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DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
1	MEMO	J. MICHAEL LUTTIG TO FRED FIELDING RE JAMES BRADY (PAGES 1-14 ONLY)	14	10/7/1981	B6

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]
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2-21-8

THE WHITE HOUSE

WASHINGTON

MEMORANDUM

Set-up meeting upon return

?

5:00
2-26-82

TO: Michael K. Deaver

FROM: Fred F. Fielding

DATE: February 8, 1982

SUBJECT: "STAND-BY TRUST" (BRADY)

Just a reminder that you want to set a meeting to discuss implementation of this trust.

Also, attached for your information is a copy of the legal opinion rendered by the Office of Legal Counsel and the Office of Government Ethics.

/Enclosures

U.S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

FEB 2 1982

MEMORANDUM FOR FRED F. FIELDING
COUNSEL TO THE PRESIDENT

FROM: Theodore B. Olson
THEODORE B. OLSON
ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL
DEPARTMENT OF JUSTICE

J. Jackson Walter
J. JACKSON WALTER
DIRECTOR
OFFICE OF GOVERNMENT ETHICS

SUBJECT: "Stand By Fund" -- Applicability of Federal Law to Beneficiaries

I. INTRODUCTION

We have received your memorandum of December 17, 1981, regarding the "Stand By Fund," (hereinafter "the Fund") along with certain attached documents and correspondence filed by representatives of the Fund with the Commissioner of Internal Revenue seeking exemption from taxation for the Fund under section 501(c)(3) of the Internal Revenue Code. We understand that the Internal Revenue Service has granted such an exemption. 1/ We have also received an Opinion Letter dated January 26, 1982 from the law firm of Jones, Day, Reavis & Pogue expressing its opinion as to the legality of the Fund. You have asked whether receipt of benefits from the Fund "will in any way contravene any provisions of federal law applicable to present or former government employees or their dependents."

For the reasons discussed more fully below, we are unable to provide you with a definitive opinion addressing whether receipt of benefits from the Fund would in all cases comply with

1/ Our opinion addresses only whether a federal employee may receive benefits from the Fund without violating 18 U.S.C. § 209 or any applicable regulations covering the receipt of outside compensation or of gifts. We have not considered the appropriateness of the Internal Revenue Service's determination to grant § 501(c)(3) status to the Fund, nor have we examined the proposed administration of the Fund in light of § 501(c)(3). See note 8, infra.

federal laws and regulations. 18 U.S.C. § 209 and the various federal regulations addressing the receipt of outside compensation and gifts may or may not be applicable to Fund distributions in an individual case. The manner of solicitation, the circumstances of distribution, and the identities of the donors and the recipient may all be relevant in assessing the legality of any particular distribution. Thus, we are unable to conclude that presently unidentified federal employees could receive distributions from the Fund without contravening any federal law or regulation.

Nevertheless, we have been able to assess the propriety of Fund distributions to the first intended beneficiary, Presidential Press Secretary James S. Brady, in light of the stated purposes of the Fund and applicable laws and regulations. Based on our understanding of the facts and the stated purposes of the Fund, as expressed in the documents we have examined and as explained below, we conclude that Mr. Brady may receive distributions from the Fund without violating section 209, as long as donor anonymity is preserved. We caution, however, that certain additional steps should be taken to avoid conflict with applicable White House regulations. 2/

II. SECTION 209

A. The Stand By Fund

18 U.S.C. § 209 is the central federal conflict of interest statute to be considered in analyzing the Fund. It provides in relevant part:

> (a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government . . . from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

2/ Because we have examined only the propriety of distributions to the first intended beneficiary, Mr. Brady, we render no opinion on the propriety of any future distributions to other possible beneficiaries, such as Secret Service Agency McCarthy.

> Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make its receipt a violation of this subsection --
>
> Shall be fined not more than $5,000 or imprisoned not more than one year, or both. 3/

Thus, Section 209 establishes both a "recipient" and a "payor" offense.

Section 209 has four elements. It

> prohibits (1) an officer or employee of the executive branch or an independent agency of the United States government from (2) receiving salary or any contribution to or supplementation of salary from (3) any source other than the United States (4) as compensation for services as an employee of the United States.

United States v. Raborn, 575 F.2d 688, 691-92 (9th Cir. 1978). Because the first three elements are relatively straightforward, the question whether a payment is "compensation for services as an employee of the United States" is often the focus of a section 209 inquiry. 4/ The answer depends on

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3/ Section 209 does not apply to Special Government Employees or to those serving without compensation. See § 209(c).

