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THE WHITE HOUSE

WASHINGTON

March 21, 1984

MEMORANDUM FOR FRED F. FIELDING
RICHARD A. HAUSER

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Statement of Irving R. Kaufman
Concerning H.J. Res. 490, Subpoena
Power for Commission on Crime,
March 22, 1984

We have been provided with a copy of testimony Commissioner Kaufman of the President's Commission on Organized Crime proposes to deliver on March 22 before the House Judiciary Subcommittee on Crime. The testimony briefly reviews the establishment and composition of the Commission, as well as the progress of its first two sets of public hearings. In his testimony Kaufman urges favorable consideration of H.J. Res. 490, the resolution introduced by Chairman Rodino -- also a member of the Commission -- at the request of the Department of Justice. This resolution would give the Commission subpoena authority, including the authority to initiate contempt proceedings for failing to comply with subpoenas, and the authority to compel testimony from witnesses invoking the Fifth Amendment.

Kaufman goes beyond H.J. Res. 490, however, and also requests authority to obtain transcripts of wiretaps authorized pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2520. I contacted Tex Lezar, Counselor to the Attorney General, to ensure that this request had been approved by Justice. Lezar advised that Justice approved of the request, noting that access would be limited to closed cases in which disclosure would not affect the integrity of any ongoing investigation or prosecution. Kaufman's testimony reflects this limitation. Lezar also noted that express approval of the Attorney General must be obtained prior to release of any transcripts to the Commission, a protection not reflected in Kaufman's statements. Kaufman simply notes that the Commission "would seek the approval of the appropriate agency on a case by case basis when access or disclosure is sought."

Lezar indicated he would seek to have Kaufman's testimony revised to reflect accurately the agreement with Justice; we should aid in this effort by conditioning our approval of the testimony on such a revision.

Attachment

THE WHITE HOUSE

WASHINGTON

March 21, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Irving R. Kaufman
Concerning H.J. Res. 490, Subpoena
Power for Commission on Crime,
March 22, 1984

Counsel's Office has reviewed the above-referenced proposed testimony. In this testimony Chairman Kaufman of the President's Commission on Organized Crime requests authority for the Commission to have access to transcripts of wiretaps authorized under Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2520. As noted in the testimony, access would be limited to closed cases in which disclosure would not affect the integrity of any ongoing investigation or prosecution.

The testimony fails to note, however, that no Title III material will be released to the Commission without the express approval of the Attorney General. It is our understanding that a condition of the Justice Department support for Kaufman's request for access to Title III material is that such express approval by the Attorney General be required. The testimony should accordingly be revised to reflect this requirement. It is hardly enough to state, as Kaufman does on page 7, that the Commission "would seek the approval of the appropriate agency on a case by case basis when access or disclosure is sought." Express approval by the Attorney General is an added protection against abuse of the highly unusual right of access to sensitive Title III wiretap material, and that protection should be insisted upon and made explicit.

cc: Michael M. Uhlmann
Special Assistant to the President
Assistant Director for Legal Policy
Office of Policy Development

FFF:JGR:aea 3/21/84

bcc: FFFielding/JGRoberts/Subj/Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
- H - INTERNAL
- I - INCOMING

Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Greg Jones

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Statement of Irving R. Kaufman concerning H.J. Res. 490, subpoena power for Commission on Crime, March 22, 1984

ROUTE TO:	ACTION	DISPOSITION	
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response Code Completion Date YY/MM/DD
<u>Cuttler</u>	ORIGINATOR	<u>84 123120</u>	<u>1 1</u>
<u>CUAT 18</u>	Referral Note:	<u>D 84 103120</u>	<u>S 84 103121</u>
	Referral Note:		<u>C.O.B.</u>
	Referral Note:	<u>1 1</u>	<u>1 1</u>
	Referral Note:	<u>1 1</u>	<u>1 1</u>
	Referral Note:	<u>1 1</u>	<u>1 1</u>

ACTION CODES:

