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Speeches

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 8, 1983



FOR: PETER RUSTHOVEN
JOHN ROBERTS ← -
SHERRIE COOKSEY

FROM: DIANNA HOLLAND *djh*

As you will see from the attached, Fred has been invited to speak to the American Bar Association Young Lawyers Division on Sunday, July 31. He would like for the three of you to get together and come up with some topic for his speech. If you could submit your recommendations to him within the next ten days, it would be greatly appreciated.

Thank you.

American Bar Association

June 25, 1983

Fred F. Fielding, Esq.
Counsel to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Fred:


I was delighted to learn that you will speak to the American Bar Association Young Lawyers Division on Sunday, July 31, 1983.

The Young Lawyers Division will be considering the new proposed code of professional responsibility, in addition to a variety of professional issues during the Atlanta meeting. Accordingly, a speech on any related ethical issues would be timely. You may, however, feel free to speak on any subject that you believe to be important.

Your speech will be part of a luncheon program on Sunday and should be approximately 20 minutes in length with five minutes for questions and answers. So that we may publicize your attendance appropriately, we ask that you send us a photograph and biography that can be published.

If you need any assistance in making your arrangements, please feel free to give me a call.

Very truly yours,


Carolyn B. Lamm

cc: Cabinet
Deborah Owen

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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 18, 1983

FOR: FRED F. FIELDING
FROM: PETER J. RUSTHOVEN 
SUBJECT: Address to ABA Young Lawyers
Division, Sunday, July 31, 1983

Sherrie, John and I have, as you requested, discussed what topic you may wish to use for the above-referenced address. Our somewhat reluctant conclusion is that, given the nature of the letter from the Division Chairperson confirming this speaking engagement, the topic in which the audience would be most interested would probably be the Ethics in Government Act as it relates to the work of our office.

If you agree, we will prepare a draft speech on this topic (drawing on, inter alia, your Directors & Boards article and speeches and other presentations we have drafted for you on this subject in the past). The speech would be built around a "how should we look at Government ethics laws" theme, with care being taken to avoid your remarks being construed either as a general criticism of such laws per se or as a commentary on any recent or current events that may have "ethical" overtones.

Other possible topics, and the reasons we have tentatively rejected them, include (1) the new proposed Code of Professional Responsibility developed by the Kutak Commission (too controversial within the ABA; official Administration views, if any, will be coming from Justice; no more interesting than Governmental ethics questions, on which you are more expert); (2) judicial selection (you addressed ABA group on this at 1981 ABA meeting); (3) legal equity for women (President's address to this ABA meeting may well focus on this); (4) civil rights efforts by Administration (very controversial; President's address to this ABA meeting will probably at least touch on this; official comments by others than the President probably should be made by Justice officials).

If you agree with the suggested topic, we should be able to have a draft speech ready for your review before this weekend. Please advise; thank you.

cc: Sherrie M. Cooksey
John G. Roberts, Jr. ←

7/28/83
Speech

REMARKS OF FRED F. FIELDING,
COUNSEL TO THE PRESIDENT, TO
YOUNG LAWYERS DIVISION OF
AMERICAN BAR ASSOCIATION,
SUNDAY, JULY 31, 1983

[THANKS FOR INTRODUCTION; SPECIFIC ACKNOWLEDGEMENTS;]

LADIES AND GENTLEMEN:

IT IS A PLEASURE TO SPEAK TO THE ABA'S YOUNG LAWYERS DIVISION, AND I WANT TO TAKE THIS OPPORTUNITY TO THANK YOUR CHAIR, CAROLYN LAMM, FOR EXTENDING ME THIS INVITATION. WHILE I FEAR I AM NO LONGER ELIGIBLE FOR MEMBERSHIP IN THE DIVISION, IT IS COMFORTING TO BE REASSURED THAT I REMAIN AMONG THE UNIVERSE OF PERSONS WHO MAY BE ASKED TO APPEAR BEFORE IT.

THOUGH WE'RE MEETING ON A SUNDAY, I PROPOSE NEITHER TO DELIVER A SERMON NOR TO DISCUSS RELIGION. I WOULD, HOWEVER, LIKE TO SPEND A FEW MOMENTS SHARING SOME THOUGHTS WITH YOU ON RELIGION'S FREQUENT CONVERSATIONAL COMPANION, NAMELY, "ETHICS." AS SOME OF YOU MAY KNOW, THE REAGAN ADMINISTRATION IS THE FIRST TO UNDERGO A FULL-SCALE PRESIDENTIAL TRANSITION UNDER THE ETHICS IN GOVERNMENT ACT OF 1978, WHICH EFFECTED A MAJOR EXPANSION IN THE SCOPE AND DETAIL OF PUBLIC FINANCIAL DISCLOSURE AND RELATED REQUIREMENTS FOR HIGH-LEVEL GOVERNMENT OFFICIALS. A SIGNIFICANT PART OF MY PROFESSIONAL DUTIES, BOTH AS CONFLICTS COUNSEL FOR THE TRANSITION AND AS COUNSEL TO THE PRESIDENT, HAS INVOLVED ASSISTING INCOMING ADMINISTRATION

APPOINTEES IN COMPLYING WITH THE REPORTING AND OTHER FEATURES OF THE ETHICS ACT. BASED ON THAT EXPERIENCE, I THINK IT MAY BE TIME WE TOOK A LOOK AT HOW CURRENT ETHICS LAWS MIGHT BE IMPROVED, SO THAT WE CAN NOT ONLY CONTINUE TO ENSURE PUBLIC CONFIDENCE IN THE INTEGRITY OF GOVERNMENT AND PUBLIC OFFICIALS, BUT ALSO CONTINUE TO ATTRACT TALENTED CITIZENS TO GOVERNMENT SERVICE.

NOW, I KNOW FULL WELL THAT "ETHICS" IS NOT THE MOST FASCINATING OF TOPICS. CERTAINLY, THE LAWYERS ON MY STAFF -- ALL OF WHOM, BY THE WAY, ARE ELIGIBLE FOR MEMBERSHIP IN THIS DIVISION -- HAVE BEEN KNOWN TO TESTIFY AND EVEN TO VOLUNTEER THAT LEADING A PROSPECTIVE PRESIDENTIAL NOMINEE THROUGH THE MAZE OF AN OFFICIAL FINANCIAL DISCLOSURE REPORT IS NOT THE MOST INTELLECTUALLY STIMULATING TASK FOR AN ATTORNEY. AT THE SAME TIME, HOWEVER, ETHICAL STANDARDS AND RULES DO PRESENT IMPORTANT AND FREQUENTLY CONTROVERSIAL QUESTIONS. THE CURRENT DEBATE WITHIN OUR PROFESSION OVER THE RECOMMENDATIONS OF THE KUTAK COMMISSION -- ONE OF THE SUBJECTS THAT I UNDERSTAND THE YOUNG LAWYERS DIVISION IS CONSIDERING HERE IN ATLANTA -- IS A PROMINENT EXAMPLE. AND IT IS SAFE TO SAY THAT MATTERS RAISING ETHICAL QUESTIONS OF ONE KIND OR ANOTHER OCCASIONALLY MAKE THE NEWS IN WASHINGTON AS WELL.

IT'S PARTLY BECAUSE THIS IS TRUE THAT I THINK IT BEST TO

INTRODUCE MY REMARKS ON THIS SUBJECT TODAY WITH A SERIES OF DISCLAIMERS. FIRST, MY REMARKS HAVE NOTHING TO DO WITH ANY PARTICULAR ISSUE THAT MAY PRESENTLY BE CONSIDERED NEWSWORTHY. LIKewise, THESE REMARKS ARE NOT A COMMENT UPON THE EXPERIENCES OF ANY INDIVIDUAL PRESIDENTIAL NOMINEE OR GOVERNMENT OFFICIAL. MY PURPOSE IS SIMPLY TO DISCUSS WITH SOME FELLOW ATTORNEYS MATTERS OF COMMON INTEREST TO THOSE WHO CARE ABOUT GOVERNMENT AND PUBLIC SERVICE; AND MY COMMENTS ARE PRESENTED AND SHOULD BE TAKEN ON AN "AS IS" BASIS, DEVOID OF ULTERIOR MOTIVES, AND WITHOUT ANY HIDDEN MEANINGS OR SUBTLE IMPLICATIONS INVOLVING ANY ISSUE OF PAST NOTORIETY OR CURRENT MOMENT.

