exercise Executive Branch functions, i.e., the enforcement of penal laws.

Title II would establish as an arm of Congress the Office of Congressional Legal Counsel. The duties of this office would be threefold: (1) the Counsel would defend Congress in any litigation questioning the validity of official Congressional action; (2) the Counsel could bring a civil action to enforce a Congressional subpoena or order; and (3) the Counsel could intervene or appear as amicus curiae in a pending action in which the constitutionality of a law of the U. S. is challenged, the U. S. is a party, and the constitutionality of the statute is not adequately defended by Counsel for the U. S.

Title III would require, under pain of a criminal penalty which could result in one year's imprisonment and a $10,000 fine, the annual filing of detailed financial reports by all elected or appointed Federal officers paid at a rate equal to or in excess of the minimum rate prescribed for grades GS-16. The reports would be extremely detailed,

requiring, for example, the amount and source of each item of income in excess of $100. These reports would then be available to satisfy simple public curiosity.

Title I of S. 495 had its genesis in the so-called "Saturday Night Massacre" and the subsequent recommendations of the Senate Watergate Committee in late 1973 and early 1974. Other portions of the bill were added by members of the Senate Government Operations Committee (Senators Ribicoff, Percy, Javits, Weicker, etc.) during the 94th Congress.

The Department of Justice has testified on numerous occasions in opposition to S. 495. Their position may be summarized in the following manner. First, several features of the bill, i.e., Title I's authority for the creation of an "independent" special prosecutor and Title II's provision for enforcement of Congressional process and the intervention or appearance by a Congressional Legal Counsel in litigation, are believed to be constitutionally inappropriate by the Department. In these instances, S. 495 could represent an unlawful encroachment upon the exclusive province of the Executive Branch. Secondly, the provision of the bill calling for the creation of a Division of Government Crimes within the Department of Justice, is thought by the Attorney General to be administratively unworkable and unnecessary. Finally, although the Administration has supported the concept of a full public disclosure of personal finances by candidates for elective office, a program carrying forward this concept would have to be mindful of relevant privacy concerns.

S. 495 will be the subject of Senate floor action currently set for July 19. Additionally, Title I of S. 495 was recently introduced as H.R. 14476, which has been scheduled for hearings before the House Judiciary Committee on July 21. A recent series of newspaper articles have tended to exacerbate the confrontation between Congress and the Administration with respect to these legislative items. Moreover, the inclusion of a plank in the Democratic platform supporting an "independent" special prosecutor should add yet more fuel to the fire.

In accordance with your directive, we shall adopt a posture which is supportive of the Attorney General in his efforts to modify this legislation in accordance with concerns previously expressed by officials of the Department of Justice.

Buchen

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Schmults 7/1/76

THE WHITE HOUSE
WASHINGTON

Date 7/2/76

TO: ED SCHMULTS

FROM: KEN LAZARUS

ACTION:

_____ Approval/Signature

_____ Comments/Recommendations

_____ Prepare Response

_____ Please Handle

X _____ For Your Information

_____ File

REMARKS:

If you have any suggested changes, Phil has the original.

THE WHITE HOUSE

WASHINGTON INFORMATION

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PHILIP B. KURLAND
608 WEST HARPER TOWER
THE UNIVERSITY OF CHICAGO
CHICAGO, ILLINOIS 60637
(312) 753-2444

8 July 1976

Dear Senators Ribicoff and Percy:

When I was in Washington last week, at the Senate Subcommittee on Separation of Powers, I was given a copy of the revised S. 495 with the report and hearings thereon. Inasmuch as you solicited my opinion, over two years ago, on the original bill, I venture to offer my opinion on the present version, or at least one aspect of it, that which relates to special prosecutors. I must way that I find that part of S. 495 unfortunate at best, dangerous at worst.

It is unfortunate because it offers as a cure for Watergate ills something that is totally extraneous to the problems uncovered by Watergate. It is dangerous because it affords a potent, new device for what can be described in terms of the pre-Watergate governmental crisis as McCarthyism.

