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THE WHITE HOUSE  
WASHINGTON

April 4, 1981

MEMORANDUM FOR FRED FIELDING

FROM: FRANK HODSOLL *Frank*

SUBJECT: EOP Organization in Connection with  
Government Ethics Requirements

Attached is a letter from Jackson Walter,  
Director of the Office of Government Ethics,  
regarding this subject.

We would be grateful if your office could  
prepare a response from JAB within the next  
week to ten days.

Thanks.

ATTACHMENT

THE WHITE HOUSE  
WASHINGTON

March 31, 1981

NOTE FOR FRED FIELDING

FROM: FRANK HODSOLL *Frank*

I still have for response Bill Tucker's memo on transition. Do you still want us to respond regarding paragraph G? Please let me know and return if you do.

ATTACHMENT

2/23/81

FRANK,

JAB ASKED IF YOU COULD PLEASE HANDLE THIS FOR HIM. PAGE FOUR HAS ~~XXX~~ SPECIFIC

THINGS FOR JAB.

MANY THANKS

MDT

*rec'd  
2/23/81*

THE WHITE HOUSE

WASHINGTON

March 4, 1981

File

MEMORANDUM FOR THE SECRETARY OF STATE  
THE SECRETARY OF THE TREASURY  
THE SECRETARY OF DEFENSE  
THE ATTORNEY GENERAL  
THE SECRETARY OF THE INTERIOR  
THE SECRETARY OF AGRICULTURE  
THE SECRETARY OF COMMERCE  
THE SECRETARY OF LABOR  
THE SECRETARY OF HEALTH AND HUMAN SERVICES  
THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT  
THE SECRETARY OF TRANSPORTATION  
THE SECRETARY OF ENERGY  
THE SECRETARY OF EDUCATION

FROM: FRED FIELDING *FF*

SUBJECT: Senior Executive Service

The Senior Executive Service (SES) is divided into career and non-career positions and this distinction affects selection, qualifications, reassignment and removal of individuals in the SES. Following is a very brief explanation of Agency Heads' authority in dealing with the SES:

SES Positions

There are a set number of SES positions in each agency. Allocation is made by the Office of Personnel Management from a pool established by statute. Positions are designated either career-reserved or general. Career-reserved positions may be filled only with career people on a merit basis under the agency's career recruitment program. General positions may be filled by either career or non-career people, but the number of non-career appointments is also fixed by OPM.

Non-career SES

- o Positions may be filled by the agency on a non-competitive basis,
- o Qualifications are determined by the agency,
- o May be reassigned to other non-career positions in agency head's discretion,

- o May be removed or asked to resign because of "lack of confidence" but not solely on the basis of political affiliation unless affiliation is essential to job performance,
- o No rights to appeal removal.

#### Career SES

- o Career-reserved positions must be filled on a competitive basis under agency selection procedures,
- o Qualifications of the appointee are subject to review by the Office of Personnel Management,
- o May be reassigned on a truly voluntary basis,
- o May not be involuntarily reassigned or removed except for cause for 120 days after appointment and commissioning of the agency head or immediate non-career supervisor,
- o May be involuntarily reassigned after 120 days if given 15 days notice. Reassignment may be made to any career or general SES position in the agency or to another agency so long as the individual is qualified and the other agency agrees,
- o May not be rated on performance during the first 120 days after appointment of agency head or supervisor,
- o May be removed from SES for unsatisfactory executive performance only after notice and opportunity for informal hearing before the Merit Systems Protection Board and may retain placement rights in a non-SES position with the agency,
- o May be removed from government service for cause with proper notice, hearing and appeal procedures,
- o Regulations on procedures and placement rights in instances in which functions are abolished or personnel complements are reduced are being prepared by OPM and will be furnished later.

#### Procedural Protections

OPM has issued regulations concerning the selection, appointment, reassignment and removal of persons in the SES. In addition, individual agencies have issued supplementary regulations.

Failure to follow the regulations may result in reversals of agency action by the Merit Systems Protection Board or the courts. Historically more personnel actions are reversed for procedural irregularity than on substantive grounds. Moreover, some courts have held officials personally liable for improper personnel actions.

#### Individual Status

The rights of an individual in SES are determined not only by the classification of the position but also by the status of the individual. Thus, a career SES official may accept a Presidential appointment yet retain rights to return to the SES. The rights of an individual to placement in a non-SES position in the agency may depend on his status prior to appointment to the SES. Before taking any action on an SES member the status of the individual should be checked.