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure

- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

DISPOSITION CODES:

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE:

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: _____

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 Send all routing updates to Central Reference (Room 75, OEOB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

DRAFT

DRAFT STATEMENT OF THE HONORABLE IRVING R. KAUFMAN,
CHAIRMAN OF THE PRESIDENT'S COMMISSION ON ORGANIZED CRIME

I have been a federal judge for thirty-five years, and I have had the privilege of appearing before subcommittees of the Committee on the Judiciary on numerous occasions. Today, however, I appear before you, not in my role as a member of the federal judiciary, nor as a representative of the United States Judicial Conference, but rather as the Chairman of the President's Commission on Organized Crime, to urge your favorable consideration of House Joint Resolution 490.

As you know, the Commission was established by Executive Order in July 1983. In announcing the formation of the Commission, President Reagan charged us with the difficult task of conducting a nationwide investigation of organized crime in both its traditional and emerging forms, and producing recommendations for legislative change, reforms in the administration of justice, and institutional remedies which would allow federal, state and local law enforcement authorities to confront more effectively the growing power of organized crime. As one aspect of this mandate, the Commission is directed to expose to the American public the nature and scope of organized criminal activity through a series of public hearings conducted across the nation.

Cognizant of the enormity of our mission, the Commission on Organized Crime has commenced its investigation with dedication and vigor. The membership of the Commission includes persons with a broad range of expertise concerning the problems engendered by organized crime. Virtually all of the Commissioners are or have been involved in law enforcement, some as prosecutors, others as investigators or police officers. The Commission also includes two members of the federal judiciary -- your speaker and Supreme Court Justice Potter Stewart, two members of Congress -- Chairmen Thurmond and Rodino, two professors of law and a number of practicing attorneys. Our staff includes some of the nation's most experienced organized crime prosecutors, including several attorneys from the special organized crime strike forces which operate across the country. The Commission's investigators include agents from the Federal Bureau of Investigation, the Department of Labor, the Internal Revenue Service and other federal and state agencies. Together, the Commissioners and staff bring many years of insight and experience to our investigation. We believe that as a group, the President's Commission on Organized Crime is uniquely well situated to conduct an in-depth, comprehensive investigation of organized crime, and to recommend changes which will allow law enforcement at all levels to challenge this menace.

The Commission has successfully launched this effort. We have conducted two public hearings -- the first in Washington, D.C., in November, and the most recent in New York City last week. At our

hearing in New York, we explored the problems engendered by financial laundering schemes, and we received testimony from a number of witnesses, including a federal agent with direct experience in laundering schemes, a major organized crime figure, and an official from the United States Department of the Treasury. The Commission has also commenced work on several projects which may lead to the issuance of periodic staff reports, and we have been actively progressing with our investigation of topics which will be the subjects of future hearings.

The Commission's investigation will not be a superficial overview of organized crime, nor will our hearings merely present information which is already in the public domain. Rather, the Commission will endeavor to add to the knowledge which already exists concerning organized crime and the nature and scope of its influence. We expect that in many cases the disclosures that we will provide new information to both the public at large and its elected or appointed representatives. Similarly, our recommendations will not be mere rubberstamps for the positions of any particular individual or political party. The Commission will be examining the phenomenon of organized crime with a fresh perspective, and it expects to make a substantial contribution to the national struggle against organized crime.

As you know, Chairman Rodino has introduced, at the request of the Department of Justice, House Joint Resolution 490, which would enable the Commission to subpoena witnesses, would authorize the initiation

of civil or criminal contempt proceedings against persons who ignore these subpoenas, and would provide, in appropriate cases, for the compulsion of testimony from recalcitrant witnesses who invoke their Constitutional privilege against self-incrimination.

It has become increasingly clear that we will be unable to fulfill our mandate unless Congress acts favorably on our request for subpoena, contempt, compulsion of testimony and other powers. I have accepted our invitation to testify today because I believe that it is critical and urgent that the Commission be vested with such authority if its work is to succeed. It is the hope of the Commission that the members of this Subcommittee will appreciate the importance and urgency of these needs and will act expeditiously on the resolution which Chairman Rodino has introduced.