1. You have certainly misconstrued history if the concept of a special prosecutor is based on the notion that the Watergate special prosecutor contributed to the discovery and remedy for the Watergate abuses. The discovery and remedy for the Watergate abuses are correctly attributable to two other institutions. The first and foremost was Congress: the Senate Select Committee, operating in the best traditions of Congressional responsibility for oversight of executive behavior, and the House Judiciary Committee, again responsibly assuming the difficult task of determining whether a government official should be removed from office. It should be remembered that impeachment is a proper inquiry for all those who would be made subject to special prosecutions by S. 495, except the Senators and Congressmen, for whom separate mechanisms exist. The second was the press: it, too, acted responsibly in uncovering the details of Watergate, despite extraordinary criticism and pressures to abandon it.

Dean and Magruder went to the grand jury before the special prosecutor took hold, primarily because the Senate Select Committee was already on their tails. The revelation of the existence of the tapes came through the investigations of the Senate Committee, not the special prosecutor. The special prosecutor undertook criminal prosecutions of those malefactors uncovered by the Congress and the ordinary processes of the law. That is the role of a special prosecutor generally: not so much investigative, as prosecutorial. I do not mean to disparage the Watergate special prosecutor. But I should insist that his was not an important role -- except perhaps as Archie Cox became a martyr -- in l'affaire Watergate.

Moreover, the utilization of special prosecutors at a stage prior to criminal trial is once again an evasion of Congressional responsibility, not an effectuation thereof. It should not be forgotten that the primary problems revealed by Watergate were an undue concentration of power within particular branches of the executive department -- the Department of Justice was not among them -- and an unwillingness of Congress to assume its place of primacy in the constitutional scheme. Every time an important governmental problem has arisen in recent decades, Congress has pusillanimously delegated the treatment of the ailment to someone else. Thus, the proposed public prosecutorial scheme in S. 495 is only another symptom of the Watergate syndrome rather than a contribution toward its elimination. Once more Congress will be saying, "Please, someone else, perform our job of executive oversight for us."

2. Let me turn to the dangers of the proposal. Who are the targets for action as set out in the bill? All elected officials, and all federal judges, and all executive branch personnel who hold responsible jobs. The only elected federal officials are the President and Vice-President and all members of the Senate and House of Representatives.

The special prosecutorial mechanism could be triggered whenever a charge of misfeasance, malfeasance, or nonfeasance was levelled by any person who chose to make such a charge. This is what I term the "Joe McCarthy" aspect. Just imagine if each of the phony

McCarthy charges against executive branch officials were to require special prosecutors to investigate and prosecute. Just imagine the official Cohens and Schines who might offer such charges. Just imagine the extraordinary number of unofficial individuals eager to assert such charges.

It is not enough to say that an Attorney General could cut off such frivolous -- however defined charges. The fact is that no Attorney General in his right mind would dare to cut off such prosecutions, if he could. The minute he did so, he would become suspect of political activity. Moreover, his decisions would be subject to judicial challenge, at which time the whole matter would take on the same costume as if the special prosecutor had begun an investigation.

It is not my imagination that conjures up a parade of horribles. Personal experience as a law clerk at the United States Supreme Court and the United States Court of Appeals has taught me that the number of charges levelled against judges is enormous. A short term with the Department of Justice revealed that even such lowly officials as I was are subject to the same kinds of attack by those who are disappointed in their demands. And my service as a staff member to a Senate subcommittee was equally revealing of the distemper of many of our citizenry. I don't know whether you get to see your own "crank mail," if you do, you know that I am not exaggerating. Nor does this take into account the very large number of individuals who would and do enjoy the role of "private prosecutor." The number of calls for special prosecutions may well be enormous.

If, as is likely, most of the claims prove invalid, the accused will nevertheless have been blighted. And perhaps more important, the accused will -- like the President during Watergate -- not be able to perform his duties while the charges are pending. The special prosecution provisions of S. 495 afford adequate means for bringing large portions of government to a standstill. Perhaps we do have too much government, but again it should be Congress that makes the decision where and when it should be diminished or eliminated.