Of the criminal conflict statutes applicable to federal employees, we have addressed only 18 U.S.C. § 209. We believe that only § 209 requires examination with respect to the Fund. This belief, of course, rests on the assumption that no corrupt gift offered to influence the performance of official acts, see § 201, is contemplated by the Fund. Our examination of the Fund's intent reveals no such contemplated impermissible gift.

4/ Section 209 does not prohibit the making or receiving of gifts. Nor does it prohibit the payment or receipt of compensation for outside activities unrelated to government services. As the leading commentator has explained:

> It may be debatable in a particular case whether a transfer of an item of value to the government employee was a gift or was a supplementation of the employee's salary "for" his

(continued)

examination of all the surrounding circumstances, keeping in mind the purposes underlying section 209 and its predecessor, 18 U.S.C. § 1914. Broadly stated, the underlying purpose of section 209 is "that no Goverment official or employee should serve two masters to the prejudice of his unbiased devotion to the interests of the United States." See 33 Op. Att'y Gen. 272, 275 (1942).

> Three basic concerns underlie this rule prohibiting two payrolls and two paymasters for the same employee on the same job. First, the outside payor has a hold on the employee deriving from his ability to cut off one of the employee's economic lifelines. Second, the employee may tend to favor his outside payor even though no direct pressure is put on him to do so. And, third, because of these real risks, the arrangement has a generally unwholesome appearance that breeds suspicion and bitterness among fellow employees and other observers.

Association of the Bar of the City of New York, Conflict of Interest and Federal Service 211 (1960) [hereinafter Conflict of Interest and Federal Service].

The intent of both the recipient and the donor may be important factors in assessing whether a particular payment is compensation for government service. When it is clear that the payment is intended as a gift, or is for the performance of outside employment unrelated to government service, section 209 is not offended. See, e.g., United States v. Muntain, 610 F.2d 964 (D.C. Cir. 1979); 41 Op. Att'y Gen. 217, 220 (1955). When intent is not clear, however, an important question may be "whether the individual rendering service to the Government is in a position by virtue of his Government service to assist his private employer." See 41 Op. Att'y Gen. at 220. Similarly, "if there is any substantial relationship or pattern of dealings between the employee's agency and the

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4/ (continued)

> services. But to make out the offense under Section 209, it is essential to establish the linkage between the transfer of the thing of value and the services rendered.

B. Manning, Federal Conflict of Interest Law 163 (1964).

payor, the likelihood is substantially increased that a court or other deciding authority will find a violation." B. Manning, Federal Conflict of Interest Law 165 (1964). It is critical to remember, however, that no one factor is determinative. There need not be a connection between the payor and the employee's agency, for example, to make out a violation under section 209, although such a connection may be an important consideration in assessing the true purpose of a payment. Nor need the employee be in a position to, or actually attempt to, influence the government on behalf of the payor, although again this might prove to be an important consideration. All that the statute actually requires is that a government employee receive outside compensation for his or her government work, not that there be actual or apparent influence. See Conflict of Interest and Federal Service, supra, at 55-56. The totality of the circumstances must be examined in each individual case.

In assessing payments made by the Fund, we look primarily to the expressed intent of that Fund. The purpose of the Fund, as expressed in its amended Articles of Incorporation, is:

> To provide whatever assistance is needed for the complete care, rehabilitation, support or additional extraordinary expenses of Federal employees, and other innocent by-standers who are victims of assassination attempts and their dependents where those victims are injured during an attempt on the life of the President or Vice President of the United States, their immediate families, Presidential Candidates or other senior United States officials. Of primary concern are those persons who place themselves in danger by accompanying the President or his immediate family even though such persons' jobs are not primarily to provide protection. 5/

Letter from James T. O'Hara to Commissioner of Internal Revenue, at 2 (Dec. 23, 1981).

5/ The Fund was originally conceived to provide benefits only to federal employees. The Fund incorporators have indicated, however, that their intention has never been to compensate for government service. Consequently, we have been informed that they have since broadened the class of eligible beneficiaries, as provided above, to include other victims of assassination attempts, whether or not such victims are federal employees, to ensure that their intent is not misinterpreted. This opinion assumes that the Articles of Incorporation have been, or are to be, amended to reflect this change.

It is clear from the supporting documents that the impetus for establishment of the Fund was the wounding of Mr. Brady during the March 30, 1981 attempt on President Reagan's life. See, e.g., Letter from James T. Lynn to Commissioner of Internal Revenue, at 3 (Nov. 23, 1981). In fact, initial distributions from the Fund are expected to be devoted to providing for Mr. Brady's welfare, facilitating any needed changes in his home made necessary by his injury, and enabling him to undergo therapeutic rehabilitation. See id. at 5. The Fund has been established, however, to provide benefits not only to Mr. Brady but also to any future victims who fall within its class of intended beneficiaries. The Fund may also operate a scholarship program.

