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# ROLE AND FUNCTION OF THE OFFICE OF THE COUNSEL TO THE PRESIDENT

## I. Introductory Note

The functions of the Counsel's Office have differed with the various needs and styles of Presidents. Judge Rosenmon, who was Counsel to Franklin Roosevelt (and apparently the first of the breed) was primarily a speech writer, as was Theodore Sorenson under President Kennedy.

Under President Eisenhower, the Counsel's office performed both legal and general staff functions. It served as the final clearance on legislation, briefing the President on all bills presented for his signature or veto. In addition, Eisenhower's Counsel served to compose differences between Cabinet members, or at least to reduce a controversy to a single issue for the President to decide, as well as to exercise a general oversight of the independent regulatory agencies from an administrative standpoint. President Johnson's Counsel also performed this function, in addition to supervising an extensive technical review of legislative proposals.

Under President Ford, the Counsel's office has served primarily in a managerial and supervisory role, coordinating the positions of the various agencies and providing a central collection and oversight function for all legal matters of concern to the President.

## II. Current Role of Counsel's Office

Despite the various functions performed in the past, the Counsel's office has remained very small and therefore, it must rely on the expertise of lawyers throughout the government to the maximum extent practical for research and other assistance. Indeed, a good description of the Counsel's role might be framed in a response to the question: Given the existence of the Attorney General, and the resources of the Department of Justice, including the Office of Legal Counsel, who does the President need yet another Counsel in the White House? The answer, in short, is that certain functions such as managing -- from a

Presidential perspective -- the flow of legal matters involved in Presidential decisions, providing advice and services in some uniquely Presidential matters, and exercising a general legal coordination role in the Executive Branch are best done from the White House itself.

The basic role of the Counsel has been to manage and oversee legal matters for the President. The Attorney General, the Department of Justice and counsel in the various departments and agencies can provide advice and services; but there is a need for a focal point in the White House to raise and receive legal inquiries, transmit the proper questions to the departmental lawyers, evaluate the responses, intercept faulty or biased legal work, resolve or narrow conflicts, and frame answers in the appropriate format for consideration by the President. There is also a need for this to be done by lawyers with a uniquely Presidential perspective.

### III. Workload and Assignments

The miscellany of specific functions that are performed by the Counsel's office can be grouped broadly into three categories: (1) general counseling; (2) routine services; and (3) special assignments and projects.

- A. General counseling. As one of four counselors to the President, the Counsel to the President is often called upon to express his views on a broad variety of subjects which come before the President. The Counsel's office will often provide the staff assistance necessary to insure that the issues have been analyzed from a particularly legal perspective.
- B. Routine services. In this capacity the Counsel's office provides legal advice, often based upon the research done by counsel in the various departments and agencies, to other offices within the Executive Office of the President on a variety of matters including: Freedom of Information Act; Executive Privilege; classified information and other issues of confidentiality; Constitutional and statutory

powers of the President to appoint, dismiss, pardon, etc.; foreign and domestic gifts, honoraria and emoluments; Hatch Act and other political restrictions; White House authorization and budget matters; and questions relating to the Federal campaign laws.

Certain quasi-legal administrative duties are handled relating to: standards of conduct and conflicts of interest, security and special clearances; contacts with regulatory agencies, litigating divisions of the Department of Justice and the FBI; authorizations for Secret Service protection for certain foreign officials; the Interagency Classification Review Committee; litigation affecting the President's interests; miscellaneous requests for use of the Seal of the President, invitations to the President concerning proposed memberships, Executive clemency, etc.; and Congressional and citizen mail.

In addition, the office normally provides a final review of: legislative action memoranda involving proposed Administration bills, budget amendments, enrolled bills, special messages, etc.; Presidential documents, including proclamations, executive orders, trade actions, and CAB decisions; and Presidential appointments with some attention to legal positions.

- C. Special assignments and projects. Under President Ford, the office has also assumed or shared responsibility for a number of special assignments and projects which include: the litigation surrounding the disposition of former President Nixon's tapes, documents and materials; review of the recommendations submitted by the Presidential Clemency Board to the President; the Crime Message; Regulatory Reform; and serving as legal counsel to the President's Task Force on Refugees.

## THE WHITE HOUSE SECURITY OFFICE

The primary purpose of the Security Office is to protect the President from any possible embarrassment or harm.

### Major Responsibilities:

1. Passholders. The White House Security Office initiates and evaluates investigative reports of all White House pass holders and a major portion of the EOB pass holders. These include employees of the following offices:

White House  
CEA\*  
CIEP  
Domestic Council  
GSA \*  
Military Assistant\*\*\*  
NSC \*\*  
OMB\*  
OTP  
PFIAB  
Presidential Papers  
Residence  
Vice President  
White House Communications Agency \*\*\*  
White House Telegraph and Travel Service

The Security Office authorizes all White House passes and most of the EOB passes issued by Secret Service. Permanent passes are requested only after security requirements have been fully satisfied. When a potential problem arises with an investigation, the matter is referred to Counsel for final disposition.

- \* White House passes only.
- \*\* NSC initiates investigation.
- \*\*\* Military Assistant initiates.

2. Presidential Appointees. The Security Office initiates and evaluates the appropriate security investigation on Presidential Appointees. Counsel's office is advised immediately upon satisfactory completion of the security requirements. If an investigation reveals a potential problem, Counsel is consulted for a final decision.
3. Social Events/Meetings. For such events in the Complex where a member of the First Family will be in attendance, FBI Name Checks are requested. Prior to an event, close liaison is maintained with the Social Office and/or office handling the event. When a potential problem is revealed in the FBI check, we are in constant contact with Secret Service. Counsel is consulted if the problem is a serious one. Following the event, each Name Check result is carded and filed in our master card index. Thus, duplication is avoided on future events. Additionally, files are coded after evaluation to denote possible derogatory information.
4. Background Investigation Updates. This project continues through the year on the following basis:

Personnel and other pass holders - every three years.

Presidential Appointees - every five years for those holding the same appointments for five or more years.

5. Reports - Weekly and Monthly. The various offices within the Complex provide us with a weekly list of their accessions and departures. We then prepare reports for the following offices:

Tour Office. Our weekly report of all departures assists Mr. Farrell in updating Parking Permits.

FBI. Our monthly report of departures from the Complex aids the Bureau in updating their White House list accordingly. On future investigative activity, the Bureau will then apprise us immediately of new information (e. g. , arrest records) as it develops.

6. Miscellaneous Investigative Activity. The Security Office requests and evaluates full field investigations of the following employees:

- American Telephone & Telegraph
- C&P Telephone
- Government Services (GSI)
- Other (e. g., Alderson Reports)
  
- Other Government Agency (OGA) passholders whose requests are initiated and approved by the White House. On all additional requests for passes, the particular department or agency so requesting must provide a current full field investigation.

7. Special Clearances. This office handles requests for certain staff members and Presidential Appointees in close cooperation with NSC Security and subsequent contact with CIA.

8. Liaison. This office is the liaison with department and agency security offices on all security matters.

9. Access List. The Security Office handles requests for access on both temporary and permanent employees with an initial FBI Name Check. No one is placed on the access list without a clear Name Check.

## FULL FIELD INVESTIGATIONS

<u>1974</u>	<u>Presidentials</u>	<u>Staff</u>	<u>NSC</u>	<u>State Dept.</u>	<u>Other</u>	<u>Total</u>
August (8/9-8/31)	4	14	4	9	-	31
September	8	41	13	8	-	70
October	26	30	2	7	-	65
November	42	37	7	5	1	92
December	19	33	3	5	-	60
<u>1975</u>						
January	34	84	5	1	-	124
February	39	60	7	5	-	111
March	15	88	5	3	-	111
April	36	67	7	5	-	115
May	21	65	17	4	1	108
June	<u>90</u>	<u>31</u>	<u>6</u>	<u>2</u>	<u>-</u>	<u>129</u>
Totals	334	550	76	54	2	1,016

Note:

Since we have had no files prior to August 9, 1974, it has been necessary to re-evaluate all prior investigations as we receive copies from the FBI through new, updated or Name Check investigations.

New full field investigations may contain approximately six to ninety pages. If an investigation reveals no previous investigation and if there is no derogatory information developed in the current investigation, the report is short. However, if an individual has had previous investigations or one prior investigation contained derogatory information, the reports could be eighty or ninety pages long. Also, if an individual's previous investigation was not in summary form (e.g., Justice Dept. applicant type, Civil Service or Defense Investigative Service), it could be very lengthy.

Updated investigations are similar in that a large portion of individual investigations cover a period of years, and all previous reports are sent to us in the updating process.

Name Checks may be one page (individual not previously investigated) or perhaps fifty pages (government official). Thus, when a Name Check is requested for a government official not recorded in our index, all previous reports are sent to us for re-evaluation, carding and filing.

The White House Security Office is comprised of three personnel:

- Staff Assistant for Security (evaluator)
- Administrative Secretary
- Security Assistant

FBI NAME CHECKS

<u>1974</u>	<u>Sent</u>	<u>Oral</u>	<u>Total</u>
August (8/9-8/31)	132	76	208
September	1,778	133	1,911
October	345	107	452
November	489	56	545
December	326	125	451
<u>1975</u>			
January	327	138	465
February	2,040	104	2,144
March	1,327	154	1,481
April	2,922	130	3,052
May	1,470	227	1,697
June	1,333	150	1,483
Totals	<u>12,489</u>	<u>1,400</u>	<u>13,889</u>

THE WHITE HOUSE  
WASHINGTON

*Council's office  
Role file*

April 11, 1985

MEMORANDUM FOR DAVID B. WALLER

FROM: HUGH HEWITT

Attached are some talking points that could be used in delivering a generic "what we do" speech. If you have not heard the Bishop of Verona tale, I will fill you in on it. I welcome your comments and red pen.

Attachment

## TALKING POINTS

### THE WHITE HOUSE COUNSEL'S OFFICE

- Thank you, ladies and gentlemen. I am pleased to be here today, pleased to have this opportunity to talk a little bit with you about my work in the White House Counsel's Office in particular, and perhaps to answer any questions you might have on the White House and how it operates in general.
  
- I welcome opportunities such as this. It is so rare that a lawyer is an invited and welcome guest, much less one of the featured speakers. Even lawyers hate to listen to other lawyers. In fact I hate to listen to lawyers.
  