Our investigation is still at its early stages, but we have already encountered significant reluctance among persons we have contacted to meet with members of the staff, much less to appear at a public hearing. Persons who have been directly involved in unlawful activities are obviously not enthusiastic over the prospect of presenting information to the Commission, yet such individuals are ideally situated to provide us with the information we require. Even more troubling, however, has been the reluctance of respectable, law-abiding members of the public

to provide testimony or evidence to the Commission and its staff. In preparing for our most recent hearing in New York City, for example, the Commission contacted a number of representatives of the banking industry. We had hoped that such persons would be able to inform us of the internal practices which banks have adopted or might consider implementing to assure that these financial institutions are not unwittingly used as a conduit for the transfer of unlawfully obtained funds to off-shore jurisdictions. To our dismay, some of these individuals refused to even meet with members of the staff, and others who agreed to meet with us, declined to appear at the hearing.

Although we believe that our latest hearing was successful in exposing some of the problems associated with financial laundering schemes, we were and continue to be hampered by our inability to compel the production of testimony and evidence. As our work progresses, we have every reason to believe that this problem will become even more critical, since potential witnesses will often have been engaged in questionable conduct. Unless we are authorized to issue subpoenas and seek their enforcement through court orders of contempt, we are simply unable to develop and present the information we must to fulfill our mandate. What end does it serve to have a presidential commission to investigate organized crime, if it lacks subpoena power and is unable to compel attendance, testimony and the production of information?

Another critical requirement of the Commission on Organized Crime is not addressed in the proposed resolution. It is widely recognized that court-authorized wiretaps are a vital tool in investigations of

organized crime figures, and the Commission seeks legal authority to obtain access to the transcripts of court-authorized wiretaps in cases which are no longer active.

The value of electronic surveillance in organized crime investigations cannot be overstated. Indeed, the legislative history of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 is replete with references to the importance of wiretaps in organized crime trials. The Senate Report accompanying the draft bill, for example, quotes New York District Attorney Frank Hogan as stating that "wiretapping is an indispensable weapon in the fight against organized crime", and the report further observes that "electronic surveillance techniques by law enforcement officials are indispensable legal tools" in organized crime cases. Similarly, the final report of President Lyndon Johnson's Commission on Law Enforcement and Administration of Justice noted that wiretaps are the most important tool which law enforcement authorities can employ in investigations of organized crime figures.

I wish to emphasize the Commission does not request authorization to conduct electronic surveillance, nor does it seek to disclose or to use information obtained through wiretaps in ongoing investigations and prosecutions where such disclosure or use would jeopardize federal law enforcement interests. The Commission believes, however, that Title III information would be invaluable both in examining the wide range of

activities in which criminal cartels engage, and in developing proposals to counteract the growing influence of these groups. The Commission does not seek blanket authorization to disclose the contents of the transcripts it may obtain, but does request authorization to make such disclosure in a limited number of cases. We would, of course, work closely with all concerned agencies, to guarantee that no disclosure would compromise an ongoing investigation or would improperly disclose confidential investigative techniques, and we would seek the approval of the appropriate agency on a case by case basis when access or disclosure is sought. I am pleased to report that we have the complete support of the Department of Justice in this matter.

Thus far, the President's Commission on Organized Crime has been undaunted in its effort to fulfill its goals without relying on subpoena, contempt and compulsion authority, but it has been a frustrating task. We believe, moreover, that if the Commission is to complete its vital mission, it must be vested promptly with legal power to obtain the information it requires. The problem of organized crime is one which affects every American citizen. This disease transcends all geographic, ethnic and social divisions and is truly a matter of national concern. We ask for your support so that we may be able to accomplish the critical task to which we have been assigned.

Before answering your questions, I would like to submit a resolution which was adopted at the most recent meeting of the Commission on March 13, 1984. (Copy attached.)

