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THE WHITE HOUSE

PRESS CONFERENCE
OF
ELLIOT RICHARDSON
SECRETARY OF COMMERCE

THE BRIEFING ROOM

11:37 A.M. EDT

SECRETARY RICHARDSON: Ladies and gentlemen, you have heard the President's announcement. You have, I believe, copies of a somewhat fuller version of the statement he just gave and you also have a fact sheet on decisions on questionable corporate payments abroad, so I would be very glad to proceed directly to your questions.

Q Mr. Secretary, throughout the fact sheet the reference is to questionable corporate behavior. The President used the term "bribery." This is just a euphemism for bribery, isn't it?

SECRETARY RICHARDSON: Questionable payments actually range through somewhat broader scope than this. A payment is extorted, for example. It isn't necessarily a bribe. And at the other end there are payments which may go into political accounts in countries where political contributions by corporations are not legal, they are legal in some countries but the payment may nevertheless be questionable.

To the extent that it is made by a company with a direct interest in the business of that country, then there are payments which, because of their sheer size, when made through an agent may be questionable in the sense of giving rise to the question "Where did the money go," even though on the face of the payment itself you do not have evidence of a bribe.

So in this sense the phrase really is broader than the term "bribery."

Q Mr. Secretary, the corporate accountability part of the proposals by the SEC to prohibit falsification of accounting records, that sort of thing, isn't it already illegal to falsify accounts, or are there no Federal laws on the subject?

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SECRETARY RICHARDSON: I don't think there is any SEC requirement that deals directly with falsification of accounts in the sense of putting in a payment like this under a different heading. At any rate, on this I rely really on the report of the SEC itself and the recommendations by the Chairman, Rod Hills. The legislation the President is endorsing here today that deals with that aspect of it is legislation that has already been proposed to the Congress by the SEC.

Q On that same subject, are there some types of companies in which SEC regulations or the original Securities and Exchange Act prohibit falsification of accounts? I am thinking particularly of utilities.

SECRETARY RICHARDSON: There are certainly criminal penalties attached to the falsification of the information filed with the SEC. Their legislation here goes beyond the requirement of registration or of reporting to them by prohibiting falsification of corporate accounting records even in a situation where it might not be determined that a report to the SEC was material in the sense that the shareholders were necessarily entitled to that information.

Q Mr. Secretary, what foreign countries have been sounded out and have said they might be interested in a treaty?

SECRETARY RICHARDSON: In the instance of the treaty, the United States at the ECOSOC meeting of the UN Commission on Transnational Corporations was held in Lima from the first of March to the twelfth of March, there proposed an international agreement or treaty that would cover the things that are spelled out in the fact sheet under acceleration of international efforts.

We have also, of course, as you know I am sure, proposed language that has been included in the Organization of Economic Corporation and Development's proposed code of ethics for--or code of conduct for--multinational corporations, and that is about to be considered at the ministerial meeting later this month.

Ambassador Dent proposed language for inclusion in the GAAT but the most important international initiative this country has taken is the one that was put forward at the UN meeting in Lima on March 5 and the contacts by the United States with other countries since then have been directed toward getting their support for that initiative at the ECOSOC meeting later this summer where we hope that there will be a resolution calling on the ECOSOC to adopt an agreement or treaty language along these lines.

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Q Mr. Secretary, at the risk of oversimplifying this, why not just ask for legislation making it illegal for American corporations to bribe foreign officials?

SECRETARY RICHARDSON: Well, as a matter of fact, this was one of the major options that was considered and submitted to the President with a variance that the criminal penalty attached in circumstances where the United States has entered into a bilateral agreement with the other country for the enforcement of such a prohibition. The problem, of course, is that we would be making criminal under U.S. law an act that takes place in another country and that would create problems of investigation and enforcement.

Another problem is the problem of the definition of exactly what kinds of payments are covered. You would have to have a pretty clear limitation in a criminal statute to things that could be proved to be bribes or extortion.

So the option really was whether to go that route or to follow a disclosure route with the idea that the reporting of questionable payments -- payments to influence the action of other governments -- would create a deterrent effect and when that information was in turn reported by the United States to that other government would create a basis for the other government to look into the question of whether or not there had been a violation of its own law.

So it is contemplated here that there would be first a reporting requirement of all payments above a certain amount to a U.S. department or agency -- there has been no decision yet on what department or agency -- and then the communication in due course by the State Department to the other country. This would then be followed by the publication of these reports in the U.S.

Q What amount? And I have another question beyond that. What amount are we talking about, payments beyond what amount?