- Occasionally, very occasionally, a lawyer will have something interesting to say. I hope my few remarks will be the exception, and not the rule.
  
- Let me begin by asking you a question: What do Lloyd Cutler, Ted Sorenson and John Dean all have in common? No, they have not all authored best-sellers, and Mr. Dean is the only one of them to write for Rolling Stone. They all, however, did occupy the position of Counsel to the President. While Dean is of course best known for his role in Watergate, and Cutler for his profile during the Iranian Hostage negotiations, Sorenson was a speechwriter. Cutler

was very much part of the inner council of the Carter Presidency, Dean was not one of Nixon's close advisers, and Sorenson's role was in-between the two. The differences in the roles assumed by these three men illustrate the rather elastic quality of the White House Counsel's Office. It is really a decision of the President as to what he wants from the Counsel and the Counsel's staff that will determine the duties and responsibilities of the office in any given administration.

-- President Reagan, it turned out, wanted a lawyer and a law firm within his staff and we have taken our cue from that desire. Now it may seem unusual to say that the President wanted a law firm within his staff. After all, he already has the Department of Justice where the Attorney General sits atop 60,000 employees, no small number of them lawyers. But despite this huge Executive Agency, there was the need for a small group of lawyers, close at hand, that would view matters from a Presidential perspective.

-- It is no secret, of course, that in Washington one's perspective is often colored by the vantage point from which one gets his or her view. We have thousands of fine and able lawyers at the Department of Justice, but the Department of Justice is not only physically situated just about half-way between the White House and Congress, it can also be said to have a unique view on almost every issue it

deals with. The perspective that develops at 10th and Constitution is considerably different from one that develops at the White House. This is not a bad thing at all, in fact the Department of Justice would fail in its mission if it did not develop and communicate its collective view to the President. But it does not function as the President's law firm.

-- Most legal questions as you know are in gray areas. If an answer was clear cut, there would not be a need for lawyerly advice. But most issues are complicated and the President often needs the advice of a lawyer on a suitable course of action. He can and does turn to the Attorney General. But he also does seek the advice of the White House's and the Presidency's in-house counsel.

-- Moreover, there is a tidal wave of paper that flows through the White House in any given week. There are bills to sign or veto. There are Presidential proclamations and Presidential decision memoranda. There are treaties and understandings, letters and communiques, telegrams, speeches, and even autographed pictures. Most of these things will emerge from the White House carrying one kind or another of a Presidential imprimatur. The Counsel's Office is one of those places that exist to keep watch on the paper flow and to alert the President to any potential problems presented by any particular piece of paper.

-- When William Howard Taft assumed the Presidency, he set off on one of those long briefings that all new Presidents must sit through. This one was being given by a young man fond of automation and process and procedure. The young man kept referring to the "machinery of government", and how if the machinery was well oiled, all would go smoothly. During this presentation, a horrified Taft leaned over to one of his fellow sufferers and said, "My God, he really believes that government is a machinery." Taft's point was that people run the government. All these various boards and bureaus and components and divisions and departments are made up of people. All the endless paper flow was, at some point in the past, capped in some pen. Because it was an individual who uncapped the pen somewhere in the past, we have to be on the look out for human error. People exercise judgment, and often they will do so badly. The Counsel's Office exists as a check on human error.

-- We also function in a different capacity. I mentioned the Department of Justice. Well Justice does not see everything that a President must act on. The President's incoming box is full of papers originating in all the other executive agencies, independent agencies, Congress, the state and local governments and of course private citizens. The Justice Department does not have the time or the inclination to review all those documents. The White House Counsel's Office must do this.

- Obviously a lot of this work is of a recurring variety.
  
- We review and sign off on all enrolled bills for example. What do we look for? In pre-Chadha days -- the Supreme Court's decision that struck down the device known as the legislative veto -- we used to look for, among other things, legislative vetoes so that Fred could alert the President that a given bill had a kicker in it, some kind of Congressional encroachment. Today we look for, among other things, Congressional formulations of the appointment process for a new agency or board or commission. We are concerned that Congress may be intruding on the President's power under the appointments clause of the Constitution.
  
- We are also shepherds of sort. It falls to our office to oversee the Presidential appointment process. We are the eye-of-a-needle folk, who meticulously review and analyze a potential appointee's background qualifications, and finances. If you think it is difficult for a wealthy man to enter heaven, you ought to see them enter the Senate Confirmation process. At least the Lord is widely known for his mercy. To prepare appointees for this gauntlet, we initiate and review all the necessary FBI and IRS background checks. We must also introduce prospective appointees to the laws and regulations governing conduct, including the Ethics in Government Act of 1978. In this respect we are pleased that the practice of killing the messenger who

brings bad news has gone out of style, for the requirements of law can often be confusing and burdensome. After we have prepared an appointee for the confirmation process, we are also occasionally tasked to lend a hand in the actual proceedings on the Hill.

-- We patrol the ethics not only of prospective appointees, but of members of the President's staff as well. This function is particularly important, as questions concerning the propriety of actions by members of a President's staff can be very debilitating in terms of the effectiveness of a Presidency. And the threat never goes away. There are always those people outside the government who are looking for a shortcut or a favor. In this respect, Washington and its ways have not changed much. A century ago, just prior to the Democratic Convention in Chicago in 1884, the leader of the forces for Grover Cleveland who was out to capitalize on the confusion in Republican camp following the bolting of the Mugwumps who could not stomach the GOP's nominee, James Blaire, addressed his chief delegate hunter. "Now I want you to devote yourself to these doubtful men," said Daniel Manning to William Hudson. "Find out the conditions surrounding them, the influences political, commercial and moral....We must subject them to pressure, but first we must learn the sort of pressure that should be applied."

-- Well, pressure in Washington has only increased in the 100 years since that remark. William Safire has written that its various forms can be calibrated: political pressure begins with a mild "talk to him", rises to "twist his arm", then "lean on him", and finally "put his feet to the fire". All these forms of pressure can and have been brought to bear on members of the President's staff. The Counsel to the President and his staff serve as a counterweight, a kind of institutional Cassandra. Do our fellow White House staffers welcome this role? About as much as Scrooge welcomed Marley's ghost, but in the end -- when embarrassment and perhaps illegality has been avoided -- they are as grateful as Scrooge was when Dickens completed his novel.

-- Fred also chairs the Judicial Selection Committee. This Committee processes and makes final recommendations to the President on all appointments to the Supreme Court and all other federal courts. President Reagan will soon have made a record number of such appointments. How challenging is this task? Ask yourself: If you had the power to equip a fellow with a life-time job that included a comfortable salary, pension, and staff allotment, as well as prestige, how many applicants do you think you would have? Needless to say we have many interested applicants. With many types of Presidential appointments, one can suitably take partisan politics into account, and follow Disraeli's advice that

"nothing is more ruinous to political connection than the fear of justly rewarding your friends and the promotion of ordinary men of opposite opinions....We should always remember that if we were not partisans we should not be Ministers." But federal judgeships are unique among Presidential appointments. Justice Brennan was an Eisenhower appointment. Three decades and seven presidents later he continues to occupy his chair. We must always attend to the appointment of a judge with particular care. They are guaranteed to be a unique legacy of the Administration.

-- We are also involved with the obvious legal controversies affecting the President. He or his authority is at issue in a number of litigation settings. We must keep an eye on those cases. The Counsel also sits on the Cabinet Council on Legal Policy where Administration policy on a host of difficult legal issues is hammered out. And of course, we advise the President on the subject of executive privilege, never an uncontroversial subject. We are often called on to provide guidance on the correct response to Congressional requests for the production of Presidential or Cabinet Council documents.

-- [Optional]. Executive privilege disputes are always difficult, usually because the players, the President and Congress, have absolutely no understanding of, or sympathy

for, what the other is trying to do. Let me tell you a story that draws on antiquity to illustrate this disparity in perspective. [Bishop of Verona]

-- In today's White House these disputes on executive privilege and many other matters are handled by a staff of between five and eight lawyers. This size is in keeping with the traditions established by previous Administrations, although the functions of the Counsel to the President have varied widely over the past 40 years. The legal edge to most problems will, if anything, grow sharper in the future. The complexity of most decisions reaching the President's desk guarantees that the laws of the country will in some way be implicated in the decision.

-- Its been that way for four years. Recall some of the larger events of President Reagan's first term: the tax reduction legislation, the decertification of PATCO, the nomination of Justice O'Connor, the liberation of Grenada: each of these and many others demanded Fred's attention and review. We anticipate that the next four years will hold some more tense weeks, some more critical decisions. There will certainly be the regular flow of paper: We will be busy. If we do our job well, you may never hear of us again. It is a lawyer's blessing when his work is obscure. I hope it will be our blessing to continue in our pattern of quiet lawyering. Now, perhaps I can answer any questions you

might have on the Counsel's Office or the White House in general.

REMARKS BY DAVID B. WALLER  
UNIVERSITY OF TULSA COLLEGE OF LAW GRADUATION CEREMONY  
MAY 4, 1985

THANK YOU. DEAN WALWER, DISTINGUISHED FACULTY, GUESTS, AND SOON TO BE FELLOW GRADUATES OF THE UNIVERSITY OF TULSA COLLEGE OF LAW, THANK YOU FOR INVITING ME BACK TODAY TO MY ALMA MATER. IT'S CUSTOMARY IN WASHINGTON TO BEGIN FORMAL TESTIMONY BEFORE CONGRESSIONAL OR OTHER COMMITTEES WITH A BIT OF PERJURY -- THE WITNESS RECITES THAT IT IS A "PLEASURE" TO APPEAR BEFORE THE COMMITTEE -- EVEN THOUGH, AS ALL BUT THE MOST NAIVE WITNESSES KNOW, AT LEAST CERTAIN MEMBERS OF THE COMMITTEE ARE SALIVATING, ANXIOUS TO EMBARK ON THEIR EFFORT TO DISCREDIT, EMBARRASS AND GENERALLY DEVOUR THE WITNESS. TODAY, HOWEVER, I CAN SAY WITH GREAT SINCERITY THAT IT TRULY IS A PLEASURE TO RETURN TO THIS CITY AND THIS LAW SCHOOL AND TO HAVE THE PRIVILEGE OF SPEAKING TO YOU, PARTICULARLY ON THIS SIGNIFICANT OCCASION.