From our examination of the documents submitted to us and our discussions with the Fund directors we do not perceive that the Fund has been established to compensate government employees for performing their government services. Although the impetus behind establishment of the Fund appears to have been the wounding of a federal government employee while he was accompanying the President, the expressed intent of the Fund, as amended, is to compensate victims without regard to government employment. The smaller class that, according to the amended Articles of Incorporation, is of "primary concern" to the Fund -- "those persons who place themselves in danger by accompanying the President or his immediate family even though such persons' jobs are not primarily to provide protection" -- is not restricted to government employees. Members of the press, for example, presumably fall within this narrower class of beneficiaries who are of "primary concern." Others who are not federal employees -- for example, state or local officials accompanying the President on a local visit -- would also presumably fall within this narrower class. Thus, both the broad class and the narrower class "of primary concern" to those establishing the Fund are not limited to federal employees, suggesting an absence of intent to compensate for government service.

This Fund's intent is also revealed by the grounds for selecting beneficiaries and making distributions: medical and rehabilitative need. Thus, Fund benefits apparently will be distributed on a basis unrelated to a recipient's government service.

Furthermore, the initial motivation behind establishment of the Fund appears to be sympathy and respect for the courage exhibited by Mr. Brady in his struggle to overcome the effects of the shooting, and the inspiration he has provided by virtue of his personality, strength, and character. This motivation does not appear to be grounded in a desire to compensate Mr. Brady for his past, present, or future service. Additionally, as represented in the Fund documents, the majority of the contributors to the Fund are expected to be members of the public making small donations, see Letter from James T. O'Hara to Commissioner of Internal Revenue, at 1 (Dec. 10, 1981), motivated to a large extent by sympathy and compassion for Mr. Brady and other victims of assassination attempts. It is our understanding that the names of donors will be kept anonymous, to ensure against the possibility or appearance of undue influence. 6/ Because the relations of the parties and the ability of the recipient to benefit the payor are considerations in the question of intent under section 209, donor anonymity and the number of small contributions strengthen significantly the inference, which we have drawn from all the special facts discussed herein, that the Fund is not intended to provide compensation for the performance of government service. 7/

We emphasize, however, that should the Fund be administered in a manner that is inconsistent with its stated goal -- so as, for example, to benefit only government employees, under circum-

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6/ Opinion Letter from Jones, Day, Reavis & Pogue, at 5 (Jan. 26, 1982) (hereinafter Jones, Day Opinion Letter). For a discussion of the anonymity required, see footnote 7 and section III, infra.

7/ Anonymity is an important factor in our assessment of the Fund's status under § 209 because it tends to remove a significant concern: that the recipient will feel obliged to the payor. If a federal employee is unable to discover the identity of contributors, there is far less likelihood that the proper performance of his or her job will be distorted by divided loyalty.

Of course, anonymity alone is insufficient if other indicia point to an intent to compensate for government service. In this case, however, the surrounding circumstances support an inference that no such intent is present. The feature of anonymity serves to strengthen significantly our confidence in drawing this inference. Thus, our opinion depends on the preservation of donor anonymity.

As discussed more fully in Section III, infra, we believe that the method of preserving anonymity presently contemplated by the Fund is inadequate, because it permits donors to make public their contributions. There are several possible solutions to this problem, as discussed in Section III. Our approval of the Fund under § 209 is contingent on adoption of an effective method to ensure anonymity.

stances that reveal an intent to compensate them for government service, or by dispersing benefits without the required anonymity as to donors -- we would wish to reexamine our conclusion to determine if the operation of the Fund raised a question under section 209. Similarly, it would be appropriate to reexamine our conclusion if donations were being sought not for the general "Stand By Fund" described above, but rather for a "James Brady Trust," or were otherwise sought specifically for Mr. Brady. 8/ Finally, we would wish to examine any proposed distributions to other federal employees, as other circumstances might render our conclusion inappropriate. See note 2, supra.

B. Payment of Fund Benefits to James Brady

Because the Fund might raise a section 209 question depending on its administration, choice of recipients, etc., we believe it is appropriate to examine not only the stated purposes of the Fund but also the proposed distributions to Presidential Press Secretary James Brady. We are informed that Mr. Brady continues to be a full-time, fully compensated federal employee serving at the pleasure of the President. His injuries resulting from the March 30, 1981 attempt on President Reagan's life provided the impetus for establishment of the Fund, and it is intended that he will be the Fund's initial beneficiary. Distributions to him, as to any other future Fund beneficiaries, are to be made on the basis of medical and rehabilitative need, as determined by the Fund's Board of Directors.

