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THE WHITE HOUSE

WASHINGTON

January 18, 1984

MEMORANDUM FOR WHITE HOUSE STAFF

FROM:

FRED F. FIELDING 
COUNSEL TO THE PRESIDENT

SUBJECT:

Standards of Conduct: Contact with Independent
Regulatory Agencies, Investigative and Intelli-
gence Departments and Agencies, and Procurement
Agencies

It is important that all members of the staff review periodically the standards of conduct governing contacts with independent agencies and with Executive branch departments and agencies having adjudicative, investigative, intelligence and procurement responsibilities. Given the number of new members of the staff over the past two years, and as a reference for all staff members, I am recirculating prior memoranda on the subject. You should give careful consideration to the guidance contained in the attached memoranda, as well as the other guidelines set forth in the White House Office Staff Manual.

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

Thank you.

Attachments

THE WHITE HOUSE

WASHINGTON

July 13, 1981

MEMORANDUM FOR ALL MEMBERS OF THE WHITE HOUSE STAFF

FROM: FRED F. FIELDING 
Counsel to the President

SUBJECT: Standards of Conduct: Contact with Independent
Regulatory Agencies, Investigative and Intelli-
gence Departments and Agencies, and Procurement
Agencies

It is important that you be familiar with the standards of conduct governing the activities of the White House staff in its contacts with the independent agencies and Executive Branch departments and agencies with investigative, intelligence and procurement responsibilities.

Regulatory Agencies: The cases that come before these agencies are of two general types: rule-making and adjudicative. Both are normally extremely complicated, extremely important to the parties concerned, and involve large amounts of money. While there may be exceptional occasions when White House staff contact with agency personnel is justified in rule-making proceedings, there is no justification for involvement in particular adjudicative proceedings. As a general rule, no member of the staff should make an ex parte contact with a regulatory agency in regard to any particular matter pending before that agency, regardless of whether the proceedings are deemed to be rule-making or adjudicative, when such a contact may imply preferential treatment or the use of influence on the decision-making process.

Should you receive inquiries with regard to such matters, you should refer the inquiring party to the agency involved, and express no opinion on the issues raised. In short, White House staff members should avoid even the mere appearance of interest or influence -- and the easiest way to do so is to avoid discussing matters pending before the independent regulatory agencies with interested parties and avoid making ex parte contacts with agency personnel. Should an occasion arise in the course of your duties where it appears necessary to discuss general policy matters with the staff of an independent regulatory agency, to avoid any appearance of impropriety, you should first consult with the Office of the Counsel to the President to determine whether such contact would be appropriate under the circumstances. Such clearance is not required before contacting executive agencies on administrative or purely executive matters where no adjudicative, regulatory or procurement action is involved.

The following agencies, while not an exhaustive listing, are regarded by the Justice Department as independent and should not be contacted by White House staff (except for routine referrals of mail, and administrative matters) without prior clearance with the Counsel's Office:

- Civil Aeronautics Board
- Commodity Futures Trading Commission
- Consumer Product Safety Commission
- Federal Communications Commission
- Federal Election Commission
- Federal Maritime Commission
- Federal Trade Commission
- Interstate Commerce Commission
- National Credit Union Administration
- National Labor Relations Board
- National Transportation Safety Board
- Nuclear Regulatory Commission
- Occupational Safety and Health Review Commission
- Securities and Exchange Commission
- U.S. International Trade Commission

The following agencies, or components of Executive departments or agencies, exercise certain regulatory or adjudicative functions which should be treated as independent. Accordingly, they should not be contacted with respect to the exercise of those functions without prior clearance with the Counsel's Office:

- Environmental Protection Agency
- Equal Employment Opportunity Commission
- Federal Aviation Administration (Transportation)
- Federal Energy Regulatory Commission (Energy)
- Federal Labor Relations Authority
- Foreign Claims Settlement Commission (Justice)
- Merit Systems Protection Board
- Overseas Private Investment Corporation
- Pension Benefit Guaranty Corporation
- U.S. Parole Commission (Justice)

This list is merely illustrative. Many bureaus and divisions of agencies have authority to issue binding regulations or to decide specific claims, and White House staff should not attempt to influence these decisions on an ex parte basis.