#### Individualized Judgments

The creation of SES was intended to give an agency head greater flexibility in managing his agency with people in whom he had confidence. SES personnel are rated on executive performance which includes ability to carry out the policies of the Administration and the agency head. Unsatisfactory performance is a basis for removal from SES. The system was also intended to establish a corps of career managers who would bring continuity and government expertise to federal service. The 120 day restriction on removal or reassignment was designed to assure that agency heads would review the actual performance of individual SES managers rather than make blanket judgments based on service in a prior Administration. In the first test of SES following a change of Administration, care must be taken to insure that the spirit of the process is observed and that procedural requirements are followed.

THE WHITE HOUSE

WASHINGTON

February 4, 1981

*File*

MEMORANDUM FOR FRANK HODSOLL

FROM: ROGER YURCHUCK

SUBJECT: Political Activity of Certain Presidential  
Appointees

Herewith suggested drafts of two memoranda concerning the political activities of certain Presidential appointees.

I discussed the matter with Congressman Cheney, who provided useful background information. He indicated that the non-partisan rule has been in effect at least since World War II as it applies to foreign policy and defense Departments. The restriction on the Attorney General was put in effect by President Ford, primarily as a reaction to the Attorney General Mitchell situation. Congressman Cheney believes that such a ruling should not apply to the Attorney General.

I recommend that if the decision is to include the Attorney General, it be done by a separate document as the basis for the restriction on the others arising from the desire for bi-partisan foreign and defense policies.

Congressman Cheney also suggests that the Director of the CIA be added to the list.

Since this is a communication to the heads of the Departments, I recommend that it come from the President.

Attachments



THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR THE SECRETARY OF STATE  
THE SECRETARY OF DEFENSE  
THE SECRETARY OF THE ARMY  
THE SECRETARY OF THE NAVY  
THE SECRETARY OF THE AIR FORCE  
THE DIRECTOR OF THE CIA

Traditionally, officials within the Department of State, the Department of Defense, and the service related departments have refrained from partisan political activity. This practice is based upon the maintenance of a bi-partisan foreign and defense policy. I desire to continue this practice, and I hereby direct that officials within these departments refrain from becoming associated with partisan political events, campaigns, or engaging in any form of political activity, including fundraising events, that could be considered partisan political activity.

Please communicate this directive to such of your staff as is appropriate.

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR THE ATTORNEY GENERAL

It has been the policy of past administrations that officials within the Office of the Attorney General refrain from partisan political activity. It is essential that the law enforcement activities of the United States be carried out without any implications of partisanship. I desire to continue this practice, and I hereby direct that officials within your department refrain from being associated with partisan political events, campaigns, or engaging in any form of political activity, including fund-raising events that could be considered partisan political activities.

Please communicate this directive to such of your staff as you deem appropriate.

THE WHITE HOUSE  
WASHINGTON

ORIG 1/24/41

MEMORANDUM FOR THE SECRETARY OF STATE  
THE SECRETARY OF DEFENSE  
THE ATTORNEY GENERAL  
THE SECRETARY OF THE ARMY  
THE SECRETARY OF THE NAVY  
THE SECRETARY OF THE AIR FORCE

Historically, officials within the Departments of State, Defense and Justice have refrained from outside political activity. It is my desire to continue this practice and I hereby direct that officials within these departments refrain from becoming publicly associated with political events, ~~issues~~ or individual campaigns, or engaging in any form of political activity that would create a known political association.

THE WHITE HOUSE

WASHINGTON

February 10, 1981

MEMORANDUM FOR THE WHITE HOUSE STAFF

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Communications with the Department of Justice

As we are all keenly aware, it is imperative that there be public confidence in the effective and impartial administration of the laws. To that end, after consultation between the President and the Attorney General, the following procedures have been established in regard to communications between the White House Staff and the Department of Justice.

1. All inquiries which concern or may concern particular pending investigations or cases being handled by the Department of Justice shall be directed to the Counsel to the President. If appropriate and necessary, the inquiry will then be transmitted to the Office of the Attorney General or the Deputy Attorney General.
2. All requests for formal legal opinions from the Department of Justice shall be directed to the Counsel to the President, who will direct such requests to the Office of the Attorney General or to the Assistant Attorney General -- Office of Legal Counsel.
3. All comments between the White House Office and the Department of Justice in regard to policy, legislation and budgeting should be handled directly between those parties concerned.

Your cooperation in observing these guidelines is most strongly urged. If you have any questions regarding these procedures, please contact this Office.