

July 19, 1976

Dear Mr. Speaker:

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

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

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

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

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

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

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

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

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

Title I -- Reorganization of the Department of Justice

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

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

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

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

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

Title II -- Congressional Legal Counsel

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

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

Title III -- Government Personnel; Financial Disclosure Requirements

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

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

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

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

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

Sincerely,

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