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OA/ID Number: 62086
Folder ID Number: 62086-004

Folder Title:
National Academy of Science - General [1989-90]

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THE WHITE HOUSE

WASHINGTON

October 17, 89

Mr Frank Press
Dear Frank:

Many thanks for your warm
note of October 13. How good of
you to write and I am sure I
understand that you could not
join us at what turned out to
be a most pleasant reception.

I hope that the Paris trip was
both successful, and at least some
fun!

See you soon

Sincerely
Dwain

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NATIONAL ACADEMY OF SCIENCES

2101 CONSTITUTION AVENUE, NW WASHINGTON, D. C. 20418

OFFICE OF THE PRESIDENT

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October 13, 1989

The Honorable D. Allan Bromley
Assistant to the President for
Science and Technology
The White House
Washington, D.C. 20500

Dear Allan:

I will be enroute to Paris at the time of your swearing in reception. It pains me that I will miss this important event for two reasons: my personal interest in the "office" and my enthusiasm for your appointment. I have been telling people that because of your qualifications and the circumstances of your appointment you will probably be the best incumbent in the history of the science advisor position.

You have my best wishes as you embark on your White House career. The work will be hard, often frustrating -- but you will never regret having taken it on. Call on the Academy any time we can be of help.

With warm regards.

Yours sincerely,



Frank Press
President

THE WHITE HOUSE

WASHINGTON

October 24, 1980

Final

Dear Dr. Pitzer:

In my letter to you of October 16, 1980, I advised you that I had requested a formal advisory opinion from the Office of Government Ethics on the applicability of federal post-employment conflicts of interest statutes to Dr. Frank Press, should Dr. Press be elected President of the National Academy of Sciences. I promised to forward a copy of the opinion to you as soon as I received it from the Director of the Office of Government Ethics. The opinion is enclosed.

The opinion makes clear that although certain post-employment restrictions will be applicable to Dr. Press should he be elected President of the Academy, their impact on his ability to carry out the responsibilities of President of the Academy will be minimal.

As the opinion indicates, the preponderance of the activities of the Office of Science and Technology Policy (OSTP) have related to general policy formulation and Dr. Press' participation in these activities, by themselves, will not result in any post-employment restraints. However, the Office of Government Ethics did identify two areas in which post-employment restrictions will apply -- direct OSTP contracts and contracts with which OSTP has been directly involved between the Academy and other agencies. The opinion addresses these two areas in some detail and identifies a small number of instances in which Dr. Press' ability to participate in representational activities with regard to particular contracts will have to be resolved at a later date. The opinion makes clear, however, that the limitations apply only to Dr. Press and relate only to certain aspects of a small number of particular contracts, such as the negotiation of contractual terms, funding or scope, and not to the general policy areas that the contracts address.

The opinion notes that section 207(f) creates an exemption from the post-employment restrictions imposed by subsections 207(a), (b), and (c) if the head of a department or agency, in consultation with the Director of the Office of Government Ethics, finds that a former government official or

employee, in this instance Dr. Press, has outstanding qualifications in a scientific and technological discipline and his participation in a particular matter would serve the national interest. If the Academy so requests as to one or more particular contracts, I am prepared to recommend to the agency involved that Dr. Press be granted an exemption to participate in the non-financial aspects of a particular matter in which his participation would serve the national interest. Most, if not all, of the particular matters identified in the Office of Government Ethics opinion clearly fall within the area of national interest.

Please advise me if I can be of further assistance in this matter.

Sincerely,



Lloyd N. Cutler
Counsel to the President

Dr. Kenneth Pitzer
Chairman, Nominating Committee
National Academy of Sciences
Washington, D.C.

THE WHITE HOUSE
WASHINGTON

August 4, 1989

Dear Frank:

Just a brief note to tell you how much I appreciated your visit with Bob, Sam and Phil and the impressive array of studies about which you told me during that visit. As I indicated when I called on you several weeks ago, I am very serious about improving the working relationship between OSTP and NAS and will be counting on all of you for substantial help in the months ahead.

You have just written to me inviting me to write four issues and this is something that I would certainly look forward to doing because I have been very much impressed by the overall quality of the publication since its launching a number of years ago. Unfortunately, it will simply not be possible for me to get a manuscript to you in mid-August because I expect to be out of the country from the end of this week until August 20--assuming, that is, that the Senate finally completes my confirmation procedures by the end of this week!

Let me then only thank you at this point for the invitation. I shall certainly take you up on it later in the fall.

With warmest best wishes,

Sincerely,



D. Allan Bromley
Assistant to the President
for
Science and Technology

Dr. Frank Press
President
National Academy of Sciences
2101 Constitution Avenue, N.W.
Washington, D.C. 20418

THE WHITE HOUSE
WASHINGTON

August 4, 1989

Dear Frank:

I shall be happy to accept your invitation to join the meeting that you have planned for December 12 at which there will be a discussion of science and policies of the Bush Administration.