Thank you for your time and consideration. James Harmon, the Commission's Executive Director and Chief Counsel, and I would be pleased to answer your questions now.

RESOLUTION

Whereas Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (18 U.S.C. §§2510-2520), regulates the interception of wire or oral communications by investigative or law enforcement officers and the disclosure and use of the contents of such communications, or evidence derived therefrom, to other investigative or law enforcement officers; and

Whereas it appears that the legislative history and judicial interpretations of Title III do not permit the members and staff of the President's Commission on Organized Crime to be considered "investigative or law enforcement officers" to whom disclosure of information obtained pursuant to Title III may be made; and

Whereas the Senate Judiciary Committee has stated, with reference to Title III, that "intercepting the communications of organized criminals is the only effective means of learning about their activities"; and

Whereas the Commission has been charged by the President of the United States with the responsibilities, inter alia, for "evaluat[ing] Federal laws pertinent to the effort to combat organized crime" and "develop[ing] in-depth information on the participants in organized crime networks"; and

Whereas the Commission believes that even the authority to issue subpoenas, to immunize witnesses, and to seek judicial enforcement of Commission subpoenas -- while vital to the work of the Commission -- will not suffice for the Commission to fulfill these responsibilities if it is unable to obtain access to and use of Title III information (other than information from surveillances that are in progress or that were conducted in violation of Title III),

Now, therefore, be it resolved that the Chairman of the Commission be, and hereby is, authorized and directed by the Commission to inform the relevant committees and subcommittees of Congress that the members of the Commission unanimously agree that the Commission must have the authority to obtain access to, and to use, Title III information in order to fulfill its responsibilities.

THE WHITE HOUSE

WASHINGTON

March 23, 1984

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Commissioner Kaufman

With respect to the attached, Kaufman refused to agree to the revision in his testimony insisted upon by Justice and our office. The testimony was accordingly postponed, and you may be hearing from the Commissioner's office on this.

THE WHITE HOUSE

WASHINGTON

March 21, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Irving R. Kaufman
Concerning H.J. Res. 490, Subpoena
Power for Commission on Crime,
March 22, 1984

Counsel's Office has reviewed the above-referenced proposed testimony. In this testimony Chairman Kaufman of the President's Commission on Organized Crime requests authority for the Commission to have access to transcripts of wiretaps authorized under Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2520. As noted in the testimony, access would be limited to closed cases in which disclosure would not affect the integrity of any ongoing investigation or prosecution.

The testimony fails to note, however, that no Title III material will be released to the Commission without the express approval of the Attorney General. It is our understanding that a condition of the Justice Department support for Kaufman's request for access to Title III material is that such express approval by the Attorney General be required. The testimony should accordingly be revised to reflect this requirement. It is hardly enough to state, as Kaufman does on page 7, that the Commission "would seek the approval of the appropriate agency on a case by case basis when access or disclosure is sought." Express approval by the Attorney General is an added protection against abuse of the highly unusual right of access to sensitive Title III wiretap material, and that protection should be insisted upon and made explicit.

cc: Michael M. Uhlmann
Special Assistant to the President
Assistant Director for Legal Policy
Office of Policy Development

FFF:JGR:aea 3/21/84

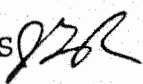
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 26, 1984

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS 

SUBJECT: Correspondence to the President From the Redmond Family Requesting a Contribution to Scholarship Fund in Memory of Katie Redmond Who Was Kidnapped and Murdered, and Expressing Their Views on Lack of Assistance for Victims of Crime and Their Families

White House Correspondence has referred to us a letter from the Redmond family to the President. Katie Redmond, 18, was the victim of a random murderer on April 7, 1984. Her family criticizes the treatment of victims and urges the President to do something about random killers. The letter concludes in what could be a sardonic fashion (I cannot be certain), noting that the President recently asked the Redmonds for a campaign contribution, and asking the President to contribute to the Katie Redmond Memorial Scholarship Fund.