Although Mr. Brady is a federal employee in the Executive branch who would, by accepting Fund benefits, be receiving a supplementation or salary from a source other than the government, thus satisfying the first three elements of section 209, see United States v. Raborn, 575 F.2d at 691-92, our examination of all of the relevant circumstances leads us to conclude that Fund benefits are not intended to serve as "compensation for government service." Thus, the fourth element required to find a violation is not met. We are aware of no circumstances to suggest that our conclusion as to the purpose of the Fund -- that is, that it is not intended to compensate for government service -- is inappropriate in the face of the proposed distributions to Mr. Brady. In

8/ Of course, solicitations specifically for Mr. Brady rather than for the Fund might also raise questions under § 501(c)(3) of the Internal Revenue Code. Although we have not examined specifically the § 501(c)(3) determination, see note 1, supra, we emphasize that the Fund approved by the IRS is not a trust established solely for the benefit of Mr. Brady, and that solicitations should reflect the nature of the Fund as approved by the IRS.

fact, the unique circumstances of the wounding of Mr. Brady, and the subsequent outpouring of national sympathy in response to the great courage and humor he has shown during his recovery, support the conclusion that the intent is other than to compensate him for his government service. This inference is further supported by the fact that the amount of Fund benefits will be determined on the basis of Mr. Brady's medical and rehabilitative needs, rather than on the basis of any service to the government. Thus, we do not believe that distributions to Mr. Brady would violate 18 U.S.C. § 209.

C. Conclusion Regarding Section 209

A violation of section 209 occurs when all elements of the offense are present. Generally, an examination of all the circumstances determines whether a payment is considered to be compensation for government service. Our examination of the stated purposes of the Stand By Fund and the proposed initial distributions to James Brady, in light of all the circumstances, suggest an absence of intent to compensate for government service. We conclude, instead, that the Fund reflects a response to the extraordinary example set by Mr. Brady, whose courage and continuing humor in the face of extensive injury have apparently motivated the Fund incorporators to establish a trust for victims of assassination attempts. This motivation appears to be unconnected to any desire to compensate for government service, as demonstrated by the chosen class of beneficiaries, the policy of donor anonymity, and the fact that distributions will be tied to medical and rehabilitative need. We do not intend that this opinion be construed to suggest that other funds, which might be designed to relieve the burdens of or to enhance the circumstances of federal employment, would be permissible under section 209. To the contrary, only the extraordinary circumstances of this case permit a conclusion that the Fund has no such impermissible purpose, and it is for this reason that we are able to conclude, assuming donor anonymity is achieved, that section 209 will not be violated if Mr. Brady accepts distributions from the Fund.

III. APPLICABLE REGULATIONS

Any federal employees receiving benefits under the Fund must comply with applicable regulations regarding receipt of outside compensation and gifts. The applicability of these regulations may differ depending on the identity of the employing agency and the nature of the employee's job. Thus, regulations should be examined on a case-by-case basis.

The regulations applicable to Mr. Brady are the Standards of Conduct for Employees in the Executive Office of the President, 3 C.F.R. § 100.735 (1981). Specifically, § 100.735-14 provides:

> § 100.735-14 Gifts, entertainment, and favors.
>
> (a) Except as provided in paragraph (b) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who:
>
> (1) Has, or is seeking to obtain, contractual or other business or financial relations with his agency; 9/
>
> (2) Conducts operations or activities which are regulated by his agency; or
>
> (3) Has interests which may be substantially affected by the performance or nonperformance of his official duty. 10/

It is our understanding that the Fund does not have, and does not expect to have, contractual or other business or financial relations with the White House, and that its operations and activities are not regulated by the White House Office. We further understand that the Fund has no interests that would be substantially affected by the performance or nonperformance of Mr. Brady's duties. *See* Jones, Day Opinion Letter, at 4. Based on these representations, the Fund itself is not a disqualified giver.

The regulation, however, forbids either "direct or indirect" receipt of gifts from disqualified persons. § 100.735-14(a). Thus it is necessary to examine not only the Fund but also those who act in behalf of the Fund or who make donations to the Fund, as explained more fully below.

9/ Mr. Brady's "agency" is the White House Office. *See* § 100.735-2.

10/ There are exceptions, but they do not appear to be applicable. They include gifts from "a friend, parent, spouse, child or other close relative when the circumstances make it clear that the family or personal relationships involved are the motivating factors"; food or refreshments of nominal value at a luncheon or dinner meeting; loans from banks and financial institutions; and promotional materials. *See* § 100.735-14(b).