With all best wishes,

Sincerely yours,



D. Allan Bromley
Assistant to the President
for
Science and Technology

Dr. Frank Press
President
National Academy of Sciences
2101 Constitution Avenue, N.W.
Washington, D.C. 20418

ACADEMY INDUSTRY PROGRAM
of the
NATIONAL RESEARCH COUNCIL

2101 Constitution Avenue, NW Washington, D.C. 20418

NATIONAL ACADEMY OF SCIENCES
NATIONAL ACADEMY OF ENGINEERING
INSTITUTE OF MEDICINE

July 27, 1989

Honorable D. Allan Bromley
Director
Office of Science and Technology
Policy
The Old Executive Office Building
17th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20506

Dear Allan:

I am writing to invite you to address and join a discussion of the science and policies of the Bush Administration on December 12 from 9 a.m. to 12:30 p.m. We plan to also invite other high-level science and technology officials from various agencies to the meeting.

We hope the discussion will be a wide-ranging one in which the challenges, problems, and prospects of this nation's science and technology policies can be aired. In particular, we want to discuss the issues of budget priorities as well as steps the United States can and should take to ensure our competitiveness in the new global economy.

The audience for the discussion will be mainly representatives of our Academy Industry Program, which includes most of the larger R&D-based corporations in the United States as well as a handful of foreign companies with R&D facilities in this country. This audience, composed of chief executive officers and vice presidents for research and development, will be most interested in your views. We believe a frank exchange with them could prove to be most fruitful as the administration puts its program in place.

I hope you will be able to join us. If you have any questions please feel free to call me at 334-2100.

Yours sincerely,



Frank Press
President
National Academy of Sciences

THE WHITE HOUSE

WASHINGTON

January 5, 1990

MEMORANDUM FOR JAMES W. CICCONI

FROM: D. ALLAN BROMLEY 
SUBJECT: REQUEST FOR PRESIDENTIAL ADDRESS

The National Academy of Sciences will hold its annual meeting here in Washington next April (1990). It will involve some 700 of the Nation's most senior and distinguished scientists and the Academy President, Frank Press, who was Science Advisor to President Jimmy Carter, has written to request that the President address this annual meeting. Presidents have chosen this occasion a number of times in the past to deliver major addresses on general science and technology matters and all have been very well received.

Perhaps the best time for such an address would be on Tuesday, April 24, but the Academy would be more than willing to adjust their schedules to free up Monday April 23 should that be more convenient.

An address by the President on his version of the role of science and technology in our Nation's future is certain to have an enormous impact as the members carry his message to their colleagues at their home institutions and other organizations with which they are affiliated both in this country and abroad.

I would recommend that the President accept this invitation if at all possible. The logistics are good, the audience is distinguished and receptive and the timing would be good for highlighting the strong relative support that this Administration has given science and technology in a difficult budget year.

"CORRESPONDENCE TRACKING"

TYPE: Action Item

DOCUMENT NUMBER: 8920787

FROM: FRANK PRESS
NATIONAL ACADEMY OF SCIENCES

TO: BROMLEY

DATE OF
CORRESPONDENCE: 12/20/89

SUBJECT: FOLLOW UP OF PREVIOUS CONVERSATION CONCERNING
PRESIDENTIAL SPEECH AT ANNUAL MEETING IN APRIL.

ASSIGNED TO: D. Allan Bromley

ACTION REQUIRED: APPROPRIATE RESPONSE

SENDER'S DUE DATE: OSTP DUE DATE: 01/08/90

DATE COMPLETED: -----

COPIES TO: Thomas Ratchford
James Wyngaarden
Judy Bostock

REMARKS:

DATE RECEIVED: 12/26/89

FILE: NEOB

NATIONAL ACADEMY OF SCIENCES

2101 CONSTITUTION AVENUE, NW

WASHINGTON, D. C. 20418

OFFICE OF THE PRESIDENT

December 20, 1989

The Honorable D. Allan Bromley
Assistant to the President
for Science and Technology
Room 360
Old Executive Office Building
Washington, D.C. 20506

Dear Allan:

I write to follow up on our conversation about the possibility that the President might address the members of the Academy at our annual meeting next April. This venue would provide an audience of some of the most influential scientists from virtually every discipline; they come, by and large, from American's major research universities, but include scientists from the national laboratories and senior corporate managers, as well. Our auditorium would be filled to capacity with nearly 700 people.

An address by the President on his vision of the role of science and technology in the Nation's future is certain to have an enormous impact, as the members carry his message to their colleagues at their home insitutions and the other organizations with which they are affiliated, both in this country and abroad.