We should refer the letter to Justice for preparation of a draft reply on the victims and random murderers issues. Justice does, of course, have a lot to say on both points. The Administration has taken several significant steps in the victims rights and assistance areas, and also recently established a national clearinghouse for information on random killers. After we receive the Justice draft we can consider what to do about the request for a contribution from the President. Normally we would decline the request, but perhaps this one should be run by Mr. Deaver.

Attachment

THE WHITE HOUSE

WASHINGTON

June 26, 1984

MEMORANDUM FOR CAROL E. DINKINS
DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

FROM: RICHARD A. HAUSER ^{ISI}
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence to the President From the
Redmond Family Requesting a Contribution
to Scholarship Fund in Memory of Katie
Redmond Who Was Kidnapped and Murdered, and
Expressing Their Views on Lack of Assistance
for Victims of Crime and Their Families

The attached letter to the President is submitted for preparation of a draft reply. The letter raises concerns about victims' rights and assistance and efforts to stop random killers, both areas in which the Department of Justice has been active.

Many thanks.

RAH:JGR:aea 6/26/84

cc: FFFielding/RAHauser/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 26, 1984

MEMORANDUM FOR CAROL E. DINKINS
DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence to the President From the
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to Scholarship Fund in Memory of Katie
Redmond Who Was Kidnapped and Murdered, and
Expressing Their Views on Lack of Assistance
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Many thanks.

RAH:JGR:aea 6/26/84

cc: FFFielding/RAHauser/JGRoberts/Subj/Chron

PR014 02

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

O - OUTGOING

H - INTERNAL

I - INCOMING

Date Correspondence Received (YY/MM/DD) 84 10 18

JR

Name of Correspondent: Mr. Mrs. Miss Thomas A. Redmond

MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Daughter Katie kidnaped and murdered seeks personal RR contribution to perpetuate her memory. Also expresses views on lack of assistance for victims of crimes and/or their families.

ROUTE TO: ACTION DISPOSITION

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
	Dono	ORIGINATOR	84 10 26			84 10 1
	CoHyde					
90 ✓	C U Field	C	84 10 24			84 10 1
	CWAT 18	D	84 10 25		S	84 10 7 10 5

ACTION CODES:

- A - Appropriate Action
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- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

* Comments: CAD would like DOJ to provide a draft reply if you concur

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June 11, 1984

288091

AD
President Ronald Reagan
The White House
Washington, D.C. 20500

Dear Mr. President,

"I'll know I've made it when I see myself on the front cover of TIME magazine." This is one of the statements our daughter, Katie, said of herself a few months ago. Katie is now dead. She was abducted and brutally murdered by a person who did not even know of her existence a few minutes before killing her.

Katie was a vitally alive, beautiful, caring, ambitious young woman, 18 years old, adored by her parents and brother and loved by all who knew her. Her college friends describe her as the most unique person they will ever know. The loss to us is indescribable.

I am writing this to you, Mr. President, as the leader of our country, to tell you that we, her father, mother and brother, are also victims of this crime and will be crippled for the rest of our lives. Katie was murdered by someone who did not know her, the murderer will be defended by someone who did not know her, there will be a jury of people at the trial who did not know her and a judge, who did not know her, will give us the benefit of his judgment. During all of this, we, the remaining victims, are treated as second class citizens, we are entitled to no information nor have any voice in any proceedings. There is no victim's aid or assistance program available to us, no compensation for any work loss or any therapy necessary - we should be satisfied with a grief counselling program!

Since the death of Katie on April 7, 1984, in Salem, Oregon, we are horrified to learn of the amount of similar murders of young women each year in the United States and even more horrified and frightened at the treatment we hear of regarding the victims who are left behind (parents, siblings, family). There does seem to be something vital lacking in a justice system which can, and does, treat us in such a cavalier fashion.

