

6/12/79 [3]

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THE WHITE HOUSE
WASHINGTON

Wkly Rpts

THE WHITE HOUSE
WASHINGTON
6/12/79

Frank Moore

The attached was returned in
the President's outbox today
and is forwarded to you for
appropriate handling.

Rick Hutcheson

cc: The Vice President
Hamilton Jordan
Stu Eizenstat
Jack Watson

ADMINISTRATIVELY CONFIDENTIAL

2606

THE WHITE HOUSE

WASHINGTON

June 11, 1979

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ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR THE PRESIDENT

FROM: FRANK MOORE

SUBJECT: Weekly Legislative Report

I. DOMESTIC POLICY ISSUES

1. Appropriations

Senate

Last Thursday, we met with Senator Magnuson's staff to anticipate Senate subcommittee mark-up this Thursday. Preliminary indications are that Senator Magnuson will be helpful.

We met with the Departments on Monday morning to coordinate our activities. Our priorities are to oppose the following House add-ons:

(\$ in millions)

NIH.....	+208 ✓
Impact Aid (B students).....	+277 ✓
Vocational Education.....	+105 ✓
Other health increases.....	+130 ✓

We will also oppose expected Senate subcommittee efforts to make CETA policy cuts.

House

HUD-Independent Agencies - Scheduled for Floor Action Thursday.

✓ The Administration position on this bill is: "We support the bill, though we object to the 3,800 personnel increase for VA."

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Floor amendments to restore \$400 million for EPA construction programs and to cut general revenue sharing may occur.

Treasury-Postal Service - Scheduled for Floor Action - Friday.

The House full committee completed action on this bill on Thursday. For discretionary programs, the committee bill is essentially at your request.

The bill includes a "pay cap" general provision limiting the pay increase for Government blue collar workers to the same overall average percentage increase as the white collar workers. The committee also accepted the following:

- Steed amendments to provide the \$2 million requested for the President's Commission on Pension Policy and an unrequested \$2.6 million for the Merit System Protection Board.
- An Addabbo amendment to restore \$710,000 for salaries and expenses of the White House staff.
- A Steed amendment deleting language (adopted by the subcommittee) that prohibited the Secret Service from paying for space on a Presidential candidate's aircraft occupied by agents protecting the candidate.

Congress should define legal uses of expense allowance -
Congressman Miller continued to threaten the Executive Office budget, particularly for the Office of Administration and the White House Office. He also criticized your \$50,000 expense allowance as not being used for expenses. He also proposed reductions in the amount recommended for allowances and office staff for former Presidents. Although minimal support was apparent in the committee, his efforts are expected to continue on the floor of the House.

The Administration supports passage of this bill on the House floor.

Transportation

At full committee mark-up today, we expect a further attempt to increase highway and mass transit spending by Members of the Public Works Committee; however, we do not expect these efforts to be successful.

Legislative

This bill was initially scheduled for floor action Thursday, but it has been postponed, probably resulting from the controversy over the pay provisions for Government employees (including Congressmen) earning \$47,500 or more. While the Administration supports increases for senior Executive Branch employees, we will need to present our view very carefully--with the help of the Leadership.

2. Energy

Windfall Profits Tax

The Committee held one day of mark-up on Thursday and reconvenes this afternoon. The Thursday session was spent discussing the general situation and such things as the definitions of old oil, tertiary oil, etc.

The Committee Democrats decided earlier in the week to take up the foreign tax credit immediately following completion of windfall profits tax. Chairman Ullman subsequently invited Secretary Blumenthal to testify on foreign tax credits on June 19. Hopefully this means that he still plans to complete work on WPT by June 15.

The "tighteners" proposed by Chairman Ullman include: raising the tax to 60% on the profits resulting from decontrol (50% would be retained for newly discovered oil, tertiary oil and stripper-well oil selling below \$20); changing the decline curve on old oil with the tax disappearing in July 1984, rather than May 1983; extending the tax to Alaskan oil from existing wells; and taxing marginal wells as old oil rather than new oil.

Other Members are likely to offer additional proposals to "toughen" the tax. At this point it is still difficult to know how far the Committee will be willing to go.

On the other side there are reports of splits in the oil industry between those with production in the "lower 48" and those producing in Alaska over whether to fight the strengthening of the windfall profits tax or to fight the imposition of the tax on Alaskan oil.

As we reported last week the effort to include a plowback provision has subsided.

Decontrol

By the end of this week DOE will have contacted 74 House Members who, on the basis of previous votes, seem "undecided" on decontrol. Early contacts reveal that more than half favor decontrol.

Moorhead Bill - Synthetic Fuels

Stu's Energy Task Force is coordinating a substantive review of the proposals. We will supply you with the findings and our collective views on the issue before you leave for Vienna.

Wright and Dingell's public statements following the Wednesday breakfast seem to indicate an expectation that the Administration will support a program of the size envisioned in the Moorhead bill.