Moreover, the specter of a large number of special prosecutions will soon overshadow the few important situations where specific remedial action is really required. It will demean the major cases by inclusion of them in a large series of minor ones. It will, also, tend to reduce both the actuality and possibility of Congressional investigations. It should be recalled that if Archie Cox had his way, the Senate Select Committee would have ground to a halt while he carried on his investigations and prosecutions. And then where would we have been?

The provision for a special judicial panel to oversee the role of the Attorney General and the special prosecutor is also bothersome. I put to one side the constitutional questions, the answers to which are far from clear. What concerns me is the expansion of the judicial power and particularly when it is relegated to the hands of superannuated federal justices and judges. You must not think of senior federal judges in terms of Learned Hands or Henry Friendlys. Let me assure you that those are the exceptions rather than the rule. Most superannuated judges were of no great competence while they performed active service and have since necessarily retired for age and the physical and mental deterioration that age brings on. To entrust them with charge of highly volatile political affairs is to put dynamite in the hands of an incompetent.

Allow me two points in closing. First I would repeat an anecdote and leave you to draw your own inferences. After Robert Jackson had been appointed a Supreme Court Justice and Francis Biddle had been appointed Attorney General in his place, President Roosevelt took some glee in reporting to Jackson that he, Roosevelt, had decided to appoint Samuel Rosenman as counsel to the President in the White House. He asked Jackson's opinion. Jackson told him he regarded Rosenman very highly indeed, but if the President wanted Rosenman as his lawyer he should appoint him Attorney General. He went on to say that if Roosevelt had appointed a house counsel while Jackson was Attorney General he would have resigned his office.

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With all good wishes,

As always,

Philip B. Kurland

Senators Abraham A. Ribicoff
and Charles H. Percy
United States Senate
Washington, D.C. 20510

PBK/s
cc: Senator Charles McC. Mathias, Jr.
Senator Robert C. Byrd
Senator Lowell P. Weicker
Congressman William L. Hungate

bcc: Edward H. Levi

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United States Senate
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PBK/s
cc: Senator Charles McC. Mathias, Jr.
Senator Robert C. Byrd
Senator Lowell P. Weicker
Congressman William L. Hungate

bcc: Edward H. Levi

Watergate Reform

THE WHITE HOUSE

WASHINGTON

July 15, 1976

MEMORANDUM FOR: ELEANOR CONNORS

FROM: PHILIP BUCHEN P.W.B.

SUBJECT: Watergate Reorganization and Reform Act

Attached is correspondence from Attorney General Levi to the President on the above subject. The material is to be used for a meeting yet to be scheduled.

Attachment

THE WHITE HOUSE

WASHINGTON

July 15, 1976

MEMORANDUM FOR: MAX FRIEDERSDORF

FROM: KEN LAZARUS

SUBJECT: S. 495, the "Watergate Reorganization and Reform Act of 1976"

The above-captioned bill is currently set for action in the Senate early next week. In its current form the bill raises serious problems which are revealed by the attachments. Phil asked me to get together with the AG's people in order to try and devise a strategy that would hold some hope for derailing the measure but at the same time not incur any significant political losses.

I have discussed the matter at length with Doug Marvin, Counsellor to the Attorney General, Senator Hruska and others. All are in agreement that our strategy should proceed along the following lines:

(1) Although the bill is currently set for Senate action early next week, Senator Hruska's conversations on the subject with Senator Ribicoff have been to the effect that action can be delayed for a limited period of time while representatives of the Department and the staff of the Government Operations Committee explore potential compromises. Although Doug Marvin's discussions with the Government Operations staff have, to date, been fruitless, he is continuing to discuss the matter with them for the purpose of delaying final Senate action for perhaps another week or so.