Hopefully, in your position as head of this nation, there is some way you can address this situation and recognize the seriousness of the worst kind of disease any country has known - the breeding and nurturing of murderers. Most of these killers have killed before, have records for other serious crimes, or have a history of mental problems.

cont/d.....

President Ronald Reagan
June 11, 1984

Page 2

Mr. President, you wrote to us some months ago, asking for a solicitation to your campaign fund and to please make out our personal check to same. All we can do for Katie now, is to keep her memory alive and, to this end, we have established a Katie Redmond Memorial Scholarship Fund. Perhaps you would care to contribute toward this fund for our lovely Californian girl. If so, please make out your personal check to:

Katie Redmond Memorial Scholarship Fund
c/o West America Bank
64 East Blithedale Avenue
Mill Valley, CA 94941

Thank you for taking the time to read this letter. God knows what will happen to us.

Sincerely,



June V. Redmond
Thomas A. Redmond
Andrew P. Redmond

29 Roosevelt Avenue
Mill Valley, CA 94941
(415) 388-3828

Copies sent to:

Sen. Alan Cranston
Sen. Pete Wilson
Rep. Barbara Boxer
Rep. Douglas H. Bosco
Sen. Barry Keene
Sen. Milton Marks
Assemblyman Bill Filante
Assemblyman Don Sebastiani

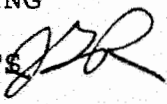
Sen. Mark Hatfield
Cong. Ron Wyden
Cong. Les Au Coin
Cong. Bob Smith
Cong. Denny Smith
Cong. Jim Weaver
Sen. Packwood

THE WHITE HOUSE

WASHINGTON

January 7, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Letter of December 13 from Chief Justice Burger Concerning the Comprehensive Crime Control Act

On December 13 the Chief Justice wrote the President, complaining about a provision in that part of the Comprehensive Crime Control Act of 1984 that establishes the U.S. Sentencing Commission, "an independent commission in the judicial branch" (emphasis supplied). Under the Act the Judicial Conference (chaired by the Chief) is to submit the names of six active Federal judges, from which list the President is to appoint at least three to full-time positions on the Commission. The statute specifies that "a Federal judge may serve as a member of the Commission without resigning his appointment as a Federal judge."

The Chief objects to taking sitting active judges away from their duties, and also questions the constitutionality of an Article III judge accepting appointment to a full-time independent commission. He notes that he does not plan to send over a list until Congress corrects or amends the statute, perhaps by allowing senior judges to be appointed to the Commission.

I referred the letter to Lowell Jensen's office at Justice for their views (that office is involved in starting up the Commission). They recommended holding out the possibility of corrective legislation, but not accepting the Chief's threat to delay until such legislation is passed, stressing that it is important that the Commission begin its work promptly. If Congress does respond to the Chief's concerns, active judges could be replaced on the Commission after helping start it up. The Chief's concern about not replacing the judges rings a bit hollow when one considers how many vacancies currently exist and may shortly be filled. As soon as we move on those vacancies, the judges sent to the Sentencing Commission will be "replaced" many times over, at least so far as current workloads are concerned.

The outlines of the proposed response suggest to me that it should be sent from Justice, since it deals with precisely what the Department is willing to support. The attached reply for your signature advises the Chief that Justice will be responding directly to him.

Attachment

THE WHITE HOUSE

WASHINGTON

January 7, 1985

Dear Mr. Chief Justice:

Thank you for your letter of December 13, 1984 to the President. In that letter you expressed concern over that section of the Comprehensive Crime Control Act of 1984 that provides for full-time service on the new United States Sentencing Commission by at least three "Federal judges in regular active service." You noted that the Act made no provision for replacement of the judges, and you suggested that the Act be amended to permit senior judges to be considered for service on the Commission.