SECRETARY RICHARDSON: There has not been a decision yet on what the amount will be and this would have to be resolved by the steering group that has been working on this to date. We really needed a decision from the President on what route he wanted to take. In any event, I was under obligation to submit a report or some kind of communication to Senator Proxmire. I am, as a matter of fact, sending him a letter which goes into all of this quite fully and which will be available later in the day.

Q Now to go back to Ann's question for one minute. Despite the difficulties of enforcement and investigation, did I understand you correctly the United States is going to try to do this wherever it can in bilateral trade agreements with individual countries? That is, make bribery of officials in another country --

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SECRETARY RICHARDSON: We will be dealing bilaterally with other countries and, of course, the disclosure approach that is set forth here in the President's announcement would call for communication of what is reported to us to the other country and that then lays the foundation for bilateral cooperation in the enforcement of their laws as well as our own. All countries for all practical purposes, with negligible exceptions, do prohibit bribery and payments to influence official conduct and so on, so it is a question then of cooperating with them in the enforcement of their own law.

Q Mr. Secretary, what about indirect payments such as legal fees paid to counsel with which appointed or elected officials are partners of?

SECRETARY RICHARDSON: If the payment related directly to influence official conduct, it would have to be reported. We have an additional drafting problem to pursue as to exactly what payments are within the scope of the phrase "directly or indirectly to influence," but presumably we would not want automatically to include routine payments to agents u related to influencing official conduct.

Q Mr. Secretary, how would this legislation apply to, say, satellite societies which are in practice satellite societies of American enterprise which are self-incorporated abroad as independent societies?

SECRETARY RICHARDSON: You are talking about the subsidiaries of U.S. firms?

Q Yes.

SECRETARY RICHARDSON: Payments by subsidiaries or any controlled corporation would have to be reported. It would be reported by the parent corporation in the U.S.

Q Mr. Secretary, does this apply to all corporation in the United States, even non-profit? The reason I ask this question is because there have been a number of arrests, as you may know, of various groups in the United States that have funded Northern aid in Ireland but then there are church groups that have funded the World Council of Churches' program to combat racism as it is called that have funded terrorist groups in Southern Africa.

SECRETARY RICHARDSON: That is a new question to me, I had not thought about that, but I think --

Q They are corporate.

SECRETARY RICHARDSON: -- as it stands it would cover all corporations.

Q All corporations, even churches?

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Q In your Task Force report to the President, were you specific about the number of corporations that are involved in questionable practices and the total dollar amount involved and, if so, could you tell us what it was?

SECRETARY RICHARDSON: No, we were not, Lou. We know that the universe of the corporations involved in U.S. export activities is about 30,000 but we did not conduct any additional investigation of our own as to the incidents or scope or type of these payments. There has been some misunderstanding about the function of our Task Force. As the President originally announced, it was formed to make policy recommendations to him as to what to do in this general area, not to take over the investigative or enforcement roles of other agencies and principally the SEC and the IRS.

So our information about the scope of the problem, the amounts of money involved and so on, is the information we obtained from the SEC and the IRS -- mainly the SEC. The SEC, of course, as you know, has summarized its own findings in its report which was dated May 12, 1976, and which contains detailed tabulations in the back, but these findings by the SEC were ample for purposes of our charge which was the question what do you do about it in the future?

SECRETARY RICHARDSON: What makes you think that corporations will step forward and honestly and voluntarily disclose that they have made payoffs abroad?

SECRETARY RICHARDSON: Well, to some extent the protection to them in doing so. To some extent, it is a way through the process of communications by the U.S. to the other country of stimulating the enforcement of that other country's own laws. To that extent, therefore, American firms would be assisted in generally stimulating uniform standards. It should be made clear. By the way, one thing that ought to be emphasized perhaps as a part of the whole picture that now exists, as a result of all the attention that has been given to this subject and as a result of the SEC's own investigation and the IRS requirements that have been stiffened for reporting to it and for the disallowance of payments, a great many companies have adopted their own internal code of ethics.

They have invited the corporation and help of their outside auditors in monitoring observance of these codes. So to a very considerable extent then American companies are adopting self-imposed limitations on their conduct and this, of course, in itself means, therefore, that some inhibiting action as far as competition by other countries' companies considered has already been taken. The question then is how do you go from here to achieve greater uniformity in observing such tendencies among American companies and how do you help to bring about more consistency by other countries in enforcing their own laws?

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Q Mr. Secretary, I am unable to follow your reasoning. You say that this disclosure provision, you think, or at least hope, will be a protection to companies implying that this would be an incentive for them to report. Now, if the country in which they made a bribe has a statute saying that bribery is illegal, how in the world do you expect an American company to acknowledge to the public and to its stockholders and to the State Department, and so forth, that it has broken the law?