(2) There is absolutely no possibility of demonstrating any veto strength, sustaining a filibuster or defeating S. 495 by a floor fight. At best, we have perhaps a dozen votes against the bill. Accordingly, Senator Hruska should not be encouraged to wage any substantial effort against the bill since such action could then only result in a "victory" for the proponents. It would be preferable for the opponents of S. 495 to merely state their opposition to the measure but recognize the disadvantage inherent in any substantial effort, including the fact that such action would likely result in a certain amount of momentum in support of the bill in the House.

THE WHITE HOUSE

WASHINGTON

INFORMATION

July 2, 1976

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S. 495 contains three titles which may be summarized as follows:

Title I would create a new Division of Government Crimes within the Department of Justice and also a statutory mechanism for the creation of an "independent" special prosecutor in certain defined instances. A court would be empowered to create and oversee the office of special prosecutor which would clearly exercise Executive Branch functions, i.e., the enforcement of penal laws.

Title II would establish as an arm of Congress the Office of Congressional Legal Counsel. The duties of this office would be threefold: (1) the Counsel would defend Congress in any litigation questioning the validity of official Congressional action; (2) the Counsel could bring a civil action to enforce a Congressional subpoena or order; and (3) the Counsel could intervene or appear as amicus curiae in a pending action in which the constitutionality of a law of the U. S. is challenged, the U. S. is a party, and the constitutionality of the statute is not adequately defended by Counsel for the U. S.

Title III would require, under pain of a criminal penalty which could result in one year's imprisonment and a $10,000 fine, the annual filing of detailed financial reports by all elected or appointed Federal officers paid at a rate equal to or in excess of the minimum rate prescribed for grades GS-16. The reports would be extremely detailed,

requiring, for example, the amount and source of each item of income in excess of $100. These reports would then be available to satisfy simple public curiosity.

Title I of S. 495 had its genesis in the so-called "Saturday Night Massacre" and the subsequent recommendations of the Senate Watergate Committee in late 1973 and early 1974. Other portions of the bill were added by members of the Senate Government Operations Committee (Senators Ribicoff, Percy, Javits, Weicker, etc.) during the 94th Congress.

The Department of Justice has testified on numerous occasions in opposition to S. 495. Their position may be summarized in the following manner. First, several features of the bill, i.e., Title I's authority for the creation of an "independent" special prosecutor and Title II's provision for enforcement of Congressional process and the intervention or appearance by a Congressional Legal Counsel in litigation, are believed to be constitutionally inappropriate by the Department. In these instances, S. 495 could represent an unlawful encroachment upon the exclusive province of the Executive Branch. Secondly, the provision of the bill calling for the creation of a Division of Government Crimes within the Department of Justice, is thought by the Attorney General to be administratively unworkable and unnecessary. Finally, although the Administration has supported the concept of a full public disclosure of personal finances by candidates for elective office, a program carrying forward this concept would have to be mindful of relevant privacy concerns.

S. 495 will be the subject of Senate floor action currently set for July 19. Additionally, Title I of S. 495 was recently introduced as H.R. 14476, which has been scheduled for hearings before the House Judiciary Committee on July 21. A recent series of newspaper articles have tended to exacerbate the confrontation between Congress and the Administration with respect to these legislative items. Moreover, the inclusion of a plank in the Democratic platform supporting an "independent" special prosecutor should add yet more fuel to the fire.

In accordance with your directive, we shall adopt a posture which is supportive of the Attorney General in his efforts to modify this legislation in accordance with concerns previously expressed by officials of the Department of Justice.

CHRONOLOGY

93rd Congress

1. October 29, 1973. S. 2612, a bill to establish an office of "independent" special prosecutor to be appointed by a panel of U. S. District Court judges, was introduced by Senator Bayh and others in the wake of the "Saturday Night Massacre".

2. November 5, 1973. Companion measure to S. 2612, opposed by then Acting Attorney General Robert Bork, before House Judiciary Committee.

3. July 13, 1974. Final Report of Senate Select Committee on Presidential Campaign Activities (see Draft, Part I, p. 212) recommended the creation of a permanent office of independent public attorney.