I have referred your correspondence to those officials at the Department of Justice who are closely involved with implementing the Comprehensive Crime Control Act and establishing the Sentencing Commission; you should receive a detailed response from them shortly. I remain hopeful that something can be done to respond to your concerns without delaying the critical work of the Sentencing Commission. That work must begin promptly and, as Congress recognized, must be informed by the perspective that can be brought to bear by members of the Federal bench.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

The Honorable Warren E. Burger
The Chief Justice of the
United States
Washington, D.C. 20543

FFF:JGR:aea 1/7/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

January 7, 1985

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Sincerely,

Fred F. Fielding
Counsel to the President

The Honorable Warren E. Burger
The Chief Justice of the
United States
Washington, D.C. 20543

FFF:JGR:aea 1/7/85
cc: FFFielding
JGRoberts
Subj
Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET



- O - OUTGOING
 - H - INTERNAL
 - I - INCOMING
- Date Correspondence Received (YY/MM/DD) 1 / 1

Name of Correspondent: Richard Darman

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: letter of December 13 from Chief Justice Burger concerning the Comprehensive Crime Control Act

ROUTE TO:	ACTION	DISPOSITION
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD
<u>Curtow</u>	ORIGINATOR	841214
<u>CRIST 18</u>	Referral Note: D	841214
	Referral Note:	S 841217 10007
	Referral Note:	1 1
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ACTION CODES:

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure

- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

DISPOSITION CODES:

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE:

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEOP).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 12/13/84 ACTION/CONCURRENCE/COMMENT DUE BY: 12/17 - NOON

SUBJECT: LETTER OF DECEMBER 13 FROM CHIEF JUSTICE BURGER

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	OGLESBY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	VERSTANDIG	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HERRINGTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McFARLANE	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McMANUS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Fred - Please prepare an appropriate response for the President's signature in coordination with others.

Thank you.

RESPONSE:

Supreme Court of the United States
Washington, D. C. 20543

1984 DEC 13 PM 5:51

CHAMBERS OF
THE CHIEF JUSTICE

December 13, 1984

Dear Mr. President:

One of the components of the Comprehensive Crime Control Act of 1984 enacted in October looks to the creation of a Sentencing Commission to establish a system of guidelines for federal judges to use in imposing sentences on criminal offenders. The Act calls upon the Judicial Conference, of which I am statutory Chairman, to submit to you a list of six active federal judges, from which you will nominate three to serve as members of the Sentencing Commission.

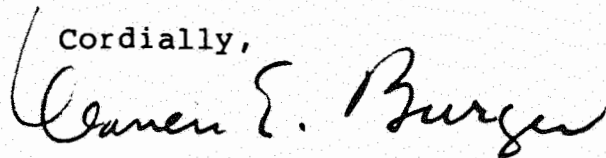
As you know, this legislation was agreed upon and passed by the House and Senate during the session-closing rush, when there was little opportunity to consider carefully all of its details and problems. Had more careful consideration been given, the obvious flaw, i.e., limiting the appointment to a judge in active service who cannot take on the significant added burden, would have been pointed out.

In its present form, the Act restricts me to suggesting to you names of full-time, active federal judges for nomination to full-time service on the Commission. The Act does not, however, contain any provision for their replacement on the courts from which they are drawn. The Judicial Conference of the United States in September 1984 surveyed the caseload statistics and concluded that 42 additional district judgeships were then needed just to handle the current caseload. In addition, there is a serious question of the constitutionality of an Article III judge in active service undertaking a "full-time" Executive Branch appointment to an independent commission.

In these circumstances, I do not see how I can fulfill my responsibilities until Congress corrects or amends the statute. At least a provision allowing for appointment of senior judges should be made.

Congressional action is imperative to correct the Act along the lines suggested above, so that I can in turn promptly fulfill my responsibility of supplying to you the names of six judges.

Cordially,



The President
The White House
Washington, D.C. 20500

THE WHITE HOUSE
WASHINGTON

December 26, 1984

TO: JAY STEPHENS

FROM: John G. Roberts, Jr.
Associate Counsel
to the President

- FYI
- COMMENT
- ACTION

Please advise concerning a response for Mr. Fielding's signature, as we have discussed.