THAT'S NOT TO SAY I DON'T LIKE OUR NATION'S CAPITOL -- I DO. BUT HAVING LIVED THERE FOR A NUMBER OF YEARS, I HAVE FOUND THAT THERE IS SOME JUSTIFICATION FOR JFK'S DESCRIPTION OF WASHINGTON AS A CITY OF "SOUTHERN EFFICIENCY AND NORTHERN CHARM." I'VE NEVER BEEN SURE KENNEDY WAS BEING ENTIRELY FAIR TO THE SOUTH ON THE EFFICIENCY POINT, BUT HIS OBSERVATION ABOUT "NORTHERN CHARM" IS OFTEN HARD TO DISPUTE -- ESPECIALLY WHEN ONE COMPARES IT TO TULSA.

ALTHOUGH SOMEHOW MORE THAN 11 YEARS HAVE MANAGED TO PASS SINCE MY LAW SCHOOL GRADUATION DAY, I ASSURE YOU I HAVE NOT FORGOTTEN, AND NEVER WILL FORGET, THE EXTRAORDINARY SENSE OF SATISFACTION, PRIDE AND, PERHAPS MOST IMPORTANTLY, DETERMINATION THAT YOU GRADUATES EXPERIENCE TODAY. MY MOST SINCERE CONGRATULATIONS TO YOU AND TO YOUR FAMILIES AND FRIENDS FOR SUPPORTING, ENCOURAGING, ENDURING AND OCCASIONALLY TOLERATING YOU THROUGH THIS SEEMINGLY ENDLESS ORDEAL.

BEFORE GOING FURTHER, I WANTED TO TELL YOU THAT IN A TELEPHONE CONVERSATION LAST WEEK WITH DEAN WALWER, HE WAS VERY APOLEGETIC IN TELLING ME THAT THERE WOULD BE NO LUNCHEON HELD IN CONNECTION WITH THIS CEREMONY.

I TOLD HIM I WAS RELIEVED, NOT DISAPPOINTED. AS I EXPLAINED TO HIM, THE LAST TIME I SPOKE AT A LUNCHEON, THE GENTLEMAN WHO WOULD LATER INTRODUCE ME TURNED TO ME TOWARD THE END OF WHAT WAS A VERY ENJOYABLE MEAL AND SAID, AS HE GLANCED AT THE AUDIENCE, "SHALL WE LET THEM ENJOY THEMSELVES A LITTLE LONGER OR HAD WE BETTER HAVE YOUR SPEECH NOW." THUS FAR THE DEAN HAS BEEN FAR MORE GRACIOUS THAN THAT. AND IN AN EFFORT TO RETAIN HIS GOOD GRACES AND EARN YOURS, I WILL EMBRACE THE ADVICE FRANKLIN ROOSEVELT GAVE HIS SON REGARDING THE KEY TO SUCCESSFUL SPEECHES. "USE THE THREE B'S," HE SAID. "BE SINCERE; BE BRIEF; BE SEATED."

I THOUGHT I WOULD BEGIN BY CALLING YOUR ATTENTION TO TWO QUESTIONS POSED MANY YEARS AGO IN A POEM BY CARL SANDBURG. HE ASKED:

"WHY IS THERE ALWAYS A SECRET SINGING WHEN A LAWYER CASHES IN?"

"WHY DOES A HEARSE HORSE SNICKER HAULING A LAWYER AWAY?"

THESE ARE TOUGH QUESTIONS. OVER THE YEARS LAWYERS HAVE DEALT WITH THEM IN STANDARD FASHION, THROUGH LIBEL SUITS, FOR INSTANCE, OR BY STRICTLY REGULATING THE HORSE DRAWN HEARSE TRADE.

I ASSURE YOU, HOWEVER, THAT SANDBURG WAS ONE OF OUR PROFESSION'S MORE ELOQUENT CRITICS. A WRITER OF MORE RECENT VINTAGE, MARIO PUZO, WAS A TOUCH MORE BLUNT IN ASSESSING THE WORTH OF LAWYERS: "A LAWYER WITH A BRIEFCASE," HE WROTE, "CAN STEAL MORE THAN A HUNDRED MEN WITH GUNS."

CONSIDER ALSO THE STORY TOLD JUST LAST WEEK IN WASHINGTON BY MARK FOWLER, THE CHAIRMAN OF THE FEDERAL COMMUNICATIONS COMMISSION AND A DISTINGUISHED LAWYER IN HIS OWN RIGHT. "WHAT IS THE DIFFERENCE," HE ASKED, "BETWEEN A SNAKE THAT IS RUN DOWN ON THE HIGHWAY AND A LAWYER WHO IS RUN DOWN ON THE HIGHWAY?" THE ANSWER, HE ADVISED, IS THE SKID MARKS LEADING UP TO THE SNAKE.

FINALLY, AND PERHAPS MOST POTENTIALLY OFFENSIVE, IS THE QUESTION "HOW CAN YOU TELL WHEN YOUR LAWYER IS LYING TO YOU?" THE ANSWER OF COURSE IS WATCH TO SEE WHEN HIS LIPS MOVE.

AT THIS POINT YOU GRADUATES MAY BE GROANING SILENTLY TO YOURSELVES AND ASKING "DID I GATHER MY FAMILY AND VERY DEAREST FRIENDS SO THAT THEY COULD BE BARRAGED WITH LAWYER JOKES?"

DON'T MY THREE OR MORE YEARS OF EXHAUSTING EFFORT AND SACRIFICE DESERVE SOMETHING MORE?" BEAR WITH ME -- THERE'S GOOD REASON FOR INTRODUCING YOU TO A FEW OF THE COUNTLESS ANTI-LAWYER JOKES YOU WILL ENCOUNTER OVER A LONG CAREER.

BY THE TIME ONE OF YOU IS STANDING HERE IN A FEW YEARS, FEELING OLD, YOU WILL NO DOUBT BE EQUIPPED WITH SEVERAL MORE ANTI-LAWYER STORIES. I SUGGEST YOU COLLECT THEM; KEEP THEM ON INDEX CARDS. IT IS NOT A BAD THING TO BE A BUTT OF HUMOR. IT SERVES AN EXCELLENT PURPOSE, IN FACT, IN THAT IT REMINDS ALL OF US THAT LAWYERS HAVE TO BE EXTRAORDINARILY CAREFUL IN THE ATTENTION THEY DEVOTE TO THEIR MOST PRECIOUS ASSET -- THEIR INTEGRITY. THERE ARE SIMPLY TOO MANY IN THIS WORLD WAITING IN AMBUSH TO ATTACK MEMBERS OF THE BAR FOR YOU TO BE COMPLACENT ABOUT THE ATTENTION YOU DEVOTE TO YOUR PROFESSIONAL ETHICS.

AS DEAN WALWER MENTIONED, I GRADUATED FROM THIS LAW SCHOOL IN 1973. MINE WAS A MOST INTERESTING TIME TO BE A LAW STUDENT. IT WAS THE TIME OF THE SENATE WATERGATE HEARINGS, AND I WAS AMONG THE MANY FASCINATED BY THOSE PROCEEDINGS. AS I WATCHED THE LATE EVENING REPLAYS OF THE DAILY HEARINGS CHAIRED BY THE RECENTLY DECEASED SENATOR SAM ERVIN, I WAS PARTICULARLY INTRIGUED BY THE REMARKABLE TESTIMONY OF JOHN DEAN, THEN COUNSEL TO PRESIDENT NIXON.

I REALIZE THAT MANY OF YOU GRADUATES WERE NOT EVEN IN HIGH SCHOOL WHEN THOSE EVENTS TOOK PLACE. BUT I TRUST YOU KNOW WELL THAT THEY WERE UNIQUE AND HAD A PROFOUND IMPACT ON OUR PROFESSION.

AS THE EVENTS OF WATERGATE UNFOLDED, THEY MANAGED TO ACCOMPLISH THE SEEMINGLY IMPOSSIBLE -- THEY FURTHER TARNISHED THE REPUTATION OF LAWYERS. THE EXPLANATION IS NOT DIFFICULT. IN HIS BOOK BLIND AMBITION, DEAN RECALLED THAT AT ONE POINT IN THE DRAMA HE HAD WRITTEN DOWN THE NAMES OF EVERYONE INVOLVED IN THE ILLEGALITIES, AND THAT HE HAD THEN COMMENTED TO HIS ATTORNEY, "YOU KNOW, WHAT IS INCREDIBLE IS THE NUMBER OF LAWYERS ON THAT LIST." THAT LIST, AS YOU NO DOUBT KNOW, INCLUDED NOT ONLY DEAN HIMSELF, BUT ALSO THE FORMER ATTORNEY GENERAL, JOHN MITCHELL.

WELL, THE AMERICAN PEOPLE TOO THOUGHT IT WAS INCREDIBLE, AND AS A RESULT A PORTION OF WATERGATE'S FALLOUT CAME TO REST ON OUR PROFESSION. FOCUS ON THE AREA OF LEGAL ETHICS INTENSIFIED DRAMATICALLY,

GONE FOREVER WERE THE DAYS WHEN A LAW PROFESSOR WOULD GIVE ONE LECTURE ON PROFESSIONAL RESPONSIBILITY, CALL THE STUDENTS' ATTENTION TO THE CANONS, AND DISMISS THEM TO THEIR OWN CONSCIENCE.

THIS WAS A POSITIVE DEVELOPMENT, A VERY POSITIVE ONE. OF COURSE, UNTIL YOU ARE SAFELY ON THE OTHER SIDE OF THE BAR EXAM, YOU MAY NOT BE CONVINCED, BUT I ASSURE YOU, IT IS IN THE PROFESSION'S BEST INTEREST THAT ITS STUDENTS FOCUS THEIR INTEREST EARLY AND INTENTLY ON THE SUBJECT OF PROFESSIONAL RESPONSIBILITY.