A preliminary agenda for the annual meeting has been developed, and the most logical time frame for such an address would be on Tuesday, April 24, during the Academy's business session. We would, of course, shift other events on the preceding Monday to accommodate the President's schedule if that date is more convenient. It would make a most interesting session if you could stay on after the President departs and add to his remarks, or take questions from the audience; such a program would be received with enormous enthusiasm.

Yours sincerely,



Frank Press
President

THE WHITE HOUSE
WASHINGTON

December 6, 1989

Dear Frank and Bob:

Many thanks for your letter of November 13 concerning the Loma Prieta earthquake.

I very much agree with you that this may well be a harbinger of even more major disasters ahead, and I fully support your suggestion that additional support for earthquake research would be extremely timely.

As you know, the 1991 budget process is in its absolute final stages at the present time, and therefore it would be impossible to make any concrete changes in that budget. In order to look ahead to the 1992 budget, however, I find your suggestion of an interagency group, under the FCCSET structure, to be an attractive one in terms of coordination and information transfer within the federal government. In parallel with such an activity, which I shall certainly consider very seriously, I wonder if it would be possible for the Academies to pull together a matching external study, drawing on the substantial expertise already available in the private sector. If this were possible, we could arrange to have the groups meet together on a number of occasions and establish a solid foundation for increased research activity.

I am not yet sure whether it would be best to set up the FCCSET panel as a subgroup of the Committee on Earth Sciences or whether a separate group would be called for, but I shall look into this and will be in touch with you in the near future.

Thanks again for bringing this important question to my attention.

With all best wishes,

Sincerely yours,



D. Allan Bromley
Assistant to the President
for
Science and Technology

Dr. Frank Press
President, National Academy of Sciences
Dr. Robert M. White
President, National Academy of Engineering
2101 Constitution Avenue, N.W.
Washington, D.C. 20418

NATIONAL ACADEMY OF SCIENCES
NATIONAL ACADEMY OF ENGINEERING

2101 Constitution Avenue, Washington, D.C. 20418

November 13, 1989

The Honorable D. Allan Bromley
Assistant to the President
for Science and Technology
Old Executive Office Building
17th & Pennsylvania Avenue, N.W.
Room 358
Washington, D.C. 20506

Dear Allan:

The earthquake that struck northern California on October 17, 1989, caused one of the most costly natural disasters in U.S. history. In modern times, only hurricanes Hugo and Agnes caused comparable economic losses, and the Loma Prieta earthquake may well surpass the cost of those hurricanes by the time the damage is fully assessed.

The Loma Prieta earthquake may well be a harbinger of even more costly earthquakes ahead. Several other faults in both northern and southern California that are likely locations for future earthquakes traverse highly populated areas, whereas the Loma Prieta earthquake was centered in an area of relatively light population density.

Although the casualties and damage caused by the Loma Prieta earthquake were vividly communicated to the world, there is also an important scientific and engineering message from the earthquake that needs to be appreciated. This message is particularly important because it offers hope for substantially mitigating the effects of inevitable future earthquakes. The most important points are:

1. The location of the Loma Prieta earthquake was accurately forecast in a report published in 1988 by the U.S. Geological Survey. The south Santa Cruz Mountains section of the San Andreas fault was assigned the highest probability in the entire Bay area for future earthquake activity. The scientists' success in pinpointing the earthquake location demonstrates the progress that has been made in the last decade in understanding the mechanics of the San Andreas fault system, and lends credibility to long-range forecasts of earthquake activity elsewhere in California.

The Honorable D. Allan Bromley
November 13, 1989
Page Two

2. The greatest damage occurred in some of the areas that scientists and engineers had identified as being most vulnerable. The types of ground failure and shaking that occurred in these areas were largely anticipated, although some areas that probably should have been hard hit were not. This success reflects improved understanding of the nature of strong ground shaking and its effects.
3. The lack of damage to high-rise buildings in San Francisco and to schools, hospitals and dams throughout the region can be attributed, at least in part, to earthquake-resistant design and construction practices that were put into place following heavy damage to such structures in past earthquakes.

These are just a few of the many lessons from the Loma Prieta earthquake, but the overall message is clear: there is much that can be done to reduce losses from future earthquakes. These lessons not only apply to California, but also to other earthquake-prone areas of the U.S., including the central and eastern U.S. Here at the NAS/NAE, we plan to carry out a study to evaluate the potential benefits of actions that can be taken to mitigate earthquake hazards. This study will be helpful in planning future earthquake research efforts.