Directors and officers of the Fund who have an actual or apparent conflict with respect to a particular beneficiary will be disqualified with respect to that beneficiary. See Jones, Day Opinion Letter, at 2, 5. While this rule may be appropriate for future distributions, we believe that it is inadequate as applied to initial operations of the Fund. Unlike a charitable group such as the March of Dimes, the Fund anticipates that it will devote its initial operations to the welfare of only one person: Mr. Brady has been identified by the Fund as "the only individual in immediate need of the Fund's assistance." See Letter to Commissioner of Internal Revenue from James T. Lynn, at 5 (Nov. 23, 1981). In light of this expectation, and under these unique circumstances, we conclude that no director of the Fund, and no person otherwise involved in setting up the Fund, may be a person who is disqualified from giving a gift to Mr. Brady. We have not, however, reviewed the circumstances of persons involved in establishing the Fund, and we do not mean to suggest that any specific individual is so disqualified. Should circumstances change so that there are several beneficiaries, it might then be permissible simply to invoke the disqualification rule contemplated in the Jones, Day Opinion Letter.

A similar difficulty arises with respect to those expected to solicit on behalf of the Fund. As we understand the Jones, Day Opinion Letter, the Fund does not intend to require disqualification when a person soliciting for the Fund is prohibited from making a gift to a particular beneficiary. We understand that a financial contribution is not a prerequisite to membership on a fundraising committee of the Fund, and that those serving in a fundraising capacity will have no control over disposition of donations. See Jones, Day Opinion Letter, at 5. Nevertheless, it would be inappropriate for a fundraiser to be one who is disqualified from making a gift to Mr. Brady, in light of the special nature of the Fund and the fact that its initial operations are intended to be devoted to him. One who is prohibited from giving a gift may not avoid that prohibition simply by soliciting others to make that gift. Such a mechanism would seem to violate the proscription against "indirect" gifts and is inconsistent with the spirit of the regulation: the concerns behind the regulation -- undue influence, the appearance of impropriety -- are no less real when a disqualified giver serves as the focal point for collecting funds rather than donating the funds out of his or her own pocket. Because the initial operations of the Fund are intended to be devoted to the welfare of Mr. Brady, fundraising on behalf of the Fund must not be accomplished by those who are themselves disqualified from making gifts to Mr. Brady.

The prohibition against indirect gifts to Mr. Brady also requires care with respect to those making donations to the Fund. Although "[d]ecisions as to distributions of contributed monies lie within the exclusive power and discretion of the Fund's Board of Directors," see Jones, Day Opinion Letter, at 5, it is clear that initial expenditures are intended to be made in Mr. Brady's behalf. In fact, it is not unreasonable to suppose that contributions to the Fund may be made on the basis of such an expectation. To alleviate the problem of assessing whether each individual donor is disqualified, the Fund will not disclose the identity of any donor, nor will it verify or confirm the identity of a donor, or the fact or amount of any contribution to the Fund. See id. Individual donors may disclose their contributions, however, and there is no intended mechanism to counteract such a disclosure.

Although the Fund's policy of anonymity is sound, we believe that the regulations prohibit Mr. Brady's receipt of any gift from a disqualified donor when anonymity has not been preserved, even if the Fund itself is not responsible for disclosing the information. 11/ It is not the Fund that is regulated but rather Mr. Brady, whose responsibility under the regulations must be met regardless of the Fund's conduct. Furthermore, § 100.735-15 must be considered. That section prohibits "(a)cceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, a conflict of interest." Generally, compliance with this regulation requires sound judgment exercised in light of the importance of avoiding even an appearance of a conflict of interest. This regulation also counsels for ensuring the anonymity of donors.

Because the Fund's proposed method of ensuring donor anonymity appears to be inadequate to meet these requirements, we believe further steps should be taken. There are several possible steps that we have outlined below, to aid the Directors in choosing a method to ensure anonymity. By suggesting these possible solutions, we do not mean to preclude equally effective

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11/ The White House regulations do not actually prescribe anonymity as a cure for disqualification. However, because of the "hybrid" nature of the Fund -- that is, it is a general charitable trust, but its initial beneficiary is intended to be just one person -- donations to the Fund, at least in its initial stages, are neither exactly like a donation to a very general organization such as the United Way, nor exactly like a gift directly to Mr. Brady. We believe that anonymity provides the best solution to the problem of disqualification in this special set of circumstances.