94th Congress

1. January 30, 1975. S. 495, introduced by Senators Ribicoff, Percy, Metcalf, Inouye, Montoya, Weicker and Mondale.

2. December 2, 1975. The Civil Service Commission filed a report with the Senate Government Operations Committee, opposing Title I (Special Prosecutor) of S. 495.

3. December 3, 1975. Assistant Attorney General Michael Uhlmann testified before the Senate Government Operations Committee in general opposition to S. 495 (copy attached).

4. May 12, 1976. S. 495 reported favorably by the Senate Government Operations Committee and referred to the Senate Judiciary Committee.

5. May 26, 1976. Deputy Attorney General Harold Tyler testified before the Senate Judiciary Committee in general opposition to S. 495 (copy attached).

6. June 10, 1976. CIA filed a report with the Senate Judiciary Committee in opposition to Title III (Financial Reports) of S. 495.

7. June 15, 1976. S. 495 referred to the Senate floor by the Senate Judiciary Committee.

Recent News Reports

1. June 28, 1976. News article by Martha Angle, p. 1, Washington Star.

2. June 29, 1976. Two Q & A's forwarded to Press Office by Counsel's Office (copies attached).

3. June 30, 1976. Nessen indicates President has not yet taken a position.

4. July 1, 1976. Third Q & A forwarded to Press Office by Counsel's Office (copy attached).

Office of the Attorney General
Washington, D. C. 20530

July 15, 1976

MEMORANDUM FOR THE PRESIDENT

S.495, the Watergate Reorganization and Reform Act has three titles. Title I is of greatest concern. It establishes a mechanism for appointment of temporary special prosecutors. It also establishes a new "Division of Government Crimes" in the Department of Justice. Title II establishes an Office of Congressional Legal Counsel to represent Congress before the courts. Title III requires financial disclosure by high level public officers and employees of the Federal government.

S.495 provides for the appointment of a special prosecutor for each case in which the President or Attorney General has a conflict of interest or appearance of a conflict. "Conflict of interest" is defined as "a direct and substantial personal or partisan political interest in the outcome of the proposed criminal investigation or prosecution." Under the bill, a conflict of interest is automatically deemed to exist in all cases involving the President, the Vice President, any Cabinet officer, any individual in the Executive Office of the President compensated at a rate of level V or above, any other individual compensated at the rate of level I, the Director of the FBI, and any person who has held such a position in the four years prior to the investigation or prosecution. In cases not involving these enumerated individuals, a conflict of interest may still be held to exist and to require the appointment of a special prosecutor.

Within thirty days of learning of a matter in which a conflict of interest or appearance of conflict may exist, the Attorney General must file with the United States Court of Appeals for the District of Columbia a memorandum, which would be available to the public, setting forth (1) a summary of the allegations; (2) the results of his preliminary investigation; (3) a summary of the information relating to the possible conflict of interest;

and (4) a finding on whether the case is "clearly frivolous" and therefore does not justify any further investigation or prosecution. A decision that an allegation is "clearly frivolous" is not judicially reviewable and will terminate the case.

If the Attorney General does not certify the matter as clearly frivolous and determines it does involve a conflict of interest or the appearance of a conflict, he must appoint a special prosecutor and define his jurisdiction. The court reviews his action to assure that the appointee meets the statutory criteria, including breadth of authority, and may make a superseding appointment.

When the Attorney General determines that a case does not involve a conflict of interest, the court reviews his decision and appoints a special prosecutor if it disagrees with his conclusion.

In addition, a private citizen may initiate court consideration of appointment of a special prosecutor thirty days after the citizen has requested the Attorney General to consider such an appointment.

No employee of the Federal government, including a special prosecutor, may be appointed a special prosecutor. This requires a new special prosecutor be named for each new case.

A temporary special prosecutor would have all the authority of an Assistant Attorney General, and, in addition, would be empowered to appeal any court decision without obtaining the Attorney General's approval. A special prosecutor could be removed by the Attorney General only for extraordinary improprieties, and then only subject to court review.