The current U.S. research effort on earthquakes was largely put into place during the Ford Administration on the initiative of the President's Science Advisor, Guy Stever. Plans for the program were formulated by an advisory committee under the chairmanship of Nate Newmark. Passage of the Earthquake Hazards Reduction Act, which followed the lead of the administration, demonstrated Congressional support.

These efforts resulted in substantial funding increases in Fiscal Year 1978 for the National Science Foundation and the U.S. Geological Survey. Funding levels since 1978, however, have remained fixed and inflation has reduced the program to perhaps half its former effectiveness. This decline is unfortunate because of growing concern of an earthquake on the San Andreas or Haywood faults closer to San Francisco and the probability of an even larger earthquake in southern California.

The Honorable D. Allan Bromley
November 13, 1989
Page Three

We bring this to your attention since in the light of the recent events, you may want to have an assessment made of current U.S. research efforts on earthquakes by an interagency group or an OSTP panel, similiar to the Stever-Newmark panel.

Yours sincerely,



Frank Press
President
National Academy of Sciences



Robert M. White
President
National Academy of Engineering

Enclosure

NATIONAL EARTHQUAKE HAZARDS REDUCTION PROGRAM

APPROPRIATED FUNDS FOR PRINCIPAL AGENCIES

<u>YEAR</u>	<u>USGS</u>	<u>FEMA</u>	<u>NSF</u>	<u>NIST</u>	<u>TOTAL</u>
1978	30.3	0.0	23.0	0.0	53.3
1979	30.8	0.0	22.9	0.4	54.1
1980	30.8	1.2	24.8	0.4	57.2
1981	32.9	1.5	25.1	0.4	59.9
1982	32.9	1.1	25.2	0.5	59.7
1983	34.9	3.1	25.0	0.5	63.5
1984	35.3	4.1	25.7	0.5	65.6
1985	36.6	5.7	27.8	0.5	70.6
1986	34.3	5.3	22.6	0.5	62.7
1987	34.8	5.8	25.1	0.5	66.2
1988	34.9	5.9	25.4	0.5	66.7
1989	34.7	6.1	24.8	0.5	66.1
1990	34.9	6.6	26.0	0.5	68.0

"CORRESPONDENCE TRACKING"

TYPE: Action Item

DOCUMENT NUMBER: 8920401

FROM: FRANK PRESS & ROBERT M. WHITE
NATIONAL ACADEMY OF SCIENCES

TO: BROMLEY

DATE OF
CORRESPONDENCE: 11/13/89

SUBJECT: WRITING CONCERNING THE LOME PRIETA EARTHQUAKE AND
THE NEED TO CONTINUE ACCURATE PROGRAMS TO EVALUATE
EARTHQUAKE HAZARDS.

ASSIGNED TO: D. Allan Bromley

ACTION REQUIRED: APPROPRIATE RESPONSE

SENDER'S DUE DATE: OSTP DUE DATE: 12/04/89

DATE COMPLETED: -----

COPIES TO: JUDY BOSTOCK

REMARKS: IS FCCSET AN APPROPRIATE PLACE TO CONSIDER THIS?

DATE RECEIVED: 11/16/89

FILE: NEOB

THE WHITE HOUSE

WASHINGTON

October 16, 1980

Dear Mr. Walter:

Dr. Frank Press, the Director of the Office of Science and Technology Policy and the President's Science and Technology Advisor, is under consideration for the office of President of the National Academy of Sciences. The Academy is concerned about the impact of 18 U.S.C. section 207, the statutory provision governing post-employment conflicts of interest, on Dr. Press' capacity to fulfill the obligations of President if he were elected. The Academy has requested two private legal opinions, which my staff has already forwarded to you, of the impact of section 207. I now seek your formal advice on the matter.

Both of the opinions from the private firms focus on three major prohibitions: (1) the one-year bar on a former Senior employee (such as Dr. Press) from engaging in representational activity before his former agency in connection with any particular Government matter that is pending before that agency or of direct and substantial interest to it (section 207 (c)); (2) the two-year bar on a former employee from engaging in representational activity before any court or agency in connection with any particular Government matter involving a specific party, if the matter were actually pending under the employee's official responsibility in the final year of that responsibility (section 207(b)(i)); and (3) the lifetime bar on a former employee from engaging in representational activity before any court or agency in connection with any particular Government matter involving a specific party in which the employee participated personally and substantially (section 207(a)).

As the opinions indicate, the statute would pose no limitation on Dr. Press' capacity to be involved in all aspects of the Academy's business that do not involve representational activity by him before an agency. Moreover, no limitations would be placed on Dr. Press' capacity to speak on any matter to the Congress or the general public. Finally, there would be no limitation on any Academy employee other than Dr. Press. Nonetheless, I understand that a significant element of the President's role is to act as a spokesman for the Academy before the departments and agencies -- communications that in some cases might be covered by the post-employment restrictions -- and thus an exploration of the statute's impact is necessary.