WATERGATE HAD A NUMBER OF EFFECTS, OF COURSE, FAR BEYOND ITS IMPACT ON THE PROFESSION'S COMMITMENT TO THE TRAINING OF ITS ASPIRING MEMBERS. SENATOR ERVIN SAID DURING THE HEARINGS THAT IT WAS A CRISIS WORSE EVEN THAN THE CIVIL WAR BECAUSE AT LEAST SOME GOOD CAME OF THE WAR BETWEEN THE STATES. "I SEE NO REDEEMING FEATURES IN WATERGATE," HE SAID. SAM ERVIN, LIKE MANY MEMBERS OF CONGRESS, WAS ENAMORED OF OVERSTATEMENT, AND I THINK HIS OBSERVATION WAS WRONG. IT WAS WRONG NOT ONLY IN THE UNDERLYING COMPARISON, BUT ALSO IN ITS FAILURE TO ANTICIPATE THE MANY GOOD THINGS THAT FLOWED FROM THE COMBINATION OF WATERGATE, THE SO-CALLED BERT LANCE AFFAIR, AND OTHER EVENTS THAT SHOOK THE PUBLIC'S CONFIDENCE IN ITS GOVERNMENT. WATERGATE AND THOSE OTHER UNFORTUNATE EVENTS SPAWNED, FOR EXAMPLE, A HOST OF NEW LAWS SUCH AS CAMPAIGN REFORM ACTS, AND THE ETHICS IN GOVERNMENT ACT OF 1978.

AS A LAWYER IN THE FIRST ADMINISTRATION TO GO THROUGH A PRESIDENTIAL TRANSITION FOLLOWING ENACTMENT OF MOST OF THESE LAWS, I CAN TELL YOU FIRST-HAND THAT THEY ARE UNWIELDY, COMPLICATED, OBSCURE IN MEANING, AND EXTRAORDINARILY IMPRACTICAL IN OPERATION. BUT THEY DO EMBODY THE AMERICAN PEOPLE'S DEMAND THAT THEIR GOVERNMENT OPERATE ETHICALLY -- AND THEY ARE THE LAW. THE REMAINING ISSUE IS HOW TO REFINE THESE LAWS, HOW BEST TO STRIKE THE BALANCE BETWEEN DISCLOSURE AND DIVESTITURE REQUIREMENTS DESIGNED TO FOSTER PUBLIC CONFIDENCE IN GOVERNMENT, AND LEGITIMATE CONCERNS ABOUT THE IMPACT ON THE PRIVACY INTERESTS OF APPOINTEES, AND ON THE ABILITY OF OUR GOVERNMENT TO ATTRACT QUALIFIED PUBLIC SERVANTS.

LET ME ASSURE YOU THAT WHILE WATERGATE HAD A PROFOUND IMPACT ON THE PROFESSION AS A WHOLE, IT HAD ENORMOUS IMPACT ON THE WHITE HOUSE COUNSEL'S OFFICE. YOU SEE, IN RETROSPECT IT APPEARS THAT THE WATERGATE DIFFICULTY AROSE AT LEAST IN PART FROM THE ABSENCE OF STRONGLY PRINCIPLED LAWYERS WHO BOTH ENJOYED THE PRESIDENT'S CONFIDENCE AND HAD THE NECESSARY ACCESS TO HIM.

ALTHOUGH THE OFFICE OF COUNSEL TO THE PRESIDENT HAD BEEN AROUND, AT LEAST IN NAME, SINCE FRANKLIN ROOSEVELT'S TIME, ITS ROLE AND FUNCTION WITHIN THE WHITE HOUSE HAS CHANGED CONSIDERABLY FROM ADMINISTRATION TO ADMINISTRATION. FDR HAD AS HIS "COUNSEL" A FORMER JUDGE WHO, DESPITE THE TITLE OF COUNSEL, FUNCTIONED PRIMARILY AS A SPEECHWRITER. KENNEDY'S "COUNSEL," TED SORENSON, LIKEWISE SERVED PRIMARILY AS A SPEECHWRITER. JOHN DEAN WAS NOT, OF COURSE, LIMITED TO WRITING SPEECHES, BUT NEITHER WAS HE A MEMBER OF THE WHITE HOUSE INNER CIRCLE.

CERTAINLY SINCE WATERGATE THIS HAS BEEN REMEDIED. THE COUNSEL TO PRESIDENTS FORD, CARTER AND REAGAN HAVE ALL ENJOYED FAR MORE OF THAT UNIQUE WASHINGTON COMMODITY: "ACCESS TO THE PRESIDENT," AND THE PAST THREE PRESIDENTS HAVE STEADILY EXPANDED THE ROLE OF THE COUNSEL'S OFFICE. NOW WE REVIEW AND RENDER A LEGAL OPINION ON EACH OF THE COUNTLESS ENROLLED BILLS, EXECUTIVE ORDERS, PROCLAMATIONS, DECISION MEMORANDA, CABINET PAPERS, ETC. THAT ARE PRESENTED FOR THE PRESIDENT'S SIGNATURE. WE ENFORCE THE ETHICS LAWS AS THEY APPLY TO THE WHITE HOUSE STAFF AND WE ENDEAVOR TO ASSURE THE COMPLIANCE OF PROSPECTIVE PRESIDENTIAL APPOINTEES WITH THE NEW LAWS AND REGULATIONS.

WE PREPARE FOR PUBLIC RELEASE THE PRESIDENT'S ANNUAL FINANCIAL DISCLOSURE REPORT LISTING, AMONG OTHER THINGS, ALL HIS ASSETS, INCOME, ETC.

THERE ARE A HOST OF OTHER THINGS AS WELL. COUNSEL TO THE PRESIDENT CHAIRS THE JUDICIAL SELECTION COMMITTEE, WHICH PROCESSES AND RECOMMENDS TO THE PRESIDENT NOMINEES FOR ALL FEDERAL JUDGESHIPS, INCLUDING SEATS ON THE SUPREME COURT, AS WELL AS ALL U.S. ATTORNEY AND U.S. MARSHALL POSITIONS. WE INVOLVE OURSELVES IN LITIGATION WHICH HAS THE POTENTIAL OF AFFECTING THE PRESIDENT'S AUTHORITY OR HIS PROGRAMS -- SUCH AS SUITS SEEKING TO ENJOIN DEPLOYMENT OF THE MX MISSILES OR THE PROVIDING OF AID TO EL SALVADOR. WE RESPOND TO SUBPOENAS, INCLUDING ONES IN THE RECENT WESTMORELAND CASE -- AND IN THAT AND MANY OTHER CONTEXTS, WE ADVISE THE PRESIDENT ON ISSUES RELATING TO EXECUTIVE PRIVILEGE, SEPARATION OF POWERS AND NATIONAL SECURITY. IN SHORT, WE ARE THE IN-HOUSE LAW FIRM FOR THE PRESIDENT. THERE IS VERY LITTLE THAT DOES NOT COME THROUGH OUR OFFICE ON THE WAY TO THE PRESIDENT'S DESK.

I DIGRESSED A BIT TO DISCUSS THE POST-WATERGATE ROLE OF THE COUNSEL'S OFFICE IN ORDER TO ILLUSTRATE A PARADOX OF SORTS: OUT OF A CRISIS THAT DAMAGED THE STANDING OF LAWYERS ACROSS THE COUNTRY CAME, ODDLY ENOUGH, A HOST OF NEW LAWS AND AN INCREASED RELIANCE ON LAWYERS. I REJECT THE PARALLEL THAT SOME MIGHT DRAW BETWEEN THIS DEVELOPMENT AND THE MEDICAL PRACTICE SOME CENTURIES AGO OF APPLYING LEECHES TO THE SERIOUSLY ILL PATIENT.

IN FACT, I THINK IT WAS A NATURAL, WELCOME AND NECESSARY DEVELOPMENT.

WATERGATE ENGRAVED IN THE NATION'S COLLECTIVE MIND ONE SEARING LESSON. THE LAW CANNOT BE IGNORED. THERE ARE NO SHORTCUTS. LAWS ARE INTENTIONALLY BRITTLE THINGS -- THEY DO NOT BEND EASILY.

THIS CRISIS TAUGHT LAWYERS ANOTHER LESSON: TELL YOUR CLIENT WHAT HE OR SHE NEEDS TO HEAR, NOT WHAT HE OR SHE MAY WANT TO HEAR. GIVE FRIENDLY LEGAL ADVICE, BUT KEEP THE EMPHASIS ON THE "LEGAL" -- NOT THE "FRIENDLY."

THIS IS A LESSON WE LEARN OVER AND OVER AGAIN IN THE COUNSEL'S OFFICE. BELIEVE ME WHEN I SAY THAT THE PRESIDENT IS A DIFFICULT MAN TO WHOM TO SAY NO. YET HE IS A CLIENT WHO UNDERSTANDS THE IMPORTANCE OF GOOD LEGAL ADVICE AND DOES NOT RESIST IT. NOT ONCE HAS OUR OFFICE BEEN ASKED HOW TO "GET AROUND THE LAW;" RATHER, THE CONSTANT ATTITUDE OF THE PRESIDENT AND THE WHITE HOUSE SENIOR STAFF IS "WE NEED TO BE CERTAIN THAT THE ACTION WE ARE CONSIDERING IS RIGHT AND LAWFUL." THUS, WHEN IN OUR OPINION A PROSPECTIVE PRESIDENTIAL APPOINTEE DOES NOT PASS LEGAL OR ETHICAL MUSTER, WE SAY SO.

TO PASS ON A NOMINATION THAT SHOULD NOT GO FORWARD IS TO PLANT A TIME BOMB IN THE ADMINISTRATION, A TIME BOMB THAT WHEN DETONATED WILL ALMOST CERTAINLY DO FAR GREATER DAMAGE TO THE PRESIDENT THAN WOULD HAVE RESULTED FROM TURNING THUMBS DOWN ON A NOMINEE.

WHEN WE HAVE ONE OF OUR PERIODIC JOUSTS WITH CONGRESS OVER ACCESS TO EXECUTIVE BRANCH DOCUMENTS, WE HAVE TO STAND READY TO ADVISE THE PRESIDENT TO RELEASE THEM IF IN FACT THE LAW REQUIRES IT, WHEN MEMBERS OF THE MEDIA CLAMOR OVER PRESS POOL ARRANGEMENTS OR OVER THEIR COLLECTIVE FIRST AMENDMENT RIGHTS, WE MAY, IF WE SO CONCLUDE, FIND OURSELVES SAYING TO THE PRESS SECRETARY, "LET THEM IN, THIS TIME THEY ARE RIGHT," SEEMINGLY UNPALATABLE ADVICE IS VERY SIMPLY AN INDISPENSABLE COMPONENT OF GOOD AND ETHICAL LAWYERING.