MORE GENERALLY, I ALSO WANT TO MAKE IT CLEAR THAT I AM NOT, EITHER PERSONALLY OR AS AN ADMINISTRATION REPRESENTATIVE, IN ANY SENSE "ATTACKING" FEDERAL ETHICS LAWS OR SUGGESTING THAT THEY BE DONE AWAY WITH. IF IT NEEDS SAYING -- AND I DON'T THINK IT SHOULD -- LET ME EMPHASIZE THAT THE ADMINISTRATION FULLY SUPPORTS THE PURPOSES OF SUCH LAWS. MY STAFF AND I HAVE DEVOTED THOUSANDS OF HOURS, WITH CLOSE TO A THOUSAND APPOINTEES, IN SEEKING TO ENSURE SCRUPULOUS COMPLIANCE WITH THE LAWS NOW ON THE BOOKS.

I MENTION THIS ONLY BECAUSE IT SEEMS THAT WHENEVER ONE SUGGESTS THAT SPECIFIC IMPROVEMENTS MAY BE WORTH CONSIDERING, AT LEAST SOMEONE IS LIKELY TO CLAIM THAT ONE IS TRYING TO

"GUT" THE ETHICS ACT OR SOME SUCH THING. AND I MUST CONFESS I DO NOT WANT TO READ A HEADLINE DESCRIBING THIS SPEECH AS "REAGAN COUNSEL ATTACKS ETHICS LAWS." INSTEAD, I WANT TO READ, "REAGAN COUNSEL DENIES HE IS ATTACKING ETHICS LAWS."

NOW THAT I'VE EXHAUSTED MY LIST OF DISCLAIMERS, LET'S LOOK FOR A FEW MINUTES AT CURRENT FEDERAL LAWS IN THIS FIELD AND HOW THEY MIGHT BE IMPROVED. SPECIFICALLY, I'D LIKE YOU AND I, AS FELLOW MEMBERS OF THE BAR, TO SPEND A FEW MOMENTS CONTEMPLATING HOW WE CAN TURN THE EXPERIENCES OF THIS ADMINISTRATION -- THE FIRST, AS I MENTIONED, TO UNDERGO A PRESIDENTIAL TRANSITION UNDER THE ETHICS IN GOVERNMENT ACT -- INTO SOLID, SENSIBLE IMPROVEMENTS IN PRESENT ETHICS LAWS.

THE STARTING POINT FOR THIS EXERCISE IS UNDERSTANDING BOTH THE GENESIS AND THE REAL PURPOSE OF PRESENT ETHICS LAWS. AS YOU KNOW, THE ETHICS IN GOVERNMENT ACT CAME ON THE HEELS OF WATERGATE AND ITS MOST SIGNIFICANT BY-PRODUCT -- A SHAKING OF PUBLIC CONFIDENCE IN THE INTEGRITY OF GOVERNMENT. LATER ALLEGATIONS -- WHATEVER THEIR MERITS -- ABOUT CARTER OMB DIRECTOR BERT LANCE EXACERBATED THE PERCEPTION THAT SOMETHING HAD TO BE DONE. AMONG THE REACTIONS WAS PASSAGE OF THE ETHICS IN GOVERNMENT ACT OF 1978.

THE ACT HAD THREE PRINCIPAL ASPECTS: FIRST, IT IMPOSED

INCREASED AND INFLEXIBLE DIVESTITURE RULES. SECOND, IT REQUIRED MORE DETAILED, AND MORE PUBLIC, DISCLOSURE OF FINANCIAL INTERESTS. THIRD, IT INCREASED POST-EMPLOYMENT RESTRICTIONS -- THE SO-CALLED "REVOLVING DOOR" PROBLEM.

EACH OF THESE THINGS HAS IMPORTANT SPECIFIC CONSEQUENCES, ON WHICH WE'LL FOCUS IN A MOMENT. BUT IT IS CRITICAL TO NOTE AT THE OUTSET THAT NONE OF THEM HAS MUCH, IF ANYTHING, TO DO WITH "CREATING" ETHICS THEMSELVES, OR EVEN "TEACHING" ETHICS TO PERSONS IN GOVERNMENT SERVICE. PEOPLE SIMPLY DO NOT "LEARN" ETHICS FOR THE FIRST TIME WHEN THEY ENTER GOVERNMENT SERVICE; CERTAINLY THEY DO NOT "LEARN" ETHICS BY BECOMING FAMILIAR WITH A PIECE OF LEGISLATION AND ITS IMPLEMENTING REGULATIONS. AND THE SIMPLE TRUTH IS THAT DISCLOSURE RULES AND DIVESTITURE REQUIREMENTS WILL DO LITTLE TO DETER THOSE INDIVIDUALS -- THANKFULLY, A VANISHING BREED -- WHO ENTER PUBLIC SERVICE WITH LARCENY IN THEIR HEARTS.

INSTEAD, EACH OF THE PRINCIPAL FEATURES OF THE ETHICS ACT HAS TO DO PRIMARILY WITH PUBLIC APPEARANCES, AND THE IMPACT OF PUBLIC APPEARANCES ON PUBLIC CONFIDENCE IN GOVERNMENT. IN OTHER WORDS, THE OPERATIVE CLICHE, IF THERE IS ONE, IS NOT SO MUCH "HONESTY IS THE BEST POLICY," BUT RATHER IS MORE ALONG THE LINES OF "CAESAR'S WIFE -- OR CAESAR'S SENIOR APPOINTEES -- MUST BE ABOVE SUSPICION."

HENCE, WHEN ONE TALKS ABOUT AREAS OF POSSIBLE IMPROVEMENT IN ETHICS LAWS, THE RELEVANT COMPARISON IS NOT WHETHER ONE PREFERS "MORE ETHICS" OR "LESS ETHICS." RATHER, THE ISSUE IS HOW ONE SHOULD STRIKE THE BALANCE BETWEEN REQUIREMENTS DESIGNED TO FOSTER PUBLIC CONFIDENCE IN GOVERNMENT, ON THE ONE HAND, AND, ON THE OTHER HAND, LEGITIMATE CONCERNS ABOUT THE IMPACT OF THOSE REQUIREMENTS ON THE ABILITY OF THE GOVERNMENT ITSELF TO ATTRACT QUALIFIED PUBLIC SERVANTS. IN STRIKING THAT BALANCE, IT SHOULD BE EMPHASIZED THAT PUBLIC CONFIDENCE IN GOVERNMENT IS NEITHER AN ETHEREAL NOR AN UNIMPORTANT CONCERN; AT THE SAME TIME, HOWEVER, IT SHOULD BE KEPT IN MIND THAT JUST AS IMPORTANT AS THE "PUBLIC'S RIGHT TO KNOW" IS ITS RIGHT TO THE SERVICE OF ITS MOST TALENTED CITIZENS.

WITHIN THAT FRAMEWORK, I THINK IT IS FAIR TO SAY THAT THE PRESENT BALANCE MAY BE TILTED TOO FAR TO THE "APPEARANCES" SIDE OF THE EQUATION -- THAT WE HAVE, IF YOU WILL, ELEVATED FORM OVER SUBSTANCE, AND HAVE DONE SO AT SOME COST TO OUR ABILITY TO ATTRACT GOOD PEOPLE INTO GOVERNMENT. I AM NOT SUGGESTING THAT WE ARE AT ALL DISAPPOINTED WITH THE PERSONS THE ADMINISTRATION HAS APPOINTED TO IMPORTANT GOVERNMENT POSTS. ON THE CONTRARY, I THINK THE PRESIDENT HAS EVERY REASON TO BE PROUD OF THE APPOINTMENTS HE HAS MADE; AND SINCE OUR OFFICE GETS TO KNOW THESE INDIVIDUALS VERY WELL IN THE COURSE OF THE APPOINTMENTS PROCESS, I KNOW WHEREOF I SPEAK. BUT IT IS ALSO

TRUE THAT, IN A NUMBER OF CASES, TALENTED INDIVIDUALS WHO WERE OTHERWISE WILLING TO SERVE -- EVEN AT CONSIDERABLE FINANCIAL SACRIFICE -- HAVE BEEN LOST TO THE GOVERNMENT.

WHAT, THEN, ARE SOME OF THE AREAS IN WHICH THE PRESENT ACT MIGHT BE IMPROVED? I HAVE NO COMPREHENSIVE OR DETAILED LIST OF PROPOSED AMENDMENTS, BUT I DO HAVE A FEW SUGGESTIONS THAT MAY DESERVE SERIOUS CONSIDERATION BY LAWMAKERS, MEMBERS OF THE BAR, AND ALL OF US WHO CARE ABOUT BOTH ETHICS AND PUBLIC SERVICE.