If applicable today, S.495 would require appointment of numerous special prosecutors. Since the bill covers personal as well as partisan conflicts of interest, in any case in which a personal or financial interest of the Attorney General appeared, the entire Department of Justice would be disqualified from proceeding, even if the Attorney General recused himself. The same would be true if it appeared that the President had a personal or financial interest.

Partisan political conflicts of interest would also require frequent appointment of special prosecutors. The Criminal Division has identified twelve current or recent cases involving present or former officials of the Executive Branch as to whom a per se conflict of interest would exist under S.495. At least five are on their face of a type to foreclose a certification by the Attorney General that they are "clearly frivolous." The cases include allegations of obstruction of justice, receipt of illegal campaign contributions, fraud, misuse of public funds and civil rights violations.

The Criminal Division has also located recent or current cases involving at least 40 public officials in which it would be necessary to determine whether the President or Attorney General have, or appear to have, a substantial partisan interest. These cases involve members of the Executive Branch, the Judiciary and Congress. A significant number seemingly would require appointment of special prosecutors. The Watergate Special Prosecutor is currently pursuing matters which would also call for the appointment of special prosecutors. In addition, there are cases, as yet uncounted, involving campaign contributors, politically active labor unions, and associates of a prominent political figures which might trigger appointment of a special prosecutor.

Edward H. Levi
Attorney General

THE WHITE HOUSE

WASHINGTON

July 16, 1976

MEETING WITH EDWARD H. LEVI
Saturday, July 17, 1976
2:30 p.m. (30 minutes - tentative)
The Oval Office

From: Philip W. Buchen

I. PURPOSE

To allow the Attorney General to report on the status of the Watergate Reorganization and Reform Act pending in the Senate.

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

A. Background: A summary of the bill as reported by the Committee on Government Operations of the U. S. Senate is attached at TAB A.

B. Participants: Edward Levi and Philip Buchen (and other WH staff)

C. Press Plan: David Kennerly photo only. The meeting will be announced.

III. TALKING POINTS

1. Ed, I understand that some of the Senators behind this bill are now having second thoughts but that you are having difficulty proposing alternatives to the present provisions for appointment of special prosecutors in every case involving real or apparent "conflict of interest." What alternatives are you considering?

2. Ed, if we cannot get an acceptable bill in the Senate, what are the chances that the House will come up with an acceptable version, or fail to pass any bill during the remainder of the current session?

Attachment

THE WHITE HOUSE
WASHINGTON

Mr. Buchen:

Bill Nicholson says this meeting will probably be around 2:30 on Saturday. Instead of our sending this in separately to the President, Dr. Connor suggests you use it as part of your briefing paper for the meeting, since it doesn't appear to be anything we would need staff.

Eleanor
7/16

THE WHITE HOUSE

WASHINGTON

July 15, 1976

MEMORANDUM FOR: ELEANOR CONNORS

FROM: PHILIP BUCHEN P.W.B.

SUBJECT: Watergate Reorganization and Reform Act

Attached is correspondence from Attorney General Levi to the President on the above subject. The material is to be used for a meeting yet to be scheduled.

Attachment

Office of the Attorney General
Washington, D. C. 20530

July 15, 1976

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Edward H. Levi
Attorney General

Office of the Attorney General
Washington, D. C. 20530

July 17, 1976

MEMORANDUM FOR THE PRESIDENT

While I realize that you have made a decision on the question of the inclusion of all Congressmen in the compulsory referral provision of our revision of S.495, the more I think about it the more I believe this is a serious mistake. As you know, in our version we do include Members of Congress in the discretionary referral section. I believe this is much better for the following reasons:

1. To take out all Congressmen from the normal functioning of the Department of Justice in all criminal cases is really a public statement that the Department of Justice is not to be trusted. I believe this will be very disfiguring to the Department, and it creates a very large second Department of Justice.

2. It will be very alarming to the United States Attorneys, who make the argument that they must be able to prosecute such "hard" cases because it is only if they can do this that they are trusted by the ordinary citizen.