Investigative and Intelligence Agencies: As set forth in my memorandum of February 10, 1981 (attached) the ban on contacts extends to the litigating; investigative and adjudicatory divisions of the Department of Justice. The same rules apply to the Internal Revenue Service, the Inspectors General, the Special Counsel of the Merit Systems Protection Board, and similar components of departments and agencies with authority to investigate charges of misconduct, conduct audits of specific programs, or bring complaints before courts or other adjudicative bodies.

White House staff should also confer with the Counsel's Office before making inquiries of agencies with respect to particular individuals. While the White House Office is not bound by the provisions of the Privacy Act of 1974, 5 USC 552a, federal agencies are restricted by that Act from disclosing information about individuals contained in their files. The White House staff should be sensitive to these constraints.

Agencies in the intelligence community, including CIA, NSA, DIA, the Intelligence Division of the FBI, and the intelligence components of the military services, report to the President through his Assistant for National Security Affairs. These agencies should not be contacted directly without coordinating first with the Assistant for National Security Affairs, and, where issues of individual privacy may be concerned, the Counsel to the President.

Procurement Agencies: In recent years, the public has become increasingly sensitive to the allegations of improper influence in the awarding of government contracts. Obviously, no member of the White House staff should contact any procurement officer about a contract in which he has a personal financial interest or in which a relative, friend, or business associate has a financial interest. This is true not only as to calls or contacts in which influence is directly exerted, but also as to so-called "status" calls or other communications which might direct the attention of the procurement officer to the fact that the White House staff member has an interest.

There are likely to be occasions when the White House has a legitimate interest in information about procurement matters; in such instances, the communication should be made by persons who have no direct interest themselves, and whose friends or associates have no such interests. It is advisable that the lack of such interest be made known to those receiving the communication so that unintended inferences do not arise. To the extent that it can be done, information should be obtained after the contracting procedure is completed, or from persons not involved in the decision-making process. To avoid the appearance of conflict and subsequent embarrassment, White House staff members who feel they must contact procurement agencies with regard to pending matters should also first contact the Office of the Counsel to the President.

THE WHITE HOUSE
WASHINGTON

February 10, 1981

MEMORANDUM FOR THE WHITE HOUSE STAFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Communications with the Department of Justice

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

1. All inquiries which concern or may concern particular pending investigations or cases being handled by the Department of Justice shall be directed to the Counsel to the President. If appropriate and necessary, the inquiry will then be transmitted to the Office of the Attorney General or the Deputy Attorney General.

2. All requests for formal legal opinions from the Department of Justice shall be directed to the Counsel to the President, who will direct such requests to the Office of the Attorney General or to the Assistant Attorney General -- Office of Legal Counsel.

3. All comments between the White House Office and the Department of Justice in regard to policy, legislation and budgeting should be handled directly between those parties concerned.

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

THE WHITE HOUSE

WASHINGTON

July 17, 1981

MEMORANDUM FOR THE WHITE HOUSE STAFF

FROM: FRED F. FIELDING



SUBJECT: Communications with the Treasury Department

My memorandum of July 13, 1981 addressed the general issue of White House staff contacts with regulatory, investigative, intelligence and procurement agencies and attached a specific instruction concerning contacts with the Department of Justice. However, I feel it important that you receive this additional memorandum concerning contacts with the Department of Treasury, in light of the sensitive nature of some of its component agencies, such as, the Office of Comptroller of the Currency, Internal Revenue Service, Bureau of Alcohol, Tobacco and Firearms, and the Secret Service.

The following procedures have been established in regard to communications between the White House Staff and the Treasury Department:

1. All inquiries which concern or may concern particular pending investigations or cases shall be directed to the Counsel to the President. If appropriate and necessary, the inquiry will then be transmitted to the Office of the Deputy Secretary of the Treasury.
2. All inquiries which concern or may concern rulings on pending applications, regulatory actions or adjudications shall likewise be directed to the Counsel to the President for transmittal, if appropriate, to the Deputy Secretary.
3. All requests involving tax return information, shall be directed to Counsel to the President. If permitted by the Internal Revenue Code, such requests will be forwarded to the Deputy Secretary of the Treasury, except for routine "tax checks" which will be processed under our existing procedures.

4. Requests for information or statistical data of a routine nature and comments regarding policy, legislation and budgeting should continue to be handled directly between White House staff and the appropriate Treasury official.

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

Thank you.