FIRST, LET'S TAKE A LOOK AT THE DIVESTITURE RULES. THESE ARE SIMPLE ENOUGH BOTH IN THEORY AND IN PRACTICE: IF ONE HAS A FINANCIAL INTEREST THAT MIGHT CREATE A CONFLICT OF INTEREST -- AND, PRACTICALLY SPEAKING, AN APPEARANCE OF CONFLICT IS OFTEN ENOUGH -- THEN ONE MUST DIVEST. IN SOME CASES, PEOPLE HAVE SIMPLY BEEN PREVENTED FROM ENTERING GOVERNMENT SERVICE BECAUSE THE REQUIRED DIVESTITURE WAS TOO GREAT OR EVEN NOT POSSIBLE. SOME EXAMPLES ARE BIZARRE -- SUCH AS A PERSON LITERALLY UNABLE TO DIVEST BECAUSE OF THE TERMS OF AN OLD FAMILY TRUST, WHERE "THE DEAD HAND OF THE PAST" REACHES OUT TO PREVENT COMPLIANCE WITH THE LIVING SPIRIT OF THE ETHICS LAWS.

MORE FREQUENTLY, DIFFICULTIES ARISE BECAUSE THE VERY PERSON MOST QUALIFIED TO SERVE IN A PARTICULAR POSITION MAY

HAVE SPENT A LIFETIME WORKING IN THE FIELD IN QUESTION -- IN THE COURSE OF WHICH HE OR SHE MAY HAVE ACQUIRED, NATURALLY ENOUGH, SUBSTANTIAL INVESTMENT AND RELATED INTERESTS. THIS IS A VERY REAL PROBLEM; AS SOMEONE HAS OBSERVED, ONLY HALF IN JEST, THERE SIMPLY AREN'T ENOUGH PRIESTS AND NUNS TO STAFF THE DEPARTMENT OF ENERGY. AND IN EACH OF THESE INSTANCES, THE PUBLIC HAS LOST THE SERVICES OF A VALUABLE PERSON.

NOW, ALL OF US UNDERSTAND THE NEED TO AVOID BOTH ACTUAL AND APPARENT CONFLICTS OF INTEREST. BUT THE STUMBLING BLOCK HERE IS NOT SO MUCH THE DIVESTITURE RULES PER SE; RATHER, IT IS THE UNINTENDED AND ADVERSE FINANCIAL IMPACT, AT TIMES QUITE DRAMATIC, THAT FORCED DIVESTITURE CAN HAVE.

MOST PROSPECTIVE NOMINEES MAKE THEIR PEACE EARLY ON WITH THE FACT THAT EXECUTIVE POSITIONS IN THE FEDERAL GOVERNMENT USUALLY PAY FAR LOWER SALARIES THAN COMPARABLE POSITIONS IN THE PRIVATE SECTOR. THIS DISPARITY IN INCOME IS SELDOM AN ISSUE, IN OUR EXPERIENCE, FOR HIGH LEVEL APPOINTEES, WHO ARE GENERALLY WILLING TO MAKE THIS SACRIFICE, OFTEN FOR HIGHLY ALTRUISTIC MOTIVES HAVING TO DO WITH A DESIRE TO SERVE THEIR COUNTRY. BUT THE SUDDEN TAX CONSEQUENCES OF FORCED DIVESTITURE OF MAJOR INVESTMENT HOLDINGS CAN BE A SHOCKING AND UNANTICIPATED SIDE EFFECT.

DIVESTITURE ITSELF MAY ENHANCE PUBLIC CONFIDENCE; THE TAX CONSEQUENCES OF FORCED DIVESTITURE, HOWEVER, CAN SCARCELY BE JUSTIFIED AS SOMETHING THAT ADVANCES PUBLIC FAITH IN PUBLIC OFFICIALS. THIS IS AN AREA WHERE APPROPRIATE ADJUSTMENTS IN THE TAX CODE SEEM VERY MUCH IN ORDER. DEFERRED RECOGNITION OF GAINS, "SPREADING" GAINS OVER A SEVERAL-YEAR PERIOD AND SIMILAR IDEAS ARE WORTH SERIOUS STUDY AS POTENTIAL MEANS FOR ELIMINATING THIS UNWARRANTED AND UNINTENDED DISINCENTIVE FOR QUALIFIED PERSONS TO ENTER PUBLIC SERVICE.

A SECOND AREA WHERE IMPROVEMENTS MAY BE POSSIBLE INVOLVES "DISCLOSURE" REQUIREMENTS. THE ETHICS ACT NOW REQUIRES PUBLIC DISCLOSURE OF ALL INTERESTS IN PROPERTY AND SOURCES OF INCOME, WITH FAIRLY DETAILED LISTING, BY "RANGES," BOTH OF THE AMOUNT OF ANY INCOME, BY SOURCE, AND THE VALUE OF ANY PROPERTY. TO BE SURE, SOMEONE HAS TO KNOW WHAT A NOMINEE OWNS TO DETERMINE IF AN ACTUAL OR APPARENT CONFLICT OF INTEREST IS PRESENT. BUT I THINK THE PRESENT DISCLOSURE REQUIREMENTS MAY BE BOTH TOO DETAILED AND TOO PUBLIC.

FOR EXAMPLE, IDENTIFYING A POTENTIAL CONFLICT OF INTEREST GENERALLY DOES NOT REQUIRE KNOWING SPECIFIC "DOLLAR RANGES" OF THE SORT THAT CURRENTLY MUST BE PUBLICLY DISCLOSED. BELOW A CERTAIN AMOUNT, MOST PEOPLE WOULD PROBABLY CONCEDE THAT A PARTICULAR FINANCIAL INTEREST IS DE MINIMIS. ABOVE A CERTAIN

AMOUNT, IT IS PLAIN THAT A POTENTIAL CONFLICT MAY EXIST. I SUBMIT THAT THIS ANALYSIS -- NECESSARY AS IT IS -- IS NOT ADVANCED BY REQUIRING DISCLOSURE OF WHETHER THE VALUE OF THE HOLDING IS "\$50,000 TO \$100,000" OR "OVER \$250,000."

SIMILARLY, IT IS FAR FROM CLEAR THAT ALL SUCH INFORMATION NEED BE PUBLICLY DISCLOSED. I DOUBT MANY APPOINTEES WOULD OBJECT TO DISCLOSURE TO AND REVIEW BY RELEVANT CONGRESSIONAL COMMITTEES AND THE OFFICE OF GOVERNMENT ETHICS; AND I AM SURE APPOINTEES WOULD CONTINUE TO ABIDE BY THE ADVICE THEY RECEIVE ON THE ETHICAL ISSUES A PARTICULAR FINANCIAL INTEREST MAY RAISE. BUT IT IS AN ENTIRELY DIFFERENT MATTER WHEN ONE IS ASKED TO REVEAL OTHERWISE PRIVATE FINANCIAL INFORMATION UNDER RULES THAT PERMIT IT TO BE OBTAINED AND PUBLISHED IN ONE'S LOCAL NEWSPAPER. AND ONE MAY FAIRLY QUESTION WHETHER THERE WOULD BE MORE THAN A MARGINAL DIFFERENCE IN "PUBLIC CONFIDENCE" BETWEEN A SYSTEM OF CONFIDENTIAL DISCLOSURE AND INDEPENDENT REVIEW AND CERTIFICATION, AND ONE OF TOTAL PUBLIC DISCLOSURE.

THE MOTIVATION FOR POSSIBLE CHANGES IN THIS AREA HAS NOT BEEN ANY DETECTABLE IMPULSE ON THE PART OF PROSPECTIVE APPOINTEES TO "HIDE" POTENTIAL CONFLICTS OF INTEREST OR TO "PUT ONE OVER" ON THEIR FELLOW CITIZENS. THE CONCERNS WE HAVE HEARD EXPRESSED ARE FAR DIFFERENT AND FAR MORE UNDERSTANDABLE -- FOR EXAMPLE, THE PERSON ASKED TO DISCLOSE THE NAMES OF PARTNERS IN

UNRELATED PRIVATE TRANSACTIONS, PARTNERS WHO ARE NOT THEMSELVES ENTERING GOVERNMENT SERVICE; OR THE NOMINEE CONCERNED THAT HE OR MEMBERS OF HIS FAMILY MAY BECOME TARGETS OF THEFT, OF KIDNAPPING, OR SOLICITATIONS; OR THE NOMINEE WHO DOES NOT WANT HIS CHILDREN TO KNOW THE EXTENT OF THEIR PARENTS' WEALTH.