Whether it is the law of that country or the law of the United States I understand that, you know, in the first place, the fact that we have an extradition treaty with that country and they break the law in that country, then, presumably if they are indicted they could be extradited and put on trial in that country.

Now in the world do you expect them to acknowledge something that is going to send them to jail -- especially a Spanish jail, say? (Laughter)

Q Mexican.

Q Never mind that part of it. What is the reasoning?

SECRETARY RICHARDSON: If, in the face of this law and other applicable U.S. laws, including the SEC's disclosure requirements and Internal Revenue Service tax evasion laws, they nevertheless go ahead and pay a bribe, presumably they won't report it, which leaves us where we are except to the extent that there is an additional penalty here under U.S. law for the failure to report it. So, therefore, where now a company may, let's say, obey the Internal Revenue Service laws, it may take the position that the payment is not required to be disclosed to the SEC because it is not material or the company may not be subject to SEC requirements.

There are about 9,000 companies that report to the SEC, but there are about 30,000, as I said, that do business abroad so that if the company properly shows the payment in its income tax return and is not required to report to the SEC, then it may not be subject to any U.S. prohibition and go ahead and make the payment if it can get away with it under the law of the other country.

What we are saying is that it is required to disclose it and if it does not, then it is subject to a penalty for the violation of this law.

Q Mr. Secretary, the President said he would like the disclosure legislation this year. Your task force has to come up with recommendations. When are you going to come up with recommendations, and what chance really do you have for legislation this year given the election and the fact that Congress won't be in session for a lot of the year?

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SECRETARY RICHARDSON: Well, I think the task force should be able to fill in the remaining blanks in this legislation in another week or two, and we would, of course, in the meantime be discussing the subject with Senator Proxmire and staff or other committee people. Since the subject has had a good deal of consideration already in committee, it should be possible. We think this is a better approach than the Proxmire bill itself because it does not attempt to make action in another country a crime under the law of this country, it does not run into the definitional problems, but the Proxmire bill also deals with disclosure requirements. The only difference in that respect or the main difference is that the Proxmire bill is limited to the disclosure requirement. There are companies that have to report to the SEC.

Q Mr. Secretary, do I understand you correctly to be saying now that if a company makes a disclosure as required, no matter what the questionable payment is he is not subject to any further penalty by the United States Government?

SECRETARY RICHARDSON: That is right. The United States, however, reports the payment to the country where it is made and that in itself, of course, puts that country on notice. As I said earlier, payments certainly of bribes, distortion and so on are in violation of the law of that country.

Sarah McClendon?

Q Yes, sir. If I understand this now, you are going to let someone report to IRS that they have made the bribe and then they are going to be able to take that off their income tax and the taxpayers here are going to pay for this bribe and then you are just going to report it to the foreign country?

SECRETARY RICHARDSON: We have not changed the law; that is, we have not proposed to change the tax laws. The tax laws don't permit the deduction.

Q They do not?

SECRETARY RICHARDSON: No. On the contrary, it could be a criminal violation, willful attempted evasion of taxes if you did attempt to take the deduction by putting it under a business expense.

Q Have there not been instances in these defense contractors -- did you not find out in your survey that these defense contractors have been charging these bribes off to the taxpayers as deductions in some way?

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SECRETARY RICHARDSON: Well, there have been commissions charged off in instances where the money may have gone on to somebody else and there probably have been cases where they have attempted to deduct bribes where they knew they were bribes.

In any event, the IRS is cracking down on that. They now are requiring a detailed questionnaire about all kinds of payments. The military, in the meanwhile, under the Military Sales Act, is requiring the disclosure of commissions and fees that are paid in connection with any Government contract with another country and, if the commission or a fee is out of line in amount, then this is disallowed. That is part of the price under the Military Sales Act.

Q Mr. Secretary, you have included or incorporated church groups under this. Now, does that include missionary groups or are you just talking about things like Dr. Sun -- whatever his name is -- Moon?

SECRETARY RICHARDSON: I said we had not excluded them. I said in answer to Reverend Kinsolving that we had not --

Q You mean Father.

SECRETARY RICHARDSON: That we had not specifically --

Q He is one of our favorites.

SECRETARY RICHARDSON: We had not, to my knowledge, thought about that question. In any event, the proposal as it stands would -- well, I am not sure it would. This letter to Proxmire says, "All American business entities." I think we will have to give that some more thought.

Q Didn't you say corporations? Because I recall you said to me that it would include all corporations, and all major denominations are incorporated.

SECRETARY RICHARDSON: True.

Q Mr. Secretary, some businessmen argue that payoffs abroad are necessary as part of the whole climate over there and that to prohibit them would be to handicap U.S. firms in their competition for business abroad. Is that one reason why you went for the disclosure route and not the flat prohibition?