alternatives. The important element is that Mr. Brady not be put in the position of accepting any Fund benefits that come from one who is disqualified and who has not preserved anonymity. The principal responsibility to achieve this goal will belong to the Fund directors, who might do any of the following: (1) the Fund might make it a condition of acceptance of a donation that no donor who is disqualified from making a gift to Mr. Brady disclose the fact of or any information about a donation; (2) the Fund might require donors to certify that (a) they are not disqualified under the regulations, or (b) if they are, they will not disclose their donations; (3) the fund might examine the identity of each donor and accept donations only from those not disqualified; (4) the Fund might make any funds received from disqualified persons who identify their donations unavailable for distribution to Mr. Brady. Mr. Brady should also agree to return the amount of any donation from a disqualified person who subsequently reveals the fact of donation. The Fund may also identify other alternatives to achieve anonymity. We do not mean to preclude such alternatives, and would be glad to consult as to their effectiveness. 12/

Finally, we note that both Mr. Brady and White House employees are covered by section 735-14(c), which provides:

> An employee shall not solicit contributions from another employee for a gift to an employee in a superior official position. An employee in a superior official position shall not accept a gift presented as a contribution from employees receiving less salary than himself. An employee shall not make a donation as a gift to an employee in a superior official position (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness or retirement.

While there is an exception contained in subsection (c) for donations in nominal amounts on the occasion of illness, no significant contributions from those in the White House Office whose positions are inferior to Mr. Brady are permissible, unless, again, anonymity is preserved.

12/ To avoid any violations, inadvertent or otherwise, of § 209 or of the regulations, private legislation exempting Fund recipients who are federal employees from the provisions of law discussed herein can provide the best guarantee. Such legislation could also relieve the Fund of some of the limitations we discuss that are unavoidably generated by such laws.

Finally, we stress that solicitations should not be made by White House personnel except in a personal capacity on personal time, away from the Executive Offices. In fact, we believe that an appearance of impropriety may best be avoided if White House employees avoid soliciting donations altogether. At the very least, a White House employee should not solicit from anyone from whom he or she is prohibited from receiving a gift, as well as from those who may not make gifts to Mr. Brady.

IV. CONCLUSION

Our examination of the stated purposes and proposed operation of the Stand By Fund reveal, in light of all the circumstances, an absence of intent to compensate for government service. Thus, we conclude that distributions to Presidential Press Secretary James Brady, under the circumstances contemplated in the Jones, Day Opinion Letter and assuming that donor anonymity is maintained, will not violate section 209. We caution, however, that extreme care must be taken to ensure that benefits from the Fund are not received in contravention to applicable White House regulations. Anonymity of donors and careful selection of directors and fundraisers are essential to this conclusion. Finally, we also emphasize, in keeping with the purposes of the Fund and representations made to the Internal Revenue Service, that solicitations should be made in the name of the Stand By Fund, not Mr. Brady.

THE WHITE HOUSE

WASHINGTON

December 4, 1981

MEMORANDUM FOR MICHAEL K. DEAVER

FROM: JOSEPH W. CANZERI

SUBJECT: JIM BRADY TRUST LETTERS

Attached are three suggested letters for Mrs. Reagan's approval for the Jim Brady Trust Fund drive.

Tab A - by Dodie Kazanjian

Tab B - by Aram Bakshian

Tab C - by Mark Weinberg

Please read these and give me your thoughts, ideas, etc. so that we can do a final draft for approval by the legal counsels and Mrs. Reagan.

Thanks very much.

A

THE WHITE HOUSE

WASHINGTON

December 4, 1981

MEMORANDUM FOR: JOE CANZIERI

FROM: DODIE KAZANJIAN

SUBJECT: STAND BY FUND

Here is the letter that you asked me to draft regarding the Stand By Fund for Mrs. R's signature.

I think it would be appropriate to enclose a card that would explain both the tax exempt status of the fund and how to contribute. Mrs. R should not have to do that in the letter.

Also, if a quote from the doctor is used - which I recommend - the doctor should be called to get better wording that indicates there is still a long way to go before recovery. I have paraphrased...it is not a direct quote.

In addition, Mr. Wilderotter suggested that the stationery be printed with the letterhead "Friends of Jim Brady" at the top. This is not bad. However, I would recommend "Jim Brady's Friends" instead. This is straight forward, more direct...and very much to the point.

(Note: The attached is just a rough draft.)

stand by fund
letter draft
kazanjian

THE WHITE HOUSE

WASHINGTON

Dear ___________:

I am writing to you on behalf of the Stand By Fund.

The purpose of this new fund is to help federal employees who are innocent victims of assassination attempts - and their families - where those victims are injured during an attempt on the life of the President or the Vice President of the United States, a member of their immediate families, a major Presidential candidate, or other major senior U.S. Government officials.