CONCERNS OF THIS SORT -- WHICH ARE FAR FROM ISOLATED OR UNIQUE -- SUGGEST THAT WE MAY HAVE ERRED ON THE SIDE OF PUBLIC VOYEURISM, AND THAT THERE ARE ADJUSTMENTS WE CAN MAKE THAT WILL HAVE LITTLE APPRECIABLE IMPACT ON ETHICS IN GOVERNMENT OR PUBLIC CONFIDENCE IN PUBLIC SERVANTS. AND MY POINT IN RAISING THIS IS NOT SO MUCH CONCERN ABOUT THE PRIVACY INTERESTS OF APPOINTEES, THOUGH THESE ARE NOT INSIGNIFICANT AND I AM NOT UNSYMPATHETIC. RATHER, MY PRINCIPAL CONCERN IS THE CUMULATIVE IMPACT ON THE GOVERNMENT -- ON THE PUBLIC -- OF LOSING THE SERVICES OF TALENTED PEOPLE.

A THIRD AND DIFFICULT AREA INVOLVES RESTRICTIONS ON POST-GOVERNMENT EMPLOYMENT -- THE "REVOLVING DOOR" RULES. SOME RESTRICTIONS IN THIS AREA ARE PLAINLY NEEDED, AS HAS BEEN ACKNOWLEDGED FOR YEARS. AND I CONFESS I AM NOT PREPARED TODAY TO OFFER ANY COMPREHENSIVE SET OF REPLACEMENT RULES AND GUIDELINES. WHAT I DO WANT TO EMPHASIZE TODAY, AS I HAVE ON OTHER OCCASIONS, IS WHERE THE GREATEST POTENTIALLY HARMFUL IMPACT OF OVERBURDENSOME RESTRICTIONS HITS.

THE PROBLEM IS NOT AT THE MOST SENIOR OR CABINET LEVEL. IT IS AT THE MID-RANGE -- THE RANGE WHERE TALENTED INDIVIDUALS IN THE PRIVATE SECTOR FIRST CONSIDER ENTERING GOVERNMENT SERVICE AT A RESPONSIBLE LEVEL, WITH THE EXPECTATION OF RESUMING THEIR PRIVATE CAREERS IN A FEW YEARS. TODAY, THESE INDIVIDUALS -- PERSONS LIKE YOU AND YOUR CONTEMPORARIES IN OTHER LINES OF WORK -- MUST CONSIDER WHETHER PUBLIC SERVICE IN THE VERY FIELDS IN WHICH THEY ARE MOST QUALIFIED WILL NOT SIMPLY INTERRUPT, BUT MAY ACTUALLY PRECLUDE RESUMPTION OF, THEIR PROFESSIONAL CAREERS. IN OTHER WORDS, HERE ESPECIALLY CONCERNS ABOUT THE CUMULATIVE IMPACT ON GOVERNMENT AND THE PUBLIC -- THE SUBTLE, LONG-RANGE, IMPOSSIBLE-TO-MEASURE BUT NONETHELESS VERY REAL LOSS -- ARE CRITICAL.

WE HAVE LOST GOOD PEOPLE BECAUSE OF THESE RULES. LET ME REPEAT: SOME RESTRICTIONS ARE NECESSARY. BUT WE SHOULD REMEMBER THAT THE "REVOLVING DOOR" ALSO WORKS IN FAVOR OF GOVERNMENT ITSELF -- BY CREATING A "POOL" OF INDIVIDUALS EXPERIENCED IN GOVERNMENT ON WHICH FUTURE ADMINISTRATIONS CAN DRAW, AS SUCH PERSONS BECOME OLDER AND QUALIFIED FOR MORE SENIOR AND RESPONSIBLE POSITIONS. THIS IS A RESOURCE WE CAN ILL AFFORD TO DEplete; AND WE MAY WANT TO RE-EXAMINE WHETHER PRESENT RULES ARE DOING SO MORE THAN IS NECESSARY TO PREVENT ETHICAL PROBLEMS.

THESE ARE ALL AREAS THAT I BELIEVE CAN BE PRODUCTIVELY RE-EVALUATED FOLLOWING OUR EXPERIENCES WITH THE FIRST PRESIDENTIAL TRANSITION UNDER THE ETHICS IN GOVERNMENT ACT. LET ME REITERATE YET AGAIN THAT I AM NOT OPPOSED TO THE CONCEPT OF THE ACT OF TO MOST OF ITS PROVISIONS. MY POINT IS SIMPLY THAT WHEN LAWS DESIGNED TO PROTECT THE PUBLIC BECOME THEMSELVES OBSTACLES TO PROVIDING THE PUBLIC WITH THE BEST, MOST COMPETENT PUBLIC SERVANTS WE CAN FIND, THEN THE PUBLIC IS NOT IN FACT BEING WELL SERVED BY ITS LAWS.

THE MATTERS WE HAVE DISCUSSING TODAY ARE NOT, AS I HOPE IS APPARENT, IN ANY SENSE "PARTISAN" ISSUES. NO RESPONSIBLE REPUBLICAN OR DEMOCRAT WOULD CONTEND THAT HIS PARTY HAS SOME UNIQUE CLAIM TO "CARE" ABOUT "ETHICS." AND, I WOULD ALSO POINT OUT THAT, THEORETICALLY AT LEAST, IT IS POSSIBLE ANOTHER DEMOCRAT WILL SOMEDAY BE ELECTED PRESIDENT. SHOULD THAT UNLIKELY EVENT OCCUR, THE INCOMING DEMOCRATIC ADMINISTRATION WILL FACE CHALLENGES OF THE KIND I'VE JUST DESCRIBED IN SEEKING TO STAFF SENIOR GOVERNMENT POSITIONS WITH TALENTED INDIVIDUALS WHO SHARE THE GOALS AND PHILOSOPHY OF THAT PRESIDENT.

THESE ISSUES ALSO GO BEYOND PARTISANSHIP IN ANOTHER AND FAR MORE IMPORTANT WAY. THEY HAVE SERIOUS IMPLICATIONS FOR A LONGSTANDING AND ARGUABLY UNIQUE FEATURE OF AMERICAN GOVERNMENT, WHOSE ROOTS GO BACK TO GEORGE WASHINGTON AND WHICH HAS BEEN A

PART OF EVERY PRESIDENCY THAT FOLLOWED, WHETHER FEDERALIST OR WHIG, REPUBLICAN OR DEMOCRATIC. WHAT I AM TALKING ABOUT IS OUR TRADITION OF "CITIZEN PUBLIC SERVANTS" -- INDIVIDUALS WHO HAVE BEEN WILLING TO PUT ASIDE THEIR PRIVATE LIVES AND, NOTWITHSTANDING THE COSTS IN MONEY, PERSONAL PRIVACY AND ALL THE REST, PUT THEIR TALENTS AND ENERGIES TO WORK FOR THE COUNTRY THAT HAS SO RICHLY BLESSED US ALL.

I AM NOT SUGGESTING THAT THIS TRADITION IS NOW IN SERIOUS JEOPARDY -- YET. I AM STATING THAT, LIKE EVERYTHING ELSE WE VALUE, WE CANNOT TAKE IT FOR GRANTED. IT FOLLOWS THAT WE SHOULD WEIGH WITH GREAT CARE THE BENEFITS OF LAWS THAT, HOWEVER WELL INTENTIONED, POSE THREATS TO ITS CONTINUED EXISTENCE.

A CENTURY-AND-A-HALF AGO DISRAELI, CONCERNED THAT THE PREROGATIVES OF THE BRITISH ARISTOCRACY WERE BEING DISPLACED BY THE RISING INTEREST OF THE NEW BUSINESS CLASS IN GOVERNMENT, ASKED WHETHER GREAT BRITAIN WOULD HAVE "A GOVERNMENT OF STATESMEN OR OF CLERKS?" ON OUR SIDE OF THE ATLANTIC TODAY, WE NEED NOT WORRY ABOUT PRESERVING THE PREROGATIVES OF ANY ARISTOCRACY, AND MOST OF US APPRECIATE THE CONTRIBUTIONS MADE BY CAREER GOVERNMENT SERVANTS. BUT PERHAPS WE MUST ASK OURSELVES, "ARE WE TO HAVE A GOVERNMENT OF BUREAUCRATS OR CITIZEN PUBLIC SERVANTS?"