LET ME ALSO UNDERSCORE THAT THE COURAGE AND PROFESSIONALISM THAT ALLOWS A LAWYER TO GIVE UNWELCOME ADVICE CARRIES WITH IT ITS OWN REWARD, THAT REWARD IS THE CONFIDENCE OF THE CLIENT. OUR OFFICE, BECAUSE IT HAS WHEN NECESSARY SAID "NO," ENJOYS ENHANCED CREDIBILITY WHEN IT SAYS "YES." WHEN PATCO STRUCK IN THE EARLY DAYS OF THE ADMINISTRATION, AND WE ANALYZED THE SITUATION AND COUNSELED THE PRESIDENT THAT HE WAS WITHIN HIS RIGHTS TO FIRE THE STRIKING AIR TRAFFIC CONTROLLERS, PEOPLE -- INCLUDING THE PRESIDENT -- KNEW THAT OUR JUDGMENT WAS BASED ON THE LAW, NOT ON POLITICS.

THE ABILITY TO SEPARATE EXPEDIENCY FROM JUDGEMENT IS THE HALLMARK OF A GOOD AND TRUSTWORTHY LAWYER.

THERE IS A PIECE OF FURNITURE IN THE OVAL OFFICE CALLED THE RESOLUTE DESK. IT IS THE PRESIDENT'S DESK. IT DID NOT EARN ITS NAME SOLELY BECAUSE IT HAS RESOLUTELY SERVED MOST OF THE PRESIDENTS DURING THE PAST CENTURY. IT IS MORE THAN THAT.

IN 1855 AN ENGLISH SHIP, THE H.M.S. RESOLUTE, BECAME FROZEN IN THE HUDSON BAY. THE CREW ABANDONED HER, FEARING THAT THE ICE WOULD CRUSH THE WOODEN SHIP. IT DID NOT, AND WHEN SPRING ARRIVED AND THE ICE MELTED, THE SHIP DRIFTED OUT TO SEA. A U.S. WHALING BOAT RESCUED THE RESOLUTE AND TOWED HER TO HARBOR. PRESIDENT VAN BUREN ORDERED HER REFITTED WITH AMERICAN OAK TIMBERS, AND THEN PRESENTED THE REFURBISHED SHIP TO QUEEN VICTORIA AS A TOKEN OF FRIENDSHIP. WHEN THE RESOLUTE WAS DECOMMISSIONED MORE THAN TWO DECADES LATER, QUEEN VICTORIA, STILL RULING, HAD THE TIMBERS PULLED FROM THE SHIP AND CRAFTED INTO THE MAGNIFICANT RESOLUTE DESK. SHE PRESENTED IT TO PRESIDENT HAYES, AND IT HAS SERVED NOBLY SINCE THEN AS THE WORK PLACE FOR MANY PRESIDENTS, THE CURRENT ONE INCLUDED.

THAT DESK, WITH ITS MARVELOUS PEDIGREE, PROVIDES AN APT METAPHOR FOR A SUCCESSFUL AND ETHICAL LAWYER. YOU WILL NOT FIND THE COMMAND "BE RESOLUTE" IN THE CANONS OF ETHICS, BUT IT IS A GOOD MOTTO FOR ANY LAWYER, PARTICULARLY ONE JUST BEGINNING HIS OR HER CAREER.

I WOULD LIKE TO REMIND YOU OF THE OBVIOUS FACT THAT YOU HAVE NO IDEA AS TO WHERE YOU WILL BE IN TEN YEARS. THE CAREER OF A LAWYER IN THE UNITED STATES IS PERHAPS AS ELASTIC AS ANY IN THE WORLD. YOU CAN GO TO ANY STATE AND HANG OUT A SHINGLE.

YOU CAN PRACTICE ALONE, IN PARTNERSHIP, IN A CORPORATION OR FOR THE GOVERNMENT, OR INDEED, YOU CAN TAKE THIS MARVELOUS AND DIFFICULT EDUCATION YOU HAVE JUST COMPLETED AND APPLY IT IN ANY OF A HUNDRED FIELDS FAR REMOVED FROM LAW.

THIS UNLIMITED OPPORTUNITY WHICH OPENS TO A YOUNG LAWYER CARRIES WITH IT A CATCH. LAWYERS ARE ALLOWED MANY LOSSES IN COURT, BUT A SINGLE LAPSE OF ETHICAL JUDGMENT CARRIES THE POTENTIAL TO END A CAREER. I KNOW THIS LAW SCHOOL TRAINED YOU TO AVOID THAT. BUT KEEP IN MIND THAT CAUTION.

I WAS PRIVILEGED TO BE IN THE OVAL OFFICE TWO WEEKS AGO WHEN THE PRESIDENT, SEATED AT THE RESOLUTE DESK, SIGNED A PROCLAMATION NAMING THIS PAST WEDNESDAY, MAY 1, 1985, AS OUR NATION'S LAW DAY. IT'S EASY TO REMEMBER THE EXACT DAY OF THAT SIGNING CEREMONY BECAUSE THE PRESIDENT CALLED ATTENTION TO IT HIMSELF. "IT'S APRIL 15TH," HE SAID, "WHAT AN APPROPRIATE DATE FOR THIS CEREMONY," LIKE MANY OTHER AMERICANS, THE PRESIDENT, WITH SOME INVOLVEMENT FROM OUR OFFICE, HAD BEEN WORKING ON HIS INCOME TAXES THE WEEK BEFORE, AND CERTAINLY ONE PORTION OF OUR LAWS WAS ON HIS MIND.

BUT PUTTING ASIDE HIS HUMOR, HE ALSO CALLED ATTENTION TO THE PROCLAMATION HE WAS ABOUT TO SIGN. IT READS, IN PART: "IT IS THE IDEAL OF LIBERTY AND JUSTICE FOR ALL THAT HAS GUIDED OUR GOVERNMENT IN MAKING AND ENFORCING OUR LAWS. IT IS THE OPPORTUNITY FOR LIBERTY AND JUSTICE FOR ALL THAT HAS INSPIRED AMERICANS FROM ALL WALKS OF LIFE TO PARTICIPATE IN AND GIVE LIFE TO OUR UNIQUE FORM OF GOVERNMENT."

THE MAN WHO SIGNED THIS PROCLAMATION CERTAINLY BELIEVES IN, AND IS A PRODUCT OF, A SOCIETY THAT SAFEGUARDS OPPORTUNITY FOR ALL OF ITS CITIZENS. THE MAN STANDING DIRECTLY BEHIND THE PRESIDENT AS HE SIGNED THE PROCLAMATION, CHIEF JUSTICE BURGER, IS ANOTHER AMERICAN SUCCESS STORY, ONE NOT ONLY FUELED IN HIS CAREER BY THE LAW'S GUARANTEE OF OPPORTUNITY, BUT ONE WHO HAS IN RETURN GIVEN BACK A GREAT DEAL TO THE LAW. IT SHOULD BE ONE OF YOUR AIMS TO RETURN TO THE LAW AT LEAST AS MUCH AS IT HAS GIVEN TO YOU. I AM SURE THAT YOU HAVE HEARD BEFORE THAT THE CHIEF JUSTICE IS A MAN OF PLAIN ORIGINS, AND THAT HE ATTENDED A THEN LITTLE-KNOWN LAW SCHOOL'S NIGHT PROGRAM. HIS BEGINNINGS DID NOT BETRAY THE ENORMOUS IMPACT HE WOULD HAVE ON THIS NATION'S JURISPRUDENCE. IT IS A GOOD THING FOR YOUNG LAWYERS TO KEEP IN MIND -- THAT THE LAW IS BLIND TO ORIGINS, AND BLIND TO THE CLASS AND COLOR OF PEOPLE BEFORE THE BAR, BUT IT SEES AND REWARDS LAWYERS OF TALENT EQUIPPED WITH A CAPACITY FOR HARD WORK.

IN TWO YEARS WE WILL BE CELEBRATING THE BICENTENNIAL OF THAT MOST MARVELOUS DOCUMENT, THE CONSTITUTION. THAT SUCH A FRAIL PIECE OF PAPER HAS NOT MERELY SURVIVED TWO CENTURIES BUT ALSO SERVED AS A SHIELD FOR THIS COUNTRY IS A MONUMENT TO THE INGENUITY OF ITS DRAFTERS. BUT IT IS ALSO A MONUMENT TO MORE THAN ITS FRAMERS, IT IS ALSO A CELEBRATION OF ITS KEEPERS: THE LAWYERS AND JUDGES OF OUR PROFESSION WHO WHILE THEY HAVE TANGLED, OFTEN FEROCIOUSLY, OVER ITS MEANING, HAVE NEVER PARTED COMPANY ON ITS ENDURING QUALITY AND THE WISDOM OF ITS DESIGN.

IN A FEW MONTHS YOU WILL TAKE AN OATH TO UPHOLD THE CONSTITUTION. IF YOU REFLECT A MOMENT, YOU WILL QUICKLY REALIZE THAT THERE ARE VERY FEW TIMES IN YOUR LIFE WHEN YOU WILL BE ASKED TO SWEAR AN OATH. THAT IS SO BECAUSE OATHS ARE COMMITMENTS OF ABSOLUTE LOYALTY -- THEY ARE NOT, NOR SHOULD THEY BE, QUICKLY GIVEN. WHEN IT COMES TIME FOR YOU TO TAKE THE OATH, I HOPE YOU DO SO FIRM IN YOUR DEDICATION TO THE ETHICAL STANDARDS OF OUR PROFESSION AND SINCERE IN YOUR PROMISE TO HONOR AND UPHOLD THE CONSTITUTION AND LAWS OF OUR COUNTRY.