The Fund's objective is to provide financial assistance for those whose official government duties do not primarily involve protection of the President, but nonetheless expose them to danger. The Fund is not meant to duplicate government benefits that already exist. Voluntary contributions to the fund would suupplement government programs or insurance which do not fully cover the treatment and rehabilitation costs for assassination victims.

Jim Brady is one individual who is in all of our minds. He is a person the fund can help.

Jim and his family have very substantial, unreimbursable expenses that arose from his injury last March at the side of my husband. He is no longer in the hospital where expenses were covered. He is home now, where all expenses are not covered. His entrance back home is a new phase of his rehabilitation. While he has made splendid progress and while his courage is an inspiration to us all, we must remember what his doctor said, "Jim Brady still faces a major course of rehabilitative treatment that could take a lot more time." (get direct quote from doctor)

For this reason, a group of Jim Brady's friends decided to form this organization to help him and others who could be innocent victims of a similar tragedy.

My husband and I care very much for Jim and his family. The thought that because my husband is President can endanger the lives of people around him is frightening to both of us. It would be Some comfort to have something in place to protect the innocent victims who are not the targets.

Nothing can really compensate for the suffering and the anguish for the families, but through this fund, they can at least have the solace of knowing that Americans care.

As my husband believes, Americans have a long and proud tradition "that neighbor would care for neighbor."

Won't you please join me and be a neighbor to Jim Brady.

Yours sincerely,

NR

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 3, 1981

MEMORANDUM FOR JOE CANZERI

FROM: MARK WEINBERG MW.

SUBJECT: Jim Brady Trust Fund Letter

Per your request, I spoke with Jim Wilderotter about Mrs. Reagan's letter for the Jim Brady Trust Fund. Following is a suggested draft for the letter. Please note that Jim would like to have the lawyers look at the letter before it goes to Mrs. Reagan.

Dear ////////:

I am writing to you on behalf of a very special friend, Jim Brady. Nothing has pleased Ronnie and me more than Jim's miraculous recovery and his courage and strength. Jim is a remarkable man who is an inspiration to all of us.

Jim Brady is home now and well on the road to full recovery. But it will be a long road and we cannot think that just because Jim is out of the hospital, he and Sarah have met all of the challenges his injury brought. There will be many expenses and burdens which Jim and Sarah will have to bear and I am writing to invite you to join with Ronnie and me to help them.

Jim and Sarah's friends have formed a non-profit trust, known as the ///////////. Its purpose will be to help Jim and Sarah as they resume their life at home together and to make sure that they will not have to worry about anything other than Jim's recovery and return to work. Donations to the trust will be tax deductible and will go to the worthiest cause I can think of.

Won't you join Ronnie and me in helping our special friend? Jim and Sarah Brady have faced this difficult time bravely and with good humor. They deserve to be able to free from having their lives disrupted again by unforseen expenses or circumstances.

Thank you for your concern and compassion.

Sincerely,

Nancy Reagan

(Parvin/AB)
December 3, 1981

MRS. REAGAN: JIM BRADY FUNDRAISING LETTER

Dear Friend,

After nearly eight months in the hospital, Jim Brady recently returned to his home and his family. They were months of anguish and heartache as Jim endured four operations and several frustrating setbacks. Yet they were also months of joy as this remarkable man showed us the meaning of courage and hope. His determined recovery has been an inspiration not only to my husband and me but to so many others who prayed for his well-being.

During this tragedy I came to respect and love someone who is also very special -- Sarah Brady. In the agonizing hours after the shooting, Sarah and I developed a bond that was forged for a lifetime. With quiet strength, she has managed the demands of her husband's ordeal as well as the motherly responsibilities of raising a 2-year-old son.

Jim and Sarah's trials, however, are not yet over. The difficult business of rehabilitation continues. In the period ahead, Jim will return to the hospital five days a week for physical, occupational and speech therapy. There will be a number of extraordinary expenses not covered by Government funds. In fact the bills are already piling up.

I believe that it would be excellent therapy for both Jim and Sarah to know they need not worry about financial difficulties caused by the tragedy last March. As a result, a number of Jim's friends are establishing a fund to help the Bradys in the months ahead, and that is why I am writing you today.

Jim Brady served my husband and this nation at a terrible cost that can never be repaid. But we can ease the mending of his life through our generosity. We want Jim to concentrate on returning to work, not on financial problems. Will you help?

I spoke to Jim not long ago. He has not lost his great good humor, courage, and dignity. I know he hasn't lost his friends either. Thank you for your kindness in aiding Jim and Sarah Brady.