HIGH SIDEY, WHO HAS BEEN COVERING THE PRESIDENCY FOR LIFE AND NOW FOR TIME THROUGH SEVERAL ADMINISTRATIONS, FOCUSED ON THIS QUESTION RECENTLY IN TIME'S JUNE 27 ISSUE. WE ARE NOW IN THE MIDST, SIDEY SUGGESTED, OF "A PROFOUND PHILOSOPHICAL CONFRONTATION." HE CONTINUED:

"ONE SIDE BELIEVES THAT ALL GOVERNMENT SERVANTS MUST BE THOROUGHLY DIVORCED FROM THE PRIVATE SECTOR SO AS TO ELIMINATE CONFLICTS OF INTEREST AND CORRUPTION. THE OTHER SIDE ARGUES THAT A GOVERNMENT OF THE PEOPLE, BY THE PEOPLE AND FOR THE PEOPLE MUST HAVE LEADERS WHO MOVE BACK AND FORTH BETWEEN THE PRIVATE AND PUBLIC SECTORS. WITHOUT CROSS-POLLINATION, THIS THINKING GOES, THE GOVERNMENT LOSES TOUCH AND THE PUBLIC BECOMES RESTIVE, EVEN HOSTILE."

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THANK YOU VERY MUCH.

* * * * *

REMARKS OF FRED F. FIELDING,
COUNSEL TO THE PRESIDENT, TO
YOUNG LAWYERS DIVISION OF
AMERICAN BAR ASSOCIATION,
SUNDAY, JULY 31, 1983

[THANKS FOR INTRODUCTION; SPECIFIC ACKNOWLEDGEMENTS;]

LADIES AND GENTLEMEN:

IT IS A PLEASURE TO SPEAK TO THE ABA'S YOUNG LAWYERS DIVISION, AND I WANT TO TAKE THIS OPPORTUNITY TO THANK YOUR CHAIR, CAROLYN LAMM, FOR EXTENDING ME THIS INVITATION. WHILE I FEAR I AM NO LONGER ELIGIBLE FOR MEMBERSHIP IN THE DIVISION, IT IS COMFORTING TO BE REASSURED THAT I REMAIN AMONG THE UNIVERSE OF PERSONS WHO MAY BE ASKED TO APPEAR BEFORE IT.

THOUGH WE'RE MEETING ON A SUNDAY, I PROPOSE NEITHER TO DELIVER A SERMON NOR TO DISCUSS RELIGION. I WOULD, HOWEVER, LIKE TO SPEND A FEW MOMENTS SHARING SOME THOUGHTS WITH YOU ON RELIGION'S FREQUENT CONVERSATIONAL COMPANION, NAMELY, "ETHICS." AS SOME OF YOU MAY KNOW, THE REAGAN ADMINISTRATION IS THE FIRST TO UNDERGO A FULL-SCALE PRESIDENTIAL TRANSITION UNDER THE ETHICS IN GOVERNMENT ACT OF 1978, WHICH EFFECTED A MAJOR EXPANSION IN THE SCOPE AND DETAIL OF PUBLIC FINANCIAL DISCLOSURE AND RELATED REQUIREMENTS FOR HIGH-LEVEL GOVERNMENT OFFICIALS. A SIGNIFICANT PART OF MY PROFESSIONAL DUTIES, BOTH AS CONFLICTS COUNSEL FOR THE TRANSITION AND AS COUNSEL TO THE PRESIDENT, HAS INVOLVED ASSISTING INCOMING ADMINISTRATION

APPOINTEES IN COMPLYING WITH THE REPORTING AND OTHER FEATURES OF THE ETHICS ACT. BASED ON THAT EXPERIENCE, I THINK IT MAY BE TIME WE TOOK A LOOK AT HOW CURRENT ETHICS LAWS MIGHT BE IMPROVED, SO THAT WE CAN NOT ONLY CONTINUE TO ENSURE PUBLIC CONFIDENCE IN THE INTEGRITY OF GOVERNMENT AND PUBLIC OFFICIALS, BUT ALSO CONTINUE TO ATTRACT TALENTED CITIZENS TO GOVERNMENT SERVICE.

NOW, I KNOW FULL WELL THAT "ETHICS" IS NOT THE MOST FASCINATING OF TOPICS. CERTAINLY, THE LAWYERS ON MY STAFF -- ALL OF WHOM, BY THE WAY, ARE ELIGIBLE FOR MEMBERSHIP IN THIS DIVISION -- HAVE BEEN KNOWN TO TESTIFY AND EVEN TO VOLUNTEER THAT LEADING PROSPECTIVE PRESIDENTIAL NOMINEES THROUGH THE MAZE OF AN OFFICIAL FINANCIAL DISCLOSURE REPORT IS NOT THE MOST INTELLECTUALLY STIMULATING TASK FOR AN ATTORNEY. AT THE SAME TIME, HOWEVER, ETHICAL STANDARDS AND RULES DO PRESENT IMPORTANT AND FREQUENTLY CONTROVERSIAL QUESTIONS. THE CURRENT DEBATE WITHIN OUR PROFESSION OVER THE RECOMMENDATIONS OF THE KUTAK COMMISSION -- ONE OF THE SUBJECTS THAT I UNDERSTAND THE YOUNG LAWYERS DIVISION IS CONSIDERING HERE IN ATLANTA -- IS A PROMINENT EXAMPLE. AND IT IS SAFE TO SAY THAT MATTERS RAISING ETHICAL QUESTIONS OF ONE KIND OR ANOTHER OCCASIONALLY MAKE THE NEWS IN WASHINGTON AS WELL.

IT'S PARTLY BECAUSE THIS IS TRUE THAT I THINK IT BEST TO

INTRODUCE MY REMARKS ON THIS SUBJECT TODAY WITH A SERIES OF DISCLAIMERS. FIRST, MY REMARKS HAVE NOTHING TO DO WITH ANY PARTICULAR ISSUE THAT MAY PRESENTLY BE CONSIDERED NEWSWORTHY. LIKewise, THESE REMARKS ARE NOT A COMMENT UPON THE EXPERIENCES OF ANY INDIVIDUAL PRESIDENTIAL NOMINEE OR GOVERNMENT OFFICIAL. MY PURPOSE IS SIMPLY TO DISCUSS WITH SOME FELLOW ATTORNEYS MATTERS OF COMMON INTEREST TO THOSE WHO CARE ABOUT GOVERNMENT AND PUBLIC SERVICE; AND MY COMMENTS ARE PRESENTED AND SHOULD BE TAKEN ON AN "AS IS" BASIS, DEVOID OF ULTERIOR MOTIVES, AND WITHOUT ANY HIDDEN MEANINGS OR SUBTLE IMPLICATIONS INVOLVING ANY ISSUE OF PAST NOTORIETY OR CURRENT MOMENT.

MORE GENERALLY, I ALSO WANT TO MAKE IT CLEAR THAT I AM NOT, EITHER PERSONALLY OR AS AN ADMINISTRATION REPRESENTATIVE, IN ANY SENSE "ATTACKING" FEDERAL ETHICS LAWS OR SUGGESTING THAT THEY BE DONE AWAY WITH. IF IT NEEDS SAYING -- AND I DON'T THINK IT SHOULD -- LET ME EMPHASIZE THAT THE ADMINISTRATION FULLY SUPPORTS THE PURPOSES OF SUCH LAWS. MY STAFF AND I HAVE DEVOTED THOUSANDS OF HOURS, WITH CLOSE TO A THOUSAND APPOINTEES, IN SEEKING TO ENSURE SCRUPULOUS COMPLIANCE WITH THE LAWS NOW ON THE BOOKS.

I MENTION THIS ONLY BECAUSE IT SEEMS THAT WHENEVER ONE SUGGESTS THAT SPECIFIC IMPROVEMENTS MAY BE WORTH CONSIDERING, AT LEAST SOMEONE IS LIKELY TO CLAIM THAT ONE IS TRYING TO

"GUT" THE ETHICS ACT OR SOME SUCH THING. AND I MUST CONFESS I DO NOT WANT TO READ A HEADLINE DESCRIBING THIS SPEECH AS "REAGAN COUNSEL ATTACKS ETHICS LAWS." INSTEAD, I WANT TO READ, "REAGAN COUNSEL DENIES HE IS ATTACKING ETHICS LAWS."