THE PRESIDENT'S LAW DAY PROCLAMATION SALUTES THE 99.9% OF OUR PROFESSION WHO DO SO HONOR OUR LAWS. IT IS TOO LONG TO READ TO YOU, BUT I'VE BROUGHT ALONG A CEREMONIAL VERSION TO PRESENT TO THE LAW SCHOOL IN HONOR OF THIS GRADUATION CLASS. I HOPE YOU ALL HAVE A CHANCE TO READ IT AND TO REFLECT ON OUR PROFESSION'S COLLECTIVE CONTRIBUTION TO THE SUCCESS AND STABILITY OF OUR SOCIETY, AND UPON YOUR OWN INDIVIDUAL COMMITMENT TO THAT TRADITION. AGAIN, MY CONGRATULATIONS TO YOU, AND MY THANKS FOR BEING GIVEN THIS OPPORTUNITY. DEAN WALWER, I AM PLEASED TO PRESENT THIS SMALL TOKEN TO A SCHOOL THAT GAVE ME SO MUCH. THANK YOU.

- I am Delighted to be here today at the Washington Phoenix Chapter of the  
- Actually Dany has repeatedly ~~asked~~ asked that I speak to the  
group. I had declined at first for two reasons: the subject of an  
(1) Many of the interesting things we do in OCP areas subject of an  
1947/Client Privilege & can - 2 - not be discussed Publicly  
(2) As I reminded long there are 40,000 lawyers in this city - why in the world  
+ what people don't think much of them would you voluntarily  
TERRITORY AND USING UNDERHANDED TACTICS TO GET RECRUITS. GOD, subject  
yourself  
to eve of the  
as a member  
speaker.  
HAVING BECOME QUITE ANGRY, CALLED THE DEVIL AND SAID "IF YOU  
DON'T STOP THAT TRESPASSING AND THOSE ILLEGAL TACTICS, I'M GOING  
TO SUE YOU!" THE DEVIL THREW BACK HIS HEAD, LAUGHED AND SAID "GO  
AHEAD, YOU WON'T BE ABLE TO FIND ANYONE TO REPRESENT YOU --  
EVERYONE KNOWS I'VE GOT ALL THE LAWYERS DOWN HERE."

WELL, I AM HERE TO TELL YOU SOMETHING ABOUT THE FUNCTION AND  
OPERATION OF THE OFFICE OF COUNSEL TO THE PRESIDENT. LET ME TAKE  
A FEW MINUTES TO DO THAT AND LEAVE SOME TIME FOR Q AND A.

FIRST, IN VIEWING THE OFFICE OF COUNSEL TO THE PRESIDENT  
FROM A HISTORICAL STANDPOINT, IT IS OBVIOUS THAT THE OFFICE'S  
FUNCTIONS HAVE DIFFERED WITH THE VARIOUS NEEDS AND STYLES OF  
PRESIDENTS:

- JUDGE ROSANMON, WHO WAS COUNSEL TO FRANKLIN ROOSEVELT  
(AND APPARENTLY THE FIRST OF THE BREED) WAS PRIMARILY A SPEECH  
WRITER, AS WAS THEODORE SORENSON UNDER PRESIDENT KENNEDY.

- UNDER PRESIDENT EISENHOWER, THE COUNSEL'S OFFICE  
PERFORMED BOTH LEGAL AND GENERAL STAFF FUNCTIONS AND SERVED AS  
THE FINAL CLEARANCE ON LEGISLATION. IN ADDITION, IT SERVED TO  
RESOLVE DIFFERENCES BETWEEN CABINET MEMBERS, OR AT LEAST TO  
REDUCE A CONTROVERSY TO A SINGLE ISSUE FOR THE PRESIDENT TO  
DECIDE.

- PRESIDENT JOHNSON'S COUNSEL PERFORMED THOSE FUNCTIONS,  
AND IN ADDITION, SUPERVISED AN EXTENSIVE TECHNICAL REVIEW OF THE  
MANY JOHNSON LEGISLATIVE PROPOSALS.

° UNDER PRESIDENT FORD, PERHAPS WITH THE HINDSIGHT OF WATERGATE, THE COUNSEL'S OFFICE SERVED AN EXPANDED MANAGERIAL AND SUPERVISORY ROLE, COORDINATING THE POSITIONS OF THE VARIOUS AGENCIES AND PROVIDING A CENTRAL COLLECTION AND OVERSIGHT FUNCTION FOR ALL LEGAL MATTERS OF CONCERN TO THE PRESIDENT.

° THIS EXPANDED ROLE CONTINUED IN THE CARTER ADMINISTRATION, WITH LLOYD CUTLER HAVING SIGNIFICANT POLICY INPUT AS WELL. IN THE LATTER PART OF THAT ADMINISTRATION, HOWEVER, A GOOD PORTION OF THE WORK OF THE COUNSEL'S OFFICE WAS DIVERTED TO WORK ON THE IRANIAN HOSTAGE CRISIS.

THE OFFICE OF COUNSEL TO THE PRESIDENT IN THE CURRENT ADMINISTRATION HAS EXPANDED ITS' ROLE YET FURTHER -- FOR THE FIRST TIME VIRTUALLY ALL DOCUMENTS PRESENTED TO THE PRESIDENT FOR SIGNATURE ROUTINELY GO THROUGH IT. THUS, IN ADDITION TO REVIEWING ENROLLED BILLS, EXECUTIVE ORDERS, AND OTHER DOCUMENTS WHICH IT HAD BECOME A TRADITION FOR THE COUNSEL'S OFFICE TO REVIEW, THROUGHOUT THIS ADMINISTRATION THE COUNSEL'S OFFICE HAS REVIEWED NEARLY EVERYTHING SUBMITTED FOR PRESIDENTIAL SIGNATURE. I WILL CITE NUMEROUS EXAMPLES IN A MOMENT.

DESPITE DIFFERING ROLES, THROUGHOUT THE VARIOUS ADMINISTRATIONS THE OFFICE OF COUNSEL TO THE PRESIDENT HAS REMAINED VERY SMALL. OUR OFFICE SIZE HAS RANGED FROM 5 TO 8 LAWYERS, WHICH IS ABOUT AVERAGE FOR AT LEAST THE PAST THREE OR FOUR ADMINISTRATIONS. GIVEN THAT SIZE, THE OFFICE MUST RELY TO A LARGE EXTENT ON THE EXPERTISE OF LAWYERS THROUGHOUT THE GOVERNMENT FOR RESEARCH AND OTHER ASSISTANCE. IN ADDITION

*the office  
is small*

~~THE OFFICE IS UNIQUE~~ IN ITS LACK OF INSTITUTIONAL KNOWLEDGE. WHEN OUR COUNSEL'S OFFICE SET UP SHOP IN JANUARY OF 1981, THERE WERE NO FILES -- THEY HAD -- AND PROPERLY SO -- ALL BEEN BOXED AND SHIPPED BY THE ARCHIVES FOR INCLUSION IN THE CARTER PRESIDENTIAL LIBRARY. THE OCCASIONALLY ABSURED SITUATION IN WHICH THAT LEFT US CAN BE DEMONSTRATED BY A LETTER WE RECEIVED IN EARLY 1981. [MONDALE LETTER.]

# Bar Examiners

An Affiliated Organization of American Bar Association

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March 30, 1981

017229

The White House Office, Suite 500  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Gentlemen/Ladies:

Our Conference has been asked to prepare the required character report for WALTER FREDERICK MONDALE, a member of the bar of Minnesota who is applying for admission to the bar of the District of Columbia Court of Appeals.

Mr. Mondale has stated that he served as Vice President of the United States from 1977 to 1981. May we have official verification for our report?

Thank you for your assistance.

Sincerely yours,



William H. Morris  
Director of Administration

WHM/rt

THE WHITE HOUSE

WASHINGTON D.C.

April 17, 1981

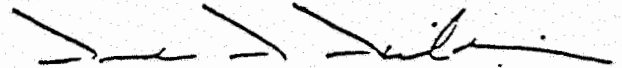
Dear Mr. Morris:

RE: Walter Frederick Mondale

In response to your correspondence dated March 30, 1981, please be advised that "official verification" is difficult, as the former tenants of our building (January 20, 1977 - January 20, 1981) did not leave behind a record upon which one could rely.

However, upon information and belief, I feel fairly confident that the data as to the particular applicant is accurate.

Sincerely,



Fred F. Fielding  
Counsel to the President

Mr. William H. Morris  
Director of Administration  
National Conference of  
Bar Examiners  
Suite 1025  
333 North Michigan Avenue  
Chicago, Illinois 60601

has previous  
little information  
record

THUS, AS YOU CAN EXTRAPOLATE FROM THIS, OUR OFFICE SIMPLY HAS TO RELY HEAVILY ON THE DEPARTMENT OF JUSTICE AND GENERAL COUNSEL OF THE VARIOUS AGENCIES AND DEPARTMENTS ON TECHNICAL LEGAL MATTERS.

A FURTHER DESCRIPTION OF OUR OFFICE'S ROLE CAN BE FRAMED IN A RESPONSE TO THE QUESTION: GIVEN THE EXISTENCE OF THE ATTORNEY GENERAL, AND THE RESOURCES OF THE DEPARTMENT OF JUSTICE, WHY DOES THE PRESIDENT NEED YET ANOTHER COUNSEL IN THE WHITE HOUSE? THE ANSWER, IN SHORT, IS THAT CERTAIN FUNCTIONS SUCH AS MANAGING -- FROM A PRESIDENTIAL PERSPECTIVE -- (1) THE FLOW OF LEGAL MATTERS INVOLVED IN PRESIDENTIAL DECISION MAKING, (2) THE PROVIDING OF ADVICE IN SOME UNIQUELY PRESIDENTIAL MATTERS, AND (3) THE EXERCISING OF A GENERAL LEGAL COORDINATION ROLE IN THE EXECUTIVE BRANCH ARE BEST DONE FROM THE WHITE HOUSE ITSELF.

THE BASIC ROLE OF WHITE HOUSE COUNSEL IS TO MANAGE AND OVERSEE LEGAL MATTERS FOR THE PRESIDENT. THE ATTORNEY GENERAL, THE DEPARTMENT OF JUSTICE, AND COUNSEL IN THE VARIOUS DEPARTMENTS AND AGENCIES CAN PROVIDE ADVICE AND SERVICES; BUT THERE IS A NEED FOR A FOCAL POINT IN THE WHITE HOUSE TO:

- RAISE AND RECEIVE LEGAL INQUIRIES;
- TRANSMIT THE PROPER QUESTIONS TO THE DEPARTMENTAL LAWYERS;
- EVALUATE THE RESPONSES;
- INTERCEPT FAULTY OR BIASED LEGAL WORK;
- RESOLVE OR NARROW CONFLICTS; AND FINALLY,
- FRAME ANSWERS IN THE APPROPRIATE FORMAT FOR CONSIDERATION

BY THE PRESIDENT.