3. I believe the almost certain reaction of the Congress will be to expand the Executive Branch items subject to compulsory referral; in addition to further weakening the authority and harming the image of the Department, this may remove from the Attorney General's prosecutorial discretion some very sensitive matters which have nothing to do with the Watergate-type concern. The only defense to such a tactic which we could make would be resort to some mechanism which selects the additional cases to be referred -- such as the special court device, which we think wholly undesirable.

4. While the argument can be made that there is some kind of conflict of interest which the public believes exists, when members of the cabinet or those employed in the Executive Office of the President who are compensated at level II or higher of the Executive Schedule, this argument is not made or believed as a matter of course when Congressmen are involved.

For the reasons stated above, I do hope you will not insist upon the automatic inclusion of all Congressmen. There is an additional reason. The inclusion, I fear, will be taken as making a political point -- which, while it may be popular with persons other than Congressmen, will make it very difficult to get a constructive alternative passed. It will be viewed solely as a political move, which will be countered not by opposing it but by embracing it and enlarging it. On the other hand it will be very difficult for Congressmen to oppose their inclusion in the discretionary referral section, which will allow referral when the Attorney General believes this to be in the public interest.

Edward H. Levi

THE WHITE HOUSE

WASHINGTON

July 18, 1976

Dear Mr. President:

Dear Mr. Speaker:

From the beginning of my administration, I have acted to assure effective enforcement by the Justice Department of the laws affecting officers and employees in the Federal government and effective administration of requirements for high standards of conduct by officers and employees of the executive branch.

I agree wholeheartedly with the policy stated in the Executive Order that prescribes standards of conduct for government officers and employees, which is:

> "Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of his government. Each individual officer, employee, or adviser of government must help to earn and must honor that trust by his own integrity and conduct in all official actions."

I have appointed to the position of Attorney General an individual of high integrity and superb qualifications, and I have supported without exception his commitment to enforce the laws fairly and independently, no matter who within my administration may become the subject of alleged violations of law. The Attorney General has in turn established a Public Integrity Section within the Criminal Division which is devoted to thorough investigation of all complaints received that public officials have violated their positions of trust. In addition, the Attorney General has directly under him an Office of Professional Responsibility to investigate for propriety and legality the conduct of officers and employees within the Justice Department.

All Presidential appointees have been required to make full disclosure to my Counsel of their financial affairs and other information that may bear on the requirement that they must be free of any conflict of interest, or even the appearance of a conflict, in carrying out their official responsibilities. Whenever allegations of misconduct in office by persons in my administration have been received by anyone on the White House staff or by those responsible for administering the various executive departments and agencies they have been promptly referred to the appropriate investigative and enforcement authorities.

For those reasons, I have not felt it necessary to propose additional or different methods for carrying out my stated policy of strict adherence to the laws and standards governing the conduct of officials and employees in my administration. However, the Committee on Government Operations of the Senate and the Senate Judiciary Committee have now recommended legislation (S. 495) that provides mechanisms for implementing the same policy in respect of the Legislative and Judicial branches of government and does make changes in the present mechanisms applicable to the Executive branch. In addition, this legislation would create a new office of legal counsel for the Congress.

Representatives of the Department of Justice testified on December 3, 1975 before the Senate Government Operations Committee and on May 26, 1976 before the Senate Judiciary Committee to state why certain of the key provisions of S. 495 appeared objectionable. The bill as reported does not generally meet these objections. However, the Attorney General advises me that members of the Senate Government Operations Committee and other Senators now do believe that certain objections were well taken and that changes in the bill are desirable.

For the purpose of proposing a revised bill that can overcome concerns expressed by some members of the Senate to the Attorney General, as he has reported them to me, and in order to evidence my readiness and desire to

advance the principles of accountability by officers and employees in all three branches of the Federal government, I am submitting for the consideration of the Congress the attached draft bill as a substitute for S. 495. Submission at this time will allow the Senate to consider my proposal at the same time it considers S. 495 and will allow the appropriate Committees of the House to consider it at the time of their initial hearings on this type of legislation.

The remainder of this letter describes the provisions of my proposal and the reasons it departs in certain respects from S. 495.

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