NOW THAT I'VE EXHAUSTED MY LIST OF DISCLAIMERS, LET'S LOOK FOR A FEW MINUTES AT CURRENT FEDERAL LAWS IN THIS FIELD AND HOW THEY MIGHT BE IMPROVED. IN DOING SO, I THINK IT IS CRITICAL TO RECOGNIZE AT THE OUTSET THAT THE ETHICS IN GOVERNMENT ACT HAS RELATIVELY LITTLE TO DO WITH "CREATING" ETHICS THEMSELVES, OR EVEN "TEACHING" ETHICS TO PERSONS IN GOVERNMENT SERVICE. PEOPLE SIMPLY DO NOT "LEARN" ETHICS FOR THE FIRST TIME WHEN THEY HAVE REACHED THE AGE AT WHICH GOVERNMENT SERVICE IS A POSSIBILITY; CERTAINLY THEY DO NOT "LEARN" ETHICS BY BECOMING FAMILIAR WITH A PIECE OF LEGISLATION AND ITS VARIOUS IMPLEMENTING RULES AND REGULATIONS. AND THE SIMPLE TRUTH IS THAT DISCLOSURE RULES AND DIVESTITURE REQUIREMENTS WILL DO LITTLE TO DETER THOSE INDIVIDUALS -- THANKFULLY, A VANISHING BREED -- WHO ENTER PUBLIC SERVICE WITH LARCENY IN THEIR HEARTS. INSTEAD, THE ETHICS IN GOVERNMENT ACT HAS TO DO PRIMARILY WITH PUBLIC APPEARANCES, AND THE IMPACT OF PUBLIC APPEARANCES ON PUBLIC CONFIDENCE IN GOVERNMENT. IN OTHER WORDS, THE OPERATIVE CLICHE, IF THERE IS ONE, IS NOT SO MUCH "HONESTY IS THE BEST POLICY," BUT RATHER IS MORE ALONG THE LINES OF "CAESAR'S WIFE -- OR CAESAR'S SENIOR APPOINTEES --

-- MUST BE ABOVE SUSPICION."

HENCE, WHEN ONE TALKS ABOUT AREAS OF POSSIBLE IMPROVEMENT IN ETHICS LAWS, THE RELEVANT COMPARISON IS NOT WHETHER ONE PREFERS "MORE ETHICS" OR "LESS ETHICS." RATHER, THE ISSUE IS HOW ONE SHOULD STRIKE THE BALANCE BETWEEN REQUIREMENTS DESIGNED TO FOSTER PUBLIC CONFIDENCE IN GOVERNMENT, ON THE ONE HAND, AND, ON THE OTHER HAND, LEGITIMATE CONCERNS ABOUT THE IMPACT OF THOSE REQUIREMENTS ON THE PRIVACY INTERESTS OF PROSPECTIVE APPOINTEES AND ON THE ABILITY OF THE GOVERNMENT ITSELF TO ATTRACT QUALIFIED PUBLIC SERVANTS. IN STRIKING THAT BALANCE, IT SHOULD BE EMPHASIZED THAT PUBLIC CONFIDENCE IN GOVERNMENT IS NEITHER AN ETHEREAL NOR AN UNIMPORTANT CONCERN; AT THE SAME TIME, HOWEVER, IT SHOULD BE KEPT IN MIND THAT JUST AS IMPORTANT AS THE "PUBLIC'S RIGHT TO KNOW" IS ITS RIGHT TO THE SERVICE OF ITS MOST TALENTED CITIZENS.

WITHIN THAT FRAMEWORK, I THINK IT IS FAIR TO SAY THAT THE PRESENT BALANCE MAY BE TILTED TOO FAR TO THE "APPEARANCES" SIDE OF THE EQUATION -- THAT WE HAVE, IF YOU WILL, ELEVATED FORM OVER SUBSTANCE, AND HAVE DONE SO AT SOME COST TO OUR ABILITY TO ATTRACT GOOD PEOPLE INTO GOVERNMENT. I AM NOT SUGGESTING THAT WE ARE AT ALL DISAPPOINTED WITH THE PERSONS THE ADMINISTRATION AS APPOINTED TO IMPORTANT GOVERNMENT POSTS. ON THE CONTRARY, I THINK THE PRESIDENT HAS EVERY REASON TO BE

PROUD OF THE APPOINTMENTS HE HAS MADE; AND SINCE OUR OFFICE GETS TO KNOW THESE INDIVIDUALS VERY WELL IN THE COURSE OF THE APPOINTMENTS PROCESS, I CAN MAKE THAT STATEMENT BOTH WITH CONFIDENCE AND WITH SINCERITY.

BUT IT IS TRUE THAT, FOR MANY OF THE APPOINTEES, THE PROCESS HAS BEEN MORE LENGTHY AND BURDENSOME, AND HAS INVOLVED GREATER SACRIFICES, THAT IT SHOULD HAVE. IT IS ALSO TRUE THAT, IN MOST INSTANCES, THE ADDITIONAL LENGTH, BURDEN AND SACRIFICE HAVE ACCOMPLISHED LITTLE IN TERMS OF ADVANCING "ETHICS" THEMSELVES OR EVEN "PUBLIC APPEARANCES" WITH RESPECT TO THE APPOINTEES IN QUESTION. AND FINALLY, IT IS ALSO TRUE THAT, IN A NUMBER OF CASES, TALENTED INDIVIDUALS WHO WERE OTHERWISE WILLING TO SERVE -- EVEN AT CONSIDERABLE FINANCIAL SACRIFICE -- HAVE CONCLUDED THAT THE PRICE OF DETAILED, PUBLIC DISCLOSURE OF WHAT IN ALL OTHER CONTEXTS ARE CONSIDERED ONE'S PRIVATE AFFAIRS WAS SIMPLY TOO HIGH A PRICE TO PAY.

WHAT, THEN, ARE SOME OF THE AREAS IN WHICH THE PRESENT ACT MIGHT BE IMPROVED? I HAVE NO COMPREHENSIVE OR DETAILED LIST OF PROPOSED AMENDMENTS. BUT I DO HAVE A FEW SUGGESTIONS THAT MAY DESERVE SERIOUS CONSIDERATION BY LAWMAKERS, MEMBERS OF THE BAR, AND ALL OF US WHO CARE ABOUT BOTH ETHICS AND PUBLIC SERVICE.

FIRST, THE PRESENT "DISCLOSURE" REQUIREMENTS MAY BE BOTH TOO DETAILED AND TOO PUBLIC. FOR EXAMPLE, IDENTIFYING A POTENTIAL CONFLICT OF INTEREST GENERALLY DOES NOT REQUIRE KNOWING SPECIFIC "DOLLAR RANGES" OF THE SORT THAT CURRENTLY MUST BE PUBLICLY DISCLOSED. BELOW A CERTAIN AMOUNT, MOST PEOPLE WOULD PROBABLY CONCEDE THAT A PARTICULAR FINANCIAL INTEREST IS DE MINIMIS. ABOVE A CERTAIN AMOUNT, IT IS PLAIN THAT A POTENTIAL CONFLICT MIGHT BE PRESENT. I SUBMIT THAT THIS ANALYSIS -- NECESSARY AS IT IS -- IS NOT ADVANCED BY REQUIRING DISCLOSURE OF WHETHER THE VALUE OF THE HOLDING IS "\$50,000 TO \$100,000" OR "OVER \$250,000."

SIMILARLY, IT IS FAR FROM CLEAR THAT ALL SUCH INFORMATION NEED BE PUBLICLY DISCLOSED. I DOUBT MANY APPOINTEES WOULD OBJECT TO DISCLOSURE TO AND REVIEW BY RELEVANT CONGRESSIONAL COMMITTEES AND THE OFFICE OF GOVERNMENT ETHICS; AND I AM SURE APPOINTEES WOULD CONTINUE TO ABIDE BY THE ADVICE THEY RECEIVE ON THE ETHICAL ISSUES A PARTICULAR FINANCIAL INTEREST MAY RAISE. BUT IT IS AN ENTIRELY DIFFERENT MATTER WHEN ONE IS ASKED TO REVEAL OTHERWISE PRIVATE FINANCIAL INFORMATION UNDER RULES THAT PERMIT IT TO BE OBTAINED AND PUBLISHED IN ONE'S LOCAL NEWSPAPER. AND ONE MAY FAIRLY QUESTION WHETHER THERE WOULD BE MORE THAN A MARGINAL DIFFERENCE IN "PUBLIC CONFIDENCE" BETWEEN A SYSTEM OF CONFIDENTIAL DISCLOSURE AND INDEPENDENT REVIEW AND CERTIFICATION, AND ONE OF TOTAL PUBLIC DISCLOSURE.