IT IS THE CURRENT WISDOM THAT THIS MUST BE DONE BY LAWYERS WITH A UNIQUELY PRESIDENTIAL PERSPECTIVE.

TURNING TO SOME SPECIFIC EXAMPLES OF FUNCTIONS THAT ARE PERFORMED BY THE COUNSEL'S OFFICE, I HAVE TRIED TO PLACE THEM IN TWO GROUPS: (1) RECURRING ISSUES, AND (2) WHAT I WILL CALL SPECIAL PROJECTS.

(1) RECURRING ISSUES

- PREVENT COMMERCIAL ABUSE OF PRESIDENTIAL SEAL AND THE PRESIDENT'S NAME, LIKENESS, PHOTOGRAPH, SIGNATURE, ETC. (E.G., HEARING AID, AD FOR LAWN FURNITURE),

- PROVIDE GUIDANCE CONCERNING THE PRESIDENT'S STATUTORY REVIEW OF CERTAIN AGENCY ACTIONS: INTERNATIONAL TRADE COMMISSION DECISIONS, CIVIL AERONAUTICS BOARD DECISIONS (NOW WITHIN THE DEPARTMENT OF TRANSPORTATION), FEDERAL MARITIME COMMISSION ORDERS, ETC.

- AS I HAVE MENTIONED, COMMENT ON ALL ENROLLED BILLS AND, WHERE APPROPRIATE, PROVIDE VETO RECOMMENDATIONS. (Farm Bill)

- REVIEW VARIOUS WHITE HOUSE PAPERS FOR LEGAL SUFFICIENCY -- INCLUDING <sup>memoranda</sup> EXECUTIVE ORDERS, <sup>counters</sup> PROCLAMATIONS, <sup>daily</sup> REMARKS, <sup>requent</sup> DECISION MEMORANDA, CABINET PAPERS, ETC. (E.G., RANGING FROM WEIGHTY MATTERS OF STATE TO <sup>responsibility for violators</sup> PROCLAMATIONS PROCLAIMING <sup>such things as</sup> WOODEN HANDLED KITCHEN UTENSIL WEEK, MUSHROOM WEEK),

- REVIEW ALL PRESIDENTIAL SPEECHES, PREPARE PRESS CONFERENCE MATERIALS, AND PARTICIPATE IN PRE-PRESS CONFERENCE PREPARATION (DESCRIBE THE PROCESS),

- ENSURE COMPLIANCE BY WHITE HOUSE STAFF WITH ANTI-LOBBYING, CONFLICT OF INTEREST, ETHICS, TRAVEL, AND OTHER APPLICABLE RESTRICTIONS. (I CAN ASSURE YOU THAT ALTHOUGH THERE MAY BE SOME "YES MEN" IN THE WHITE HOUSE, THE REPUTATION OF THE COUNSEL'S OFFICE IS THAT OF "NO MEN".)

- PROVIDE PRESS GUIDANCE AND BACKGROUND BRIEFINGS ON LEGAL ISSUES ~~AND MATTERS UNDER OUR RESPONSIBILITY~~ AT THE REQUEST OF THE PRESS OFFICE, E.G., GUIDANCE ON RECENT SUPREME COURT OR OTHER DECISIONS.

- MEMBER OF THE CABINET COUNCIL ON LEGAL POLICY [~~AG, MEESE, STOCKMAN, CHAIRMAN OF THE ADMINISTRATIVE CONFERENCE, AND SECRETARIES OF SEVERAL DEPARTMENTS~~],  
*Subset of Full Cabinet.*

- PROVIDE ADVICE OF A SOMEWHAT PERSONAL NATURE TO THE FIRST FAMILY

- \* ANNUAL FINANCIAL DISCLOSURE REPORTS
- \* COORDINATE FILING AND PROVIDE PRESS BRIEFING ON INCOME TAX RETURNS (GOOD EXAMPLE WHERE THE LINE IS DRAWN BETWEEN WORK DONE BY COUNSEL'S OFFICE AND THAT DONE BY PRESIDENT'S PRIVATE ATTORNEY);

- LITIGATION

MONITOR AND SUPERVISE LITIGATION CHALLENGING THE PRESIDENT'S PREROGATIVES AND PROGRAMS, E.G.:

- \* CONSOLIDATED CASES SEEKING TO ENJOIN THE DEPLOYMENT OF THE MX/PEACEKEEPER MISSILE SYSTEM. (DESCRIBE PROCESS)
- \* VARIOUS SUBPOENAS AND DISCOVERY REQUESTS SEEKING WHITE HOUSE DOCUMENTS, SEVERAL OF WHICH, INCLUDING WESTMORELAND V. CBS, HAVE RAISED EXECUTIVE PRIVILEGE ISSUES.
- \* CASE CHALLENGING THE CONSTITUTIONALITY OF REGULATIONS RESTRICTING THE POSTING OF LARGE SIGNS AND THE CONDUCTING OF DEMONSTRATIONS ON THE WHITE HOUSE SIDEWALK.
- \* FREEDOM OF INFORMATION ACT/PRIVACY ACT CASES.

- JUDICIAL SELECTION PROCESS

\* CHAIR FEDERAL JUDICIAL SELECTION COMMITTEE  
*A.G. or D.A.G. + Various Asst. to the P.*  
~~(ATTORNEY GENERAL, DEPUTY ATTORNEY GENERAL,  
ASSISTANT ATTORNEY GENERAL FOR LEGAL POLICY, COUNSELLOR  
TO THE PRESIDENT, CHIEF OF STAFF, AND ASSISTANTS TO THE  
PRESIDENT FOR LEGISLATIVE AFFAIRS, PERSONNEL AND  
POLITICAL AFFAIRS)~~ COMMITTEE PROCESSES AND MAKES FINAL  
RECOMMENDATIONS TO THE PRESIDENT ON ALL APPOINTMENTS  
TO SUPREME COURT, FEDERAL CIRCUIT AND DISTRICT COURTS,  
COURT FOR INTERNATIONAL TRADE, U.S. ATTORNEYS AND U.S.  
MARSHALS.

\* PROCESS CANDIDATES FOR APPOINTMENT TO THE U.S.  
TAX COURT, COURT OF MILITARY APPEALS, AND COURTS  
OF THE DISTRICT OF COLUMBIA.

- PRESIDENTIAL APPOINTMENTS

\* INITIATE AND REVIEW ALL NECESSARY FBI AND IRS  
BACKGROUND CHECKS.

\* ASSURE THE PROSPECTIVE APPOINTEE'S COMPLIANCE WITH ALL  
APPLICABLE LAWS AND REGULATIONS INCLUDING THE ETHICS IN  
GOVERNMENT ACT OF 1978 ~~AND COORDINATE CONFLICTS CLEARANCES  
WITH THE OFFICE OF GOVERNMENT ETHICS, THE ETHICS  
OFFICIALS FOR THE AGENCY TO WHICH THE PERSON IS BEING  
APPOINTED, AND APPROPRIATE SENATE COMMITTEES?~~

\* ASSIST LEGISLATIVE AFFAIRS IN CONFIRMATION PROCESS  
AS NEEDED. (E.G., RECENT CONFIRMATION HEARINGS OF  
SECS. BAKER, BENNETT, HERRINGTON AND HODEL)

- ETHICS IN GOVERNMENT ACT

\* AS THE DESIGNATED AGENCY ETHICS OFFICIAL FOR THE WHITE HOUSE OFFICE, RESPONSIBLE FOR REVIEWING FINANCIAL DISCLOSURE REPORTS OF WHITE HOUSE STAFF AND ASSURING COMPLIANCE WITH ALL LAWS AND REGULATIONS INVOLVING CONFLICTS OF INTEREST AND POST-EMPLOYMENT CONFLICTS OF INTEREST.

- ADVISE THE PRESIDENT ON ALL ISSUES RELATING TO EXECUTIVE PRIVILEGE, AND PROVIDE LEGAL ADVICE ON CONGRESSIONAL REQUESTS FOR PRODUCTION OF PRESIDENTIAL OR CABINET COUNCIL DOCUMENTS (E.G., MEESE, EPA AND INTERIOR).

- WAR POWERS ACT

\* CHAIR WORKING GROUP OF REPRESENTATIVES OF DEFENSE, STATE, JUSTICE, NSC.

- GIFTS

\* REVIEW AND DETERMINE THE PROPRIETY OF GIFTS TO WHITE HOUSE STAFF (FAMOUS MEESE CUFFLINKS),

\* PREPARE AND SUBMIT ANNUAL REPORT TO DEPARTMENT OF STATE ON ALL FOREIGN GIFTS.

- CONTACTS WITH DEPARTMENTS AND AGENCIES

\* PROVIDE GUIDANCE TO WHITE HOUSE STAFF ON THE PROPRIETY OF CONTACTS WITH INDEPENDENT REGULATORY AGENCIES, INVESTIGATIVE AND INTELLIGENCE DEPARTMENTS AND AGENCIES, AND PROCUREMENT AGENCIES.

\* SERVE AS SOLE CONTACT WITH THE DEPARTMENT OF JUSTICE WITH REGARD TO ONGOING INVESTIGATIONS, CASES AND LEGAL

*Optional*

OPINIONS AND WITH THE DEPARTMENT OF TREASURY WITH REGARD TO PENDING INVESTIGATIONS AND CASES, AND TAX RETURN INFORMATION,

- POLITICAL ACTIVITY

\* PROVIDE LEGAL GUIDANCE TO THE PRESIDENT, THE CABINET, AND MEMBERS OF THE WHITE HOUSE STAFF ON ADMINISTRATION POLICY ON POLITICAL ACTIVITIES BY GOVERNMENT OFFICIALS.

THIS INCLUDES:

- ° HATCH ACT;
- ° REQUESTS FOR PRESIDENTIAL LETTERS FOR POLITICAL FUNDRAISERS OR OTHER ACTIVITIES;
- ° LIAISON WITH THE GENERAL COUNSELS TO THE VARIOUS REPUBLICAN PARTY COMMITTEES ON ISSUES INVOLVING FUNDRAISING OR OTHER ACTIVITIES BY THE PRESIDENT OR HIS STAFF, E.G., REAGAN-BUSH '84.