Sincerely,

Nancy Reagan

THE WHITE HOUSE

WASHINGTON

November 17, 1981

New Tuesday after Thursday 2:30

MEMORANDUM FOR MEMBERS OF THE PLANNING COMMITTEE

FROM: JOSEPH W. CANZERI

SUBJECT: JIM BRADY FUND COMMITTEE

The following is a tentative list of people suggested to served on the Jim Brady ~~Fund~~ Trust Committee. The Committee

Your suggestions and comments are welcomed.

Mrs. Reagan, Chairman
Katherine Graham, Washington Post
Bill Plante, CBS
Lisa Myers, NBC
Hugh Sidey, TIME
William Marriott, Marriott Corporation
Gary Schuster, Detroit News
Clement Stone, Combined Insurance of America
Mike Wallace, CBS
John Connally, Vinson & Elkins
Barbara Walters, ABC
Jack Valente, Motion Picture Institute
William Roth, U. S. Senator
~~Ed Koch~~ Jim Thompson
Tip O'Neill
Jim Lynn

~~Thanks very much.~~

Trust Committee

Dr Cochrane ✓ Fred Fielding ✓

~~Altman~~ Bob Douglas

Dubilier = Bill Plante ✓

Ron Weiner Lisa Myers ✓

2:30 Tuesday Fielding

THE WHITE HOUSE

WASHINGTON

November 17, 1981

MEMORANDUM FOR MEMBERS OF THE PLANNING COMMITTEE

FROM: JOSEPH W. CANZERI

SUBJECT: JIM BRADY FUND COMMITTEE

The following is a suggested list of people to serve on the Committee for the Jim Brady Trust Fund.

Mrs. Reagan, Chairman
Katherine Graham
Bill Plante
Lisa Myers
Hugh Sidey
William Marriott
Gary Schuster
Clement Stone
Mike Wallace
John Connally
Barbara Walters
Jack Valente
William Roth
Jim Thompson
Tip O'Neill
Jim Lynn
Dr. Cobrene
Fred Fielding
Bob Douglas
Bob Dahlgren
Ron Weber

The next meeting will be held on Tuesday afternoon, December 1 at 2:30pm.

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1	MEMO J. MICHAEL LUTTIG TO FRED FIELDING RE JAMES BRADY (PAGES 1-14 ONLY)	14	10/7/1981	B6

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]
B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
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Self Only	101	
Self and Family	102	

Who Can Enroll	All Federal employees and annuitants.

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Benefits	Plan Pays/Provides
Inpatient Care	100% of covered charges for: • 365 days per confinement in a member hospital (80%* for additional days) • Inpatient physician care, intensive care, and consultations • Surgery
Outpatient Care	100% of covered charges for: • Services within 72 hours of an accidental injury or medical emergency • Services within 72 hours of surgery in a member hospital • X-ray and lab services in a member hospital, by a physician or an independent laboratory. • Chemotherapy, radiation therapy, and renal dialysis in a member hospital or by a physician 80%* for: • Physicians' home and office visits and second surgical opinions • Prescription drugs • Durable medical equipment • Allergy tests and injections • Professional ambulance services • Private duty nursing 70%* for: • Psychotherapy by a physician, clinical psychologist, psychiatric nurse or social worker
Surgery	100% of covered charges for: • Surgery performed by a physician in or out of a hospital • Related anesthesia
Emergency Care	100% of covered charges for: • Hospital services within 72 hours of an accidental injury or medical emergency • Physician emergency treatment within 72 hours of an accidential injury or medical emergency
Special Features	Dental Care Benefit—Schedule allowance for covered services for all subscribers. 80%* for services, supplies and appliances for dental care related to an accidental injury Alcoholism Rehabilitation—100% of covered charges for inpatient alcoholism rehabilitation for up to 28 days per treatment session in a member hospital or approved freestanding facility. Maximum of two sessions per lifetime Newborn Benefit—100% of covered charges for first routine inhospital examination (under family contracts) and for circumcision Vision Benefit—80%* for one set of eyeglasses or contact lenses required as a result of intraocular surgery or ocular injury Home Health Care—100% of covered charges for up to 90 days of home health care per confinement Freestanding Ambulatory Facilities—100% for surgery and/or renal dialysis in a freestanding ambulatory facility which has been approved by the local Plan *Deductible—$150 annual deductible for all services paid at 80% or 70% Family Deductible Limit—Under family enrollment, only two family members must meet their deductibles in a calendar year Maximum Benefits—No lifetime dollar maximums, except certain charges (mainly outpatient) for the treatment of mental illness are limited to $50,000 per patient per lifetime Catastrophic Protection Benefit—100% after all deductibles are met and your share of covered expenses reaches $1,000 Medicare Waiver—If you have Part B of Medicare, you do not have to meet the $150 deductible or pay the 20% and 30% coinsurance