I suggest that you not focus on the one-year bar of section 207(c). Although the subject matter that is covered by this section is broad in scope, the term of its applicability would be quite short. If Dr. Press were to resign as Director of the Office of Science and Technology Policy on December 31, 1980, and commence as President of the Academy on

July 1, 1981, I understand that the bar would terminate after his first six months in office. Moreover, within this period, only representational activities before his former agency made in connection with particular matters would be restricted.

I seek your guidance, however, with regard to the impact of the two-year and lifetime restrictions of sections 207(b)(i) and 207(a), respectively. The opinions that the Academy has received are at odds on this point. On the one hand, the opinion from Steptoe & Johnson indicates that section 207(b) could cause Dr. Press to be limited in "a wide range of activities," and that section 207(a) could "severely limit the activities of the Academy President on significant contracts." On the other hand, the opinion from Hedrick and Lane finds that "with a few notable exceptions, we would expect that section 207(b)(i) would not constitute a major constraint," and that section 207(a) also would not cause "significant restraints" on Dr. Press' activities as President of the Academy. (Both of the latter observations are at page 33 of the Hedrick and Lane opinion.)

In my view, the difference in result cannot be explained by differing views of the law: both opinions are in agreement on the major elements of interpretation. Moreover, both firms no doubt have attempted to alert the Academy to all possible pitfalls; I see no evidence that one firm has adopted a more conservative stance than the other. Rather, I believe the difference is a reflection of the varying familiarity of the firms with the facts surrounding OSTP's operation and, consequently, of the application of the law to the actual fact situation. I thus believe it will be necessary to determine the facts as they bear on this situation.

I believe it may be appropriate for you to give particular attention to the statutory limitation of the post-employment restrictions of sections 207(a) and 207(b) to "particular matter(s) involving a specific party or parties." Your regulations indicate that the phrase is not a casual limitation; it establishes a boundary between permitted and forbidden subject matter for representational activities. The regulations provide in pertinent part:

"Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an insolatable (sic) transaction or related set of transactions between identifiable parties. Rulemaking, legislation, the formulation of general policy, standards or objectives, or other action of general application is not such a matter. Therefore, a former Government employee may represent another person in connection with particular matter involving a specific party even if rules or policies which he or she had a role in establishing are involved in the proceeding." 5 C.F.R. section 737.5(c) (1980).

As I understand it, on the one hand, the sections impose a disqualification on post-employment representational activity related to a specific contract or a similar particular transaction between identified parties, if the particular matter fell under the former employees' official responsibility or was one with which he had personal and substantial

involvement while in Government. On the other hand, participation in formulation of general policy, without more, results in no post-employment limitations, even though the policy may result in specific contracts. The examples drawn from your regulations, which are set out at the margin, are illuminating in this regard and will no doubt provide important guidance. ^{1/}

It is my understanding that the vast preponderance of OSTP's effort has been of a general policy nature. OSTP's chief function is to advise the President on broad scientific and technological issues. This activity includes providing advice on budget matters, on national security issues, on economic matters involving technology, on energy policy and on other policy questions. Moreover, OSTP participates with other

^{1/} "Example 1: A Government employee formulated the policy objectives of an energy conservation program. He is not restricted from later representing a university which seeks a grant or contract for work emerging from such a program.

"Example 2: A Government employee reviews and approves a specific city's application for Federal assistance for a renewal project. After leaving Government service, she may not represent the city in relation to that project.

"Example 3: An employee is regularly involved in the formulation of policy, procedures and regulations governing departmental procurement and acquisition functions. Participation in such activities do not restrict the employee after leaving the Government as to particular cases involving the application of such policies, procedures, or regulations.

"Example 4: An employee of the Office of Management and Budget participates substantially on the merits of a decision to reduce the funding level of a program, which has the effect of reducing the amount of money which certain cities receive to conduct youth work programs. After leaving the Government she may represent any of the cities in securing funds for its youth program, since her participation was in connection with a program, not a particular matter involving specific parties.

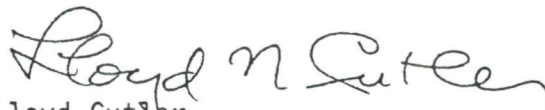
"Example 5: An agency attorney participates in drafting a standard form contract and certain "standard terms and clauses" for use in future contracts. He is not thereafter barred from representing a person in a dispute involving the application of such a "standard term or clause" in a particular contract in which he did not participate as a Government employee."