NOW, THE MOTIVATION FOR POSSIBLE CHANGES IN THIS AREA HAS NOT BEEN ANY DETECTABLE IMPULSE ON THE PART OF PROSPECTIVE APPOINTEES TO "HIDE" POTENTIAL CONFLICTS OF INTEREST OR TO "PUT ONE OVER" ON THEIR FELLOW CITIZENS. THE CONCERNS WE HAVE HEARD EXPRESSED ARE FAR DIFFERENT AND FAR MORE UNDERSTANDABLE -- FOR EXAMPLE, THE INDIVIDUAL ASKED TO DISCLOSE THE NAMES OF PARTNERS IN UNRELATED PRIVATE TRANSACTIONS, PARTNERS WHO ARE NOT THEMSELVES ENTERING GOVERNMENT SERVICE; OR THE NOMINEE CONCERNED THAT HE OR MEMBERS OF HIS FAMILY MAY BECOME TARGETS OF THEFT, OF KIDNAPPING, OR SOLICITATIONS; OR THE NOMINEE WHO DOES NOT WANT HIS CHILDREN TO KNOW THE EXTENT OF THEIR PARENTS' WEALTH. CONCERNS OF THIS SORT -- WHICH ARE FAR FROM ISOLATED OR UNIQUE -- SUGGEST THAT WE MAY HAVE ERRED ON THE SIDE OF PUBLIC VOYEURISM, AND THAT THERE ARE ADJUSTMENTS WE CAN MAKE THAT WILL HAVE LITTLE APPRECIABLE IMPACT ON ETHICS IN GOVERNMENT OR PUBLIC CONFIDENCE IN PUBLIC SERVANTS.

A SECOND AREA WHERE ADJUSTMENTS MAY BE HELPFUL INVOLVES DIVESTITURE RULES. THE PROBLEM HERE IS NOT SO MUCH THE RULES PER SE; RATHER, IT IS THE UNINTENDED AND ADVERSE FINANCIAL IMPACT, AT TIMES QUITE DRAMATIC, THAT FORCE DIVESTITURE CAN HAVE.

MOST PROSPECTIVE NOMINEES MAKE THEIR PEACE EARLY ON WITH THE FACT THAT TOP EXECUTIVE POSITIONS IN THE FEDERAL GOVERNMENT

USUALLY PAY FAR LOWER SALARIES THAN COMPARABLE POSITIONS IN THE PRIVATE SECTOR. THIS DISPARITY IN INCOME IS SELDOM AN ISSUE, IN OUR EXPERIENCE, FOR HIGH LEVEL APPOINTEES, WHO ARE GENERALLY WILLING TO MAKE THIS SACRIFICE, OFTEN FOR HIGHLY ALTRUISTIC MOTIVES HAVING TO DO WITH A DESIRE TO SERVE THEIR COUNTRY. BUT THE SUDDEN TAX CONSEQUENCES OF FORCED DIVESTITURE OF MAJOR INVESTMENT HOLDINGS CAN BE A SHOCKING AND UNANTICIPATED SIDE EFFECT.

DIVESTITURE ITSELF MAY PLAY A SIGNIFICANT PART IN ENHANCING PUBLIC CONFIDENCE; THE TAX CONSEQUENCES OF FORCED DIVESTITURE, HOWEVER, CAN SCARCELY BE JUSTIFIED AS SOMETHING THAT ADVANCES PUBLIC FAITH IN PUBLIC OFFICIALS. THIS IS AN AREA WHERE APPROPRIATE ADJUSTMENTS IN THE TAX CODE SEEM VERY MUCH IN ORDER. DEFERRED RECOGNITION OF GAINS, "SPREADING" GAINS OVER A SEVERAL-YEAR PERIOD AND SIMILAR IDEAS ARE WORTH SERIOUS STUDY AS POTENTIAL MEANS FOR ELIMINATING THIS UNWARRANTED AND UNINTENDED DISINCENTIVE FOR QUALIFIED PERSONS TO ENTER PUBLIC SERVICE.

A THIRD AND DIFFICULT AREA INVOLVES THE CURRENT RESTRICTIONS ON POST-GOVERNMENT EMPLOYMENT -- THE SO-CALLED "REVOLVING DOOR" RULES. I AM NOT PREPARED TO DAY TO OFFER ANY COMPREHENSIVE SET OF REPLACEMENT RULES AND GUIDELINES. I WOULD ONLY NOTE, AS I HAVE ON OTHER OCCASIONS, WHERE THE GREATEST

POTENTIALLY HARMFUL IMPACT OF THESE RESTRICTIONS HITS: THE PROBLEM IS NOT AT THE MOST SENIOR OR CABINET LEVEL. IT IS AT THE MID-RANGE -- THE RANGE WHERE TALENTED INDIVIDUALS IN THE PRIVATE SECTOR FIRST CONSIDER ENTERING GOVERNMENT SERVICE AT A RESPONSIBLE LEVEL, WITH THE EXPECTATION OF RESUMING THEIR PRIVATE CAREERS IN A FEW YEARS. TODAY, THESE INDIVIDUALS -- PERSONS LIKE YOU AND YOUR CONTEMPORARIES IN OTHER LINES OF WORK -- MUST CONSIDER WHETHER PUBLIC SERVICE IN THE VERY FIELDS IN WHICH THEY ARE MOST QUALIFIED WILL NOT SIMPLY INTERRUPT, BUT MAY ACTUALLY PRECLUDE RESUMPTION OF, THEIR PROFESSIONAL CAREERS.

WE HAVE LOST GOOD PEOPLE BECAUSE OF THESE RULES. I AM NOT SAYING NO RESTRICTIONS ARE NECESSARY; A NEED FOR RULES IN THIS AREA HAS BEEN ACKNOWLEDGED FOR YEARS. BUT WE SHOULD REMEMBER THAT THE "REVOLVING DOOR" ALSO WORKS IN FAVOR OF GOVERNMENT ITSELF -- BY CREATING A "POOL" OF INDIVIDUALS EXPERIENCED IN GOVERNMENT ON WHICH FUTURE ADMINISTRATIONS CAN DRAW, AS SUCH PERSONS BECOME OLDER AND QUALIFIED FOR MORE SENIOR AND RESPONSIBLE POSITIONS. THIS IS A RESOURCE WE CAN ILL AFFORD TO DEplete; AND WE MAY WANT TO RE-EXAMINE WHETHER PRESENT RULES ARE DOING SO MORE THAN IS NECESSARY TO PREVENT ETHICAL PROBLEMS.

THESE ARE ALL AREAS THAT I BELIEVE CAN BE PRODUCTIVELY

RE-EVALUATED FOLLOWING OUR EXPERIENCES WITH THE FIRST PRESIDENTIAL TRANSITION UNDER THE ETHICS IN GOVERNMENT ACT. LET ME REITERATE YET AGAIN THAT I AM NOT OPPOSED TO THE CONCEPT OF THE ACT OF TO MOST OF ITS PROVISIONS. MY POINT IS SIMPLY THAT WHEN LAWS DESIGNED TO PROTECT THE PUBLIC BECOME THEMSELVES OBSTACLES TO PROVIDING THE PUBLIC WITH THE BEST, MOST COMPETENT PUBLIC SERVANTS WE CAN FIND, THEN THE PUBLIC IS NOT IN FACT BEING WELL SERVED BY ITS LAWS.

THE MATTERS WE HAVE DISCUSSING TODAY ARE NOT, AS I HOPE IS APPARENT, IN ANY SENSE "PARTISAN" ISSUES. NO RESPONSIBLE REPUBLICAN OR DEMOCRAT WOULD CONTEND THAT HIS PARTY HAS SOME UNIQUE CLAIM TO "CARE" ABOUT "ETHICS." AND, I WOULD ALSO POINT OUT THAT, THEORETICALLY AT LEAST, IT IS POSSIBLE ANOTHER DEMOCRAT WILL SOME DAY BE ELECTED PRESIDENT. SHOULD THAT UNLIKELY EVENT OCCUR, THE INCOMING DEMOCRATIC ADMINISTRATION WILL FACE CHALLENGES OF THE KIND I'VE JUST DESCRIBED IN SEEKING TO STAFF SENIOR GOVERNMENT POSITIONS WITH TALENTED INDIVIDUALS WHO SHARE THE GOALS AND PHILOSOPHY OF THAT PRESIDENT.