SECRETARY RICHARDSON: That was not a major reason. Number one, as to the contention that such payments are necessary, our position is, first of all, that they should not be made; secondly, that the U.S. should pursue through international channels the most effective possible means of achieving uniformity in enforcement measures against such payments; but, third, that a way of contributing to the general improvement of overall standards is to focus public attention on these payments through a reporting requirement and where the law of the other country is concerned to communicate the information.

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Finally, as I mentioned earlier, if you rely on a criminal prohibition alone you have to define very precisely exactly what type of payment is prohibited and part of the problem here is the problem of the payment through an agent in a large amount where the company purports not to know exactly where it went.

The one final point to be made here, and that is that the SEC's investigation convinced it that on the whole the showing that these payments were necessary was very thin and unconvincing. Many companies who made the payments were really unable to show that they were necessary.

Q Mr. Secretary, can you give us a ball park figure on the penalty you have in mind for the failure to report bribe payments overseas? Will it be token? Will it be substantial? Or what?

SECRETARY RICHARDSON: It should be substantial. We have got the question of civil penalties and criminal penalties and how to combine them and what their levels ought to be. I just don't know. This is one of the remaining questions that the steering group is going to have to go back to.

Q In preparing for those recommendations concerning the U.S. legislative aspect, have there been any consultations with foreign governments such as Italy or Japan where such legal questions have occurred and have taken major proportion?

SECRETARY RICHARDSON: In connection with what aspect of it?

Q With the U.S. legislative aspect, have there been consultations with foreign governments?

SECRETARY RICHARDSON: No, not really. I had some conversations in Japan the other day about this approach, but that was all.

Q Who would they report to, Mr. Secretary? Just the SEC? I heard you mention the State Department. I was wondering how the information gets to the State Department?

SECRETARY RICHARDSON: Not the SEC.

Q Or the company.

SECRETARY RICHARDSON: Not the SEC.

Q Who would they report to, then?

SECRETARY RICHARDSON: We have not decided yet which department it would be. The obvious possibility would be State or Commerce. In any event, whichever it was the information would then be made available to State for communication by it to the affected country.

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MR. CARLSON: The Secretary has a luncheon appointment. Let's take two more questions.

Q You told a group of reporters this morning that whereas the requirement for reporting to the Government agency, whichever one it is, would be more or less instantaneous but the requirement for reporting to the stockholders would be one year -- in other words, they would have a year before they listed this bribe to stockholders. Why do the stockholders have to wait for a year?

SECRETARY RICHARDSON: I said that there would be an interval between the requirement of reporting to the Government department and the publication of the information which might be a year. I don't really know what the interval should be at this point. The reason for it is basically in order that there can be communications by the State Department to the country and so that the situation could be dealt with in the meanwhile without necessarily having publicity focused on it, but also because there may be proprietary information involved.

Q Mr. Secretary, when President Ford initially announced this, he seemed content to wait until the end of the year for any action. You now seemed to have moved up your timetable. Would you comment on whether that is an accurate perception and why you cite it and whether it has any connection with this?

SECRETARY RICHARDSON: He gave us until the end of the year and there presumably will be some continuing role for this task force following this up and keeping in touch with the situation, but he also called for interim reports. One of the first things we did was to review the legislative situation, including the adequacy of existing law. Since the Congress was already dealing with the subject, since I had on behalf of the Administration made a commitment to give a more definite position on legislation to Senator Proxmire and his committee, then Secretary Simon and Robinson and I were able to do in April -- we had all these reasons to reach a judgment on the legislative issue this year in time for Congressional action.

MR. CARLSON: One last question.

Q Mr. Secretary, there was a column the other day -- I don't remember if it was Evans or Novak or Jack Anderson -- but he was rather critical of your task force and said that it has been meeting only sporadically since it was formed. How many times have you met since March 31?

SECRETARY RICHARDSON: Four.

Q For a total of --

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SECRETARY RICHARDSON: There have been intervening meetings of the steering group chaired by General Counsel of Commerce J. T. Smith, and Assistant Secretary for Policy Richard G. Darnum, but, of course, the issues we have were and are policy issues.

The criticism of our meetings and so on and whether or not we should have had staff have all been predicated, so far as I have understood them, on the basic misconception that we are or were intended to be an investigative body which we are not, and were not. I think our deliberations have been thorough and thoughtful. The result of them will appear a lot more fully in my letter to Senator Proxmire, which will be available later today.

Thank you very much.

MR. CARLSON: The letter to Senator Proxmire referred to by the Secretary is a lengthy document, about 29 pages, and it will be available at the Commerce Department later this afternoon.

END (AT 12:05 P.M. EDT)