5 C.F.R. section 737.5(c)(1) (1980).

elements of the Executive Office on regulatory matters, on reorganization, and on other issues of similar broad scope, which are not particular matters involving a specific party. Nonetheless, there is a residuum of OSTP activities that may be covered by the Act's post-employment restrictions and that might affect Dr. Press' capacity to fulfill the obligations of President of the Academy. These include at the least the contracts between OSTP and the Academy and perhaps some additional matters. I urge you to work with both the OSTP staff and my staff to establish an agreed set of facts on which a decision might be based with regard to OSTP's, Dr. Press', and the Academy President's activities.

Since the Council of the Academy will act on the nomination of officers on October 25, I seek, by October 23, your opinion concerning the the post-employment restrictions imposed by section 207(a) and 207(b)(i) on Dr. Press' capacity to fulfill the obligations of the President of the Academy. As to those matters where you determine that a post-employment disqualification would apply, please advise on the availability of a limited exemption, as authorized by section 207(f) of the statute, for all but the financial elements of otherwise prohibited representational activities.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lloyd N. Cutler". The signature is fluid and cursive, with the first name "Lloyd" and last name "Cutler" clearly distinguishable.

Lloyd Cutler
Counsel to the President

Mr. J. Jackson Walter
Director
Office of Government Ethics
1900 E Street, N.W.
Washington, D.C. 20415

THE WHITE HOUSE

WASHINGTON

October 16, 1980

Dear Dr. Pitzer:

Dr. Frank Press, Science and Technology Advisor to the President, and Director of the Office of Science and Technology Policy, has advised me that he is under consideration for nomination to the Presidency of the National Academy of Sciences. Dr. Press further advised that in connection with the Academy's consideration of his qualifications for the position of President, questions concerning the possible impact of Federal post-employment restrictions on his performance as President of the Academy have arisen. On Friday, October 10, 1980, I received copies of two opinions prepared by Washington, D.C. law firms, at the request of the Academy, analyzing the post-employment restrictions that might apply to Dr. Press should he be elected President of the Academy.

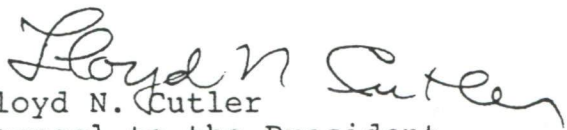
I have read the opinions prepared by Steptoe & Johnson and Hedrick and Lane. Because those opinions raise issues important not only to the Academy, but also to the Executive Branch of government, I have asked the Office of Legal Counsel, Department of Justice to assist the Office of Government Ethics in preparing a formal advisory opinion on how the various post-employment restrictions embodied in the Ethics in Government Act would affect Dr. Press should he be elected President of the Academy. Attorneys from the Office of Legal Counsel and the Office of Government Ethics are presently analyzing the facts and the applicable law and will prepare a formal legal opinion dealing with this matter.

Since I expect a prompt response from these officials, the Academy may wish to await the receipt of the Office of Government Ethics' formal opinion before it determines whether Dr. Press' eligibility to serve as President is materially affected by the post-employment restrictions of the Ethics in Government Act. However, I should point out that, as the Academy's counsel has advised you, section 207 (f) of the statute authorizes the heads of departments and agencies to grant exemptions when the former government officer or employee has outstanding qualifications in a scientific, technological or other technical discipline,

and when his participation with respect to a particular matter is in the national interest. Subject to appropriate advice from the Director of the Office of Government Ethics, we are prepared to recommend to the President that he direct departments and agencies to utilize this exemption power if Dr. Press is elected as President of the Academy so that as a result, the conflict of interest provisions of the statute, to the extent they apply at all to particular matters in which Dr. Press might participate, would apply only to the financial aspects of such matters and not to their substantive aspects.

For your information, I am attaching a copy of the letter which I have addressed to the Director of the Office of Government Ethics requesting a formal advisory opinion from that office. I have been told by the Director of the Office of Government Ethics that I will receive an opinion by October 23, 1980. I will be pleased to share that opinion with you.

Sincerely,


Lloyd N. Cutler
Counsel to the President

Dr. Kenneth Pitzer
Chairman, Nominating Committee
National Academy of Sciences
Washington, D. C.

THE WHITE HOUSE

WASHINGTON

October 16, 1980

Dear Dr. Pitzer:

Dr. Frank Press, Science and Technology Advisor to the President, and Director of the Office of Science and Technology Policy, has advised me that he is under consideration for nomination to the Presidency of the National Academy of Sciences. Dr. Press further advised that in connection with the Academy's consideration of his qualifications for the position of President, questions concerning the possible impact of Federal post-employment restrictions on his performance as President of the Academy have arisen. On Friday, October 10, 1980, I received copies of two opinions prepared by Washington, D.C. law firms, at the request of the Academy, analyzing the post-employment restrictions that might apply to Dr. Press should he be elected President of the Academy.