THESE ISSUES ALSO GO BEYOND PARTISANSHIP IN ANOTHER AND FAR MORE IMPORTANT WAY. THEY HAVE SERIOUS IMPLICATIONS FOR A LONGSTANDING AND ARGUABLY UNIQUE FEATURE OF AMERICAN GOVERNMENT, WHOSE ROOTS GO BACK TO GEORGE WASHINGTON AND WHICH HAS BEEN A PART OF EVERY PRESIDENCY THAT FOLLOWED, WHETHER FEDERALIST OR

WHIG, REPUBLICAN OR DEMOCRATIC. WHAT I AM TALKING ABOUT IS OUR TRADITION OF "CITIZEN PUBLIC SERVANTS" -- INDIVIDUALS WHO HAVE BEEN WILLING TO PUT ASIDE THEIR PRIVATE LIVES AND, NOTWITHSTANDING THE COSTS IN MONEY, PERSONAL PRIVACY AND ALL THE REST, PUT THEIR TALENTS AND ENERGIES TO WORK OF THE COUNTRY THAT HAS SO RICHLY BLESSED US ALL.

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THANK YOU VERY MUCH.

* * * * *

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

August 18, 1983

FOR: FRED F. FIELDING
FROM: JOHN G. ROBERTS
SUBJECT: Draft Presidential Radio Address:
Efficiency in Government

Richard Darman has asked for comments to be sent directly to Aram Bakshian by 2:00 p.m. today on the above-referenced remarks. The remarks review several Administration initiatives that have reduced the cost of the federal bureaucracy, including trimming the number of personnel, requiring more evidence before allowing disability retirement, and adjusting civil service retirement benefits to inflation once rather than twice per year. The remarks also urge requiring federal employees to earn their pay raises (first proposed last March), and note that this Administration deserves credit for unveiling the much-publicized examples of Pentagon contracting abuses. I have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

August 18, 1983

FOR: ARAM BAKSHIAN, JR.
DEPUTY ASSISTANT TO THE PRESIDENT
AND DIRECTOR OF SPEECHWRITING

FROM: FRED F. FIELDING *Copy sent by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Presidential Radio Address:
Efficiency in Government

Counsel's office has reviewed the above-referenced remarks,
and finds no objection to them from a legal perspective.

FFF:JGR:ph 8/18/83

cc: FFFielding
JGRoberts✓
Subject
Chron.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

O - OUTGOING

H - INTERNAL

I - INCOMING

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

Name of Correspondent: Richard G. DARMAN

ME Mail Report

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

Subject: Draft Presidential Radio Address:
Efficiency in Government

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>CULLO11</u>	<u>ORIGINATOR</u>	<u>8310818</u>		
	Referral Note:			
<u>WAT18</u>	<u>B</u>	<u>8310818</u>	<u>S</u>	<u>8310818</u>
	Referral Note:			<u>2:00 pm</u>
	Referral Note:			
	Referral Note:			
	Referral Note:			

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: Aug. 17, 1983 ACTION/CONCURRENCE/COMMENT DUE BY: 2:00 TOMORROW (Thursday) August 18, 1983

SUBJECT: DRAFT PRESIDENTIAL RADIO ADDRESS: EFFICIENCY IN GOVERNMENT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	HARPER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HERRINGTON	<input type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	JENKINS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input type="checkbox"/>	McMANUS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
CLARK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROLLINS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	VERSTANDIG	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BRADY/SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>BAKSHIAN</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
GERGEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please forward comments/edits directly to Aram Bakshian, with a copy to my office, by 2:00 tomorrow, Thursday, August 18.

Thank you.

RESPONSE:

AUG 18 1983

Richard G. Darman
Assistant to the President
Ext 2702

(Bakshian)
August 17, 1983
6:00 p.m.

PRESIDENTIAL RADIO ADDRESS: EFFICIENCY IN GOVERNMENT
SATURDAY, AUGUST 20, 1983

My fellow Americans:

Last month on one of these talks I took you behind the headlines for a moment and discussed an issue that affects every U.S. taxpayer: efficient use of your tax dollars in running the Government. At that time, I told you about a few of the things we'd been doing to cut down on waste and fraud, on unnecessary paperwork and red tape, and on abuses of Federal loan programs -- all adding up to current and future savings to you, the taxpayer, of billions of dollars.

Well, I didn't have any illusions about making the front page with that information, important though it was. Somehow, when things are being done right, they don't seem to make the headlines. I guess that's just human nature.

Still, I thought you had a right to know that we've been making progress in restoring Government to its rightful role as the servant, not the master, of the people. And today, just to assure you that this was no passing concern, I'd like to share with you some of the other things we're doing to protect your tax dollars and make Government more efficient and responsive to your needs.

One important area in which we've made real progress might be called the "bureaucratic head count" -- the employment figure for non-defense Federal agencies. There are a number of vital functions that the Federal Government has to perform, as we all

know. But, we also know that the Federal Government, like local government and the private sector, should perform those functions in an efficient, economical manner. It shouldn't cost you, the taxpayer, a penny more than the fair amount to get the job done. And, of course, that goes for the number of people it takes to do the job, too.

Well, with that in mind, we made a department by department, agency by agency review of Government operations, determined to cut out needless fat. As a result, today there are 110,000 fewer people working in non-defense Federal agencies than when we took office. Fifteen departments, agencies, and commissions have been able to reduce their payroll numbers by 20 percent or more. And we've accomplished 90 percent of these savings by attrition -- not lay-offs. The best part of it is that the Government is actually doing things more efficiently than it was before. We're still providing the needed services, but we're doing it with fewer people, and at a savings to the taxpayer of nearly a billion and a half dollars a year in salaries alone.

Here's another item. As you know, most Government jobs are not particularly hazardous. Yet, before this Administration took office, one out of every four retirements from Government service was a disability retirement. The problem was sloppiness. Government just didn't require much evidence of disability and this led to considerable abuse of the system. Today, just by requiring adequate evidence before allowing that kind of retirement, the figure is down nearly 40 percent since 1979, with a savings to the taxpayer of more than a billion dollars by 1985.

The Civil Service Retirement System in general is one of the most generous in the world. And, of course, we all want dedicated Government employees to be rewarded for their efforts, just as the overwhelming majority of Americans who work in the private sector deserve to be. But, sometimes, civil servants have received preferred treatment. Let me give you an example. When we came to office, the Civil Service Retirement System was indexing benefits to inflation twice a year -- an advantage enjoyed by virtually no one in the private sector. By going to a once-a-year cost of living adjustment for Federal retirees, and by making other fair adjustments, we have continued to protect them from inflation while saving the taxpayers some \$2½ billion by 1985.

And then, there's the question of the quality, as well as the cost of Government. In recent weeks, there's been a lot of talk about my call for merit pay to reward outstanding teachers in America's schools. Well, I think the same principle should apply to the Federal Government itself. Back in March, we announced a proposal to require Federal employees to earn, not just automatically inherit, their pay raises. We're still working with Members of the Congress to develop a way of implementing this plan to reward good work and good workers so that you, the people, are better served by your Government.

Finally, there's something I'd like to get off my chest. It deals with all those headlines about the Pentagon paying \$100 for a 4¢ diode or \$900 for a plastic cap. What is missing or buried in all those stories about waste is that this Administration is

the one that exposed these abuses -- abuses that had been going on for years. It was Defense Secretary Cap Weinberger's people -- his auditors and inspectors -- who ordered the audits in the first place and conducted the investigations. We're the ones who formed a special unit to prosecute defense-related fraud cases. And in just an 18-month period, the Defense Department has obtained 650 convictions. That's something I thought you deserved to know.

'Til next week, thanks for listening and God bless you.

Appendix

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 29, 1983

TO: RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: President's Radio Address of August 20:
650 Convictions Claim

According to Lt. Col. Stephen Luster, Executive Assistant to the Defense Department Inspector General, the 650 convictions figure is drawn from the last three semi-annual reports filed with Congress by the Defense IG, and is accurate. Anyone who is interested may obtain copies of the reports from Mary Jane Calaise, Assistant Inspector General for Management (phone: 695-9568).

Luster emphasized that the convictions referred to are not those obtained by the new joint Defense - Justice anti-fraud unit. The President did not say they were in his remarks, although the juxtaposition of the two sentences may have led some listeners to make that connection.

Attachment

the one that exposed these abuses -- abuses that had been going on for years. It was Defense Secretary Casp Weinberger's people -- his auditors and inspectors -- who ordered the audits in the first place and conducted the investigations. We're the ones who formed a special unit to prosecute defense-related fraud cases. And in just an 13-month period, the Defense Department has obtained 650 convictions. That's something I thought you deserved to know.

'Til next week, thanks for listening and God bless you.