(2) SPECIAL PROJECTS

- CONDUCT AND COORDINATE REVIEWS AND INVESTIGATIONS INTO ALLEGATIONS OF IMPROPRIETY OR ILLEGALITY BY GOVERNMENT EMPLOYEES OR OTHERS (E.G., RICHARD ALLEN, MEESE). *Bruce*

- COORDINATE AND WORK WITH NATIONAL SECURITY COUNCIL AND OTHER INTELLIGENCE AGENCIES ON NATIONAL SECURITY MATTERS.

- LEGAL ADVICE IN CONNECTION WITH INAUGURAL

- LIAISON WITH MEESE INDEPENDENT COUNSEL, "DEBATEGATE."

AND, OF COURSE, THERE HAVE BEEN OTHER PROBLEM CASES THAT WERE RESOLVED WITHOUT PUBLIC CONTROVERSY.

ALTHOUGH MY NO MEANS ALL INCLUSIVE, CONSIDERED TOGETHER THAT LONG LIST SOUNDS RATHER OVERWHELMING. I GUESS THE GOOD NEWS IS THAT ONE AREA IN WHICH WE HAVE VERY LITTLE, IF ANY, INVOLVEMENT IS THE CURRENTLY ~~ONGOING~~ <sup>RAISING</sup> BUDGET BATTLE. GIVEN THE INTENSITY OF THAT BATTLE, <sup>the current state of the W/4 is that</sup> IF THE PRESIDENT EVER DOES GET A BUDGET BILL TO SIGN, ~~THEY'RE SAYING~~ HE'LL HAVE TO DO IT WITH A STEPTIC PENCIL. HOPEFULLY, HOWEVER, THAT LONG LIST, AT THE RISK OF SOME BOREDOM, DID MAKE THE POINT THAT OUR PRACTICE IS, AT THE VERY LEAST, ONE HAVING GREAT VARIETY AND ONE THAT CAN BE FASCINATING. IT IS A RARE DAY THAT WE ACTUALLY WORK ON THE MATTERS WE HAD SCHEDULED FOR THAT DAY.

I HAVE OCCASIONALLY REFLECTED ON ONE ADDITIONAL ASPECT OF OUR PRACTICE THAT DIFFERS MARKEDLY FROM PRIVATE PRACTICE. LAWYERS IN PRIVATE PRACTICE DO NOT NECESSARILY HAVE TO BELIEVE IN THEIR CLIENT -- GIVEN THE UNIQUE CLIENT WE HAVE, AS I'M SURE YOU CAN APPRECIATE, BELIEF IS ESSENTIAL.

LET ME CLOSE WITH AN OBSERVATION REGARDING ~~THE ROTARY CLUB~~. <sup>Stanton Club</sup> THIS PRESIDENT, AS YOU KNOW, HAS GIVEN TOP PRIORITY TO PRIVATE SECTOR INITIATIVES. HE LOOKS TO THEM AND ENCOURAGES THEM TO ASSUME THE RESPONSIBILITY OF HELPING FELLOW MAN. THIS THEME HAS NEVER BEEN MORE IMPORTANT THAN AT THE PRESENT WITH THE EFFORTS TO REDUCE MUCH GOVERNMENT INVOLVEMENT. IN HIS FIRST INAUGURAL ADDRESS, HE SAID: THOSE WHO SAY WE ARE IN A TIME WHEN THERE ARE NO HEROES JUST DON'T KNOW WHERE TO LOOK.

IN CASE YOU DON'T KNOW, HE WAS TALKING ABOUT ORGANIZATIONS SUCH AS <sup>Stanton Club</sup> YOURS AND PEOPLE SUCH AS YOU, <sup>who don't substitute</sup>

THANK YOU, <sup>time & energy to helping others.</sup>

THE WHITE HOUSE  
WASHINGTON

*file -  
Counsel's  
Office*

January 11, 1985

MEMORANDUM FOR DONALD T. REGAN  
CHIEF-OF-STAFF DESIGNATE

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Request for Briefing Materials (1/11/85)

Attached for your week-end review is an outline of the general areas of responsibilities handled by me and my office. This will be supplemented on Monday by a listing of current substantive matters of which you should be aware.

OUTLINE - AREAS OF RESPONSIBILITY  
OFFICE OF THE COUNSEL TO THE PRESIDENT

I. RECURRING ISSUES

- Provide guidance concerning Presidential review of agency action, where provided by statute: International Trade Commission decisions, Civil Aeronautics Board decisions (now within the Department of Transportation), Federal Maritime Commission orders, etc.
- Prevent commercial abuse of Presidential Seal and the President's name, likeness, photograph, signature, etc.
- Comment on enrolled bills and provide veto recommendations, with special attention to effect on President's legal powers.
- Review White House papers for legal sufficiency, including executive orders, proclamations, remarks, decision memoranda, Cabinet papers, etc.
- Review Presidential speeches, public statements, prepare press conference materials; participate in President's pre-press conference preparation.
- Provide press guidance on Supreme Court or other judicial decisions.
- Ensure compliance by White House staff with anti-lobbying, conflict of interest, ethics, travel, and other applicable restrictions.
- Determine the President's obligations under the Railway Labor Act and related statutes and prepare necessary documents to create Emergency Boards.
- Provide press guidance and background briefings on legal issues and matters under our responsibility at the request of the Press Office.

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- Participate in Legislative Strategy Group (LSG) meetings.
- Member of the Cabinet Council on Legal Policy.
- Participate in personnel meetings on controversial Presidential appointment candidates; presentations to the President where necessary.
- First Family
  - .. financial disclosure statements
  - .. coordinate filing and provide press briefing on income tax returns (preparation done by private counsel)
  - .. children
  - .. assistance, handling and reporting of gifts
  - .. special assignments
- Litigation

Monitor and supervise litigation challenging the President's prerogatives and programs, e.g.:

  - .. consolidated cases seeking to enjoin the development of the MX/Peacekeeper Missile System.
  - .. various subpoenas and discovery requests seeking White House and/or Executive Office of the President documents, several of which, including Westmoreland v. CBS, have raised Executive privilege issues.
  - .. case challenging the constitutionality of regulations restricting the posting of large signs and the conducting of demonstrations on the White House sidewalk.
  - .. Freedom of Information Act/Privacy Act cases.
- Judicial selection process
  - .. chair Federal Judicial Selection Committee comprised of the Attorney General, Deputy Attorney General, Assistant Attorney General for Legal Policy, Counsellor to the President, Chief of Staff, and Assistants to the President for Legislative Affairs, Personnel and Political Affairs. Committee processes all appointments to United States Circuit and District Courts, Court for International Trade, and Claims Court, U.S. Attorneys and U.S. Marshals.

- .. process candidates for appointment to the U.S. Tax Court, Court of Military Appeals, and Courts of the District of Columbia.
- Presidential Appointments
  - .. initiate and review all necessary FBI and IRS background checks.
  - .. assure compliance with all applicable laws and regulations including the Ethics in Government Act of 1978 and coordinate conflicts clearances with the Office of Government Ethics, designated agency ethics officials and appropriate Senate Committees.
  - .. assist Legislative Affairs in confirmation process as needed.
- Advise the President on all issues relating to Executive privilege, and provide legal advice on Congressional requests for production of Presidential or Cabinet Counsel documents.
- War Powers Act
  - .. chair working group of representatives of Defense, State, Justice, NSC.
  - .. member of legislative negotiating team (e.g.: Lebanon resolutions).
- Ethics in Government Act
  - .. as the Designated Agency Ethics Official for the White House Office, responsible for reviewing financial disclosure statements of White House staff and assuring compliance with all laws and regulations involving conflicts of interest and post-employment conflicts of interest.
- Gifts
  - .. review and determine the propriety of gifts to White House staff.
  - .. prepare and submit annual report to Department of State on all foreign gifts.

- Contacts with Departments and Agencies

- .. provide guidance to White House staff on the propriety of contacts with independent regulatory agencies, investigative and intelligence departments and agencies, and procurement agencies.
- .. serve as sole contact with the Department of Justice with regard to investigations, cases and legal opinions and Department of Treasury with regard to pending investigations and cases, rulings on pending applications, regulatory actions, and tax return information.

- Security Office: unit of the Counsel's Office responsible for initiating and evaluating reports of all White House and EOB passholders; processing requests for special security clearances; maintaining liaison with department and agency security offices.

- Political Activity

- .. provide legal guidance to the President, the Cabinet, and members of the White House staff on Administration policy on political activities by Government officials. This includes:

- Hatch Act;

- legal review of all requested Presidential letters for political fundraisers or other activities;

- liaison with the general counsels to the various Republican party committees on issues involving fundraising or other activities by the President or his staff.

## II. SPECIAL PROJECTS

- Conduct and coordinate reviews and investigations into allegations of impropriety or illegality by government employees or others.
- Coordinate and work with National Security Council and other intelligence agencies on national security matters.
- Extraterritoriality
  - .. special meetings and negotiations with members of Prime Minister's Cabinet, delegations, and USG.
- Suit brought by Nicaragua against the United States in International Court of Justice.
- Legal advice in connection with:
  - .. Economic Summit
  - .. Reagan-Bush '84
  - .. Inaugural (currently the Counsel serves as General Counsel for the Committee)
- Negotiate resolutions of Executive privilege controversies.
  - .. Current negotiations: Grassley Subcommittee re: Department of Justice/General Dynamics documents.
  - .. Past negotiations: EPA, Interior.
- Formulate policy issues (e.g.: school prayer, tuition tax credits, abortion, "Baby Doe")
- National security, intelligence matters (e.g.: NSDD 84 on classified leaks, Executive Orders on classification, PFIAB, PIOB)
- Special problems (e.g.: liaison with Meese independent counsel, Donovan/FBI confirmation controversy, "Debate-gate"). This includes, of course, problem cases that were resolved without public controversy.

III. LIAISON

- American Bar Association
- Chief Justice of the Supreme Court
- District of Columbia Government
- National Bar Association
- Federal Bar Association
- Office of Government Ethics
- Inspectors General
- Chief Judges
- General Counsels

IV. CURRENT ISSUES

Will provide detailed information.