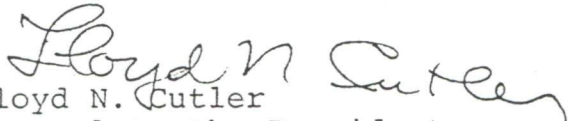
I have read the opinions prepared by Steptoe & Johnson and Hedrick and Lane. Because those opinions raise issues important not only to the Academy, but also to the Executive Branch of government, I have asked the Office of Legal Counsel, Department of Justice to assist the Office of Government Ethics in preparing a formal advisory opinion on how the various post-employment restrictions embodied in the Ethics in Government Act would affect Dr. Press should he be elected President of the Academy. Attorneys from the Office of Legal Counsel and the Office of Government Ethics are presently analyzing the facts and the applicable law and will prepare a formal legal opinion dealing with this matter.

Since I expect a prompt response from these officials, the Academy may wish to await the receipt of the Office of Government Ethics' formal opinion before it determines whether Dr. Press' eligibility to serve as President is materially affected by the post-employment restrictions of the Ethics in Government Act. However, I should point out that, as the Academy's counsel has advised you, section 207 (f) of the statute authorizes the heads of departments and agencies to grant exemptions when the former government officer or employee has outstanding qualifications in a scientific, technological or other technical discipline,

and when his participation with respect to a particular matter is in the national interest. Subject to appropriate advice from the Director of the Office of Government Ethics, we are prepared to recommend to the President that he direct departments and agencies to utilize this exemption power if Dr. Press is elected as President of the Academy so that as a result, the conflict of interest provisions of the statute, to the extent they apply at all to particular matters in which Dr. Press might participate, would apply only to the financial aspects of such matters and not to their substantive aspects.

For your information, I am attaching a copy of the letter which I have addressed to the Director of the Office of Government Ethics requesting a formal advisory opinion from that office. I have been told by the Director of the Office of Government Ethics that I will receive an opinion by October 23, 1980. I will be pleased to share that opinion with you.

Sincerely,


Lloyd N. Cutler
Counsel to the President

Dr. Kenneth Pitzer
Chairman, Nominating Committee
National Academy of Sciences
Washington, D. C.

THE WHITE HOUSE

WASHINGTON

October 16, 1980

Dear Mr. Walter:

Dr. Frank Press, the Director of the Office of Science and Technology Policy and the President's Science and Technology Advisor, is under consideration for the office of President of the National Academy of Sciences. The Academy is concerned about the impact of 18 U.S.C. section 207, the statutory provision governing post-employment conflicts of interest, on Dr. Press' capacity to fulfill the obligations of President if he were elected. The Academy has requested two private legal opinions, which my staff has already forwarded to you, of the impact of section 207. I now seek your formal advice on the matter.

Both of the opinions from the private firms focus on three major prohibitions: (1) the one-year bar on a former Senior employee (such as Dr. Press) from engaging in representational activity before his former agency in connection with any particular Government matter that is pending before that agency or of direct and substantial interest to it (section 207 (c)); (2) the two-year bar on a former employee from engaging in representational activity before any court or agency in connection with any particular Government matter involving a specific party, if the matter were actually pending under the employee's official responsibility in the final year of that responsibility (section 207(b)(i)); and (3) the lifetime bar on a former employee from engaging in representational activity before any court or agency in connection with any particular Government matter involving a specific party in which the employee participated personally and substantially (section 207(a)).

As the opinions indicate, the statute would pose no limitation on Dr. Press' capacity to be involved in all aspects of the Academy's business that do not involve representational activity by him before an agency. Moreover, no limitations would be placed on Dr. Press' capacity to speak on any matter to the Congress or the general public. Finally, there would be no limitation on any Academy employee other than Dr. Press. Nonetheless, I understand that a significant element of the President's role is to act as a spokesman for the Academy before the departments and agencies -- communications that in some cases might be covered by the post-employment restrictions -- and thus an exploration of the statute's impact is necessary.

I suggest that you not focus on the one-year bar of section 207(c). Although the subject matter that is covered by this section is broad in scope, the term of its applicability would be quite short. If Dr. Press were to resign as Director of the Office of Science and Technology Policy on December 31, 1980, and commence as President of the Academy on

July 1, 1981, I understand that the bar would terminate after his first six months in office. Moreover, within this period, only representational activities before his former agency made in connection with particular matters would be restricted.

I seek your guidance, however, with regard to the impact of the two-year and lifetime restrictions of sections 207(b)(i) and 207(a), respectively. The opinions that the Academy has received are at odds on this point. On the one hand, the opinion from Steptoe & Johnson indicates that section 207(b) could cause Dr. Press to be limited in "a wide range of activities," and that section 207(a) could "severely limit the activities of the Academy President on significant contracts." On the other hand, the opinion from Hedrick and Lane finds that "with a few notable exceptions, we would expect that section 207(b)(i) would not constitute a major constraint," and that section 207(a) also would not cause "significant restraints" on Dr. Press' activities as President of the Academy. (Both of the latter observations are at page 33 of the Hedrick and Lane opinion.)

In my view, the difference in result cannot be explained by differing views of the law: both opinions are in agreement on the major elements of interpretation. Moreover, both firms no doubt have attempted to alert the Academy to all possible pitfalls; I see no evidence that one firm has adopted a more conservative stance than the other. Rather, I believe the difference is a reflection of the varying familiarity of the firms with the facts surrounding OSTP's operation and, consequently, of the application of the law to the actual fact situation. I thus believe it will be necessary to determine the facts as they bear on this situation.

I believe it may be appropriate for you to give particular attention to the statutory limitation of the post-employment restrictions of sections 207(a) and 207(b) to "particular matter(s) involving a specific party or parties." Your regulations indicate that the phrase is not a casual limitation; it establishes a boundary between permitted and forbidden subject matter for representational activities. The regulations provide in pertinent part:

"Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an insolatable (sic) transaction or related set of transactions between identifiable parties. Rulemaking, legislation, the formulation of general policy, standards or objectives, or other action of general application is not such a matter. Therefore, a former Government employee may represent another person in connection with particular matter involving a specific party even if rules or policies which he or she had a role in establishing are involved in the proceeding." 5 C.F.R. section 737.5(c) (1980).

As I understand it, on the one hand, the sections impose a disqualification on post-employment representational activity related to a specific contract or a similar particular transaction between identified parties, if the particular matter fell under the former employees' official responsibility or was one with which he had personal and substantial

involvement while in Government. On the other hand, participation in formulation of general policy, without more, results in no post-employment limitations, even though the policy may result in specific contracts. The examples drawn from your regulations, which are set out at the margin, are illuminating in this regard and will no doubt provide important guidance. 1/

It is my understanding that the vast preponderance of OSTP's effort has been of a general policy nature. OSTP's chief function is to advise the President on broad scientific and technological issues. This activity includes providing advice on budget matters, on national security issues, on economic matters involving technology, on energy policy and on other policy questions. Moreover, OSTP participates with other

1/ "Example 1: A Government employee formulated the policy objectives of an energy conservation program. He is not restricted from later representing a university which seeks a grant or contract for work emerging from such a program.

"Example 2: A Government employee reviews and approves a specific city's application for Federal assistance for a renewal project. After leaving Government service, she may not represent the city in relation to that project.

"Example 3: An employee is regularly involved in the formulation of policy, procedures and regulations governing departmental procurement and acquisition functions. Participation in such activities do not restrict the employee after leaving the Government as to particular cases involving the application of such policies, procedures, or regulations.

"Example 4: An employee of the Office of Management and Budget participates substantially on the merits of a decision to reduce the funding level of a program, which has the effect of reducing the amount of money which certain cities receive to conduct youth work programs. After leaving the Government she may represent any of the cities in securing funds for its youth program, since her participation was in connection with a program, not a particular matter involving specific parties.

"Example 5: An agency attorney participates in drafting a standard form contract and certain "standard terms and clauses" for use in future contracts. He is not thereafter barred from representing a person in a dispute involving the application of such a "standard term or clause" in a particular contract in which he did not participate as a Government employee."

5 C.F.R. section 737.5(c)(1) (1980).

elements of the Executive Office on regulatory matters, on reorganization, and on other issues of similar broad scope, which are not particular matters involving a specific party. Nonetheless, there is a residuum of OSTP activities that may be covered by the Act's post-employment restrictions and that might affect Dr. Press' capacity to fulfill the obligations of President of the Academy. These include at the least the contracts between OSTP and the Academy and perhaps some additional matters. I urge you to work with both the OSTP staff and my staff to establish an agreed set of facts on which a decision might be based with regard to OSTP's, Dr. Press', and the Academy President's activities.

Since the Council of the Academy will act on the nomination of officers on October 25, I seek, by October 23, your opinion concerning the the post-employment restrictions imposed by section 207(a) and 207(b)(i) on Dr. Press' capacity to fulfill the obligations of the President of the Academy. As to those matters where you determine that a post-employment disqualification would apply, please advise on the availability of a limited exemption, as authorized by section 207(f) of the statute, for all but the financial elements of otherwise prohibited representational activities.

Sincerely,

A handwritten signature in cursive script, reading "Lloyd N. Cutler".

Lloyd Cutler
Counsel to the President

Mr. J. Jackson Walter
Director
Office of Government Ethics
1900 E Street, N.W.
Washington, D.C. 20415