3. Hospital Cost Containment

Senate

The Senate Finance Committee will resume consideration of HCC and the Talmadge bill on June 12. The Human Resources Committee is scheduled to consider HCC on the 13th.

House

Why? (If we have the votes) Ullman is hesitant to bring up HCC in Ways and Means until after the July 4 recess. WHCL will meet with the committee staff to compare vote counts on the critical amendments. Once the 19 votes are confirmed we will try to convince Ullman to schedule HCC before July 4.

It is possible the Health subcommittee of Commerce will begin its work the week of June 18.

4. National Health Plan

HEW is nearing completion of their briefings. They have concentrated on members of the Finance Committee because action is expected in that forum first. They have also briefed members of Labor and Human Resources and some members of Ways and Means and Commerce. The announcement is set for Tuesday.

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5. Davis-Bacon

The House defeated Hansen's Davis-Bacon repeal amendment to the housing authorization bill (155-244).

In the Senate Armed Services Committee the Tower amendment to the military construction bill was adopted by a vote of 11-5. Thursday morning the Senate Banking Committee defeated 7-6 a Davis-Bacon repeal amendment to the EDA authorization bill.

DOL anticipates a difficult time in staving off other attempts to attach Davis-Bacon repeal measures as these bills reach the floor. DOL congressional liaison will be working with the unions and the Senate Labor Committee staff to develop a floor strategy.

6. Export Administration Act

House floor consideration is not expected before mid-July. The Senate schedule is uncertain -- Senator Ted Stevens would like to delay consideration until the existing McKinney Amendment expires (June 21). There may also be sequential referral of the energy portions of the bill to the Energy Committee.

Although extensive Administration-supported changes have been made in both bills, objectionable provisions still remain. NSC, Commerce and State agree that the Senate bill is preferable and that we have a good chance of fixing most of the problems.

7. Department of Education

We expect the final House vote on the Department of Education bill to be this week, although the timing of this may become a problem. Realistically, action on the Department will require more than one legislative day; the Panama Canal resolution, however, is currently scheduled for Tuesday. We are trying to work out some schedule changes with the Leadership. (See section on Panama).

Our current vote count shows a slight majority in favor, but attrition is continuing as the Catholic and higher education groups become more active. Members of the Cabinet, Bob Strauss, and Chairman John White have all been asked to call Members.

The Vice President met with the 40 core supporting Members on Monday morning and gave them each a list of colleagues to be contacted. We think your call to Rostenkowski paid off. Apparently he started to work the floor Friday with some positive results.

The problems with the Brademas/waiver have been worked out. The Vice President called Brademas over the week-end to wrap up the deal. Brademas has agreed in principle to an extension of time certain on the waiver issue. Brademas and Fascell will meet today to work out the final details. Part of the package will be the fulfillment of our commitment to Graham to send a waiver provision to the Hill in the Vocational Rehabilitation amendments. This must be done within 30-45 days. We are committed to supporting the same.

8. EDA Reauthorization

Senate

In final mark-up action by the Banking Committee on Thursday, a Lugar-Riegle compromise funding amendment for the Development Financing Program (DFP) was adopted by a vote of 10-5. The amendment would provide for a two-year authorization of the loan guarantee program at \$1.8 billion per year (Administration request); a two-year authorization of the direct loan program at \$150 million per year (\$41 million less than Administration request); a one-year authorization of the interest subsidy program at \$50 million per year (\$300 million less than Administration request); and authority to assist firms with annual assets of up to \$50 million.

Senate Public Works plans mark-up for the week of June 18. Floor action is anticipated early in July.

House

The Banking subcommittee on Economic Stabilization is scheduled to mark up the two versions of the EDA bill this week.

Commerce reports that they are hopeful that the Development Financing Program will come out of the subcommittee relatively close to the Administration's proposal.

9. Food Stamps

The House Agriculture Committee this week reported by a vote of 30-12 a clean bill to raise the FY 79 food stamp cap by \$620 million, bringing the total to \$6.78 billion. Congressman Foley was extremely helpful in caucusing the Committee Democrats to avoid conflicting amendments. In so doing Foley had to commit to expedite consideration of increased medical and dental deductions for food stamp qualification, as well as to an open door for any and all amendments when the Committee considers an increase in the cap for FY 80.

10. Milk Supports

Last week the House Agriculture Committee favorably reported the 80 percent of parity support bill for milk. The Committee also rejected the Administration-proposed provision to allow the Secretary of Agriculture to cancel scheduled increases in the support rate if excessive milk stocks occur.

11. Sugar

Despite continued pressure from Chairman Ullman and others, Trade Subcommittee Chairman Vanik has not scheduled consideration of the sugar bill. USDA feels that there are enough votes in the full Ways and Means Committee to pass the measure. After a week on the Hill, the sugar people count 192 firm votes for the sugar bill. Another 50 indicate they will support whatever the Administration wants.

12. Alaska National Interest Lands

Senate Energy Committee Chairman, Henry Jackson, in some off-hand comments during a meeting of his Committee Wednesday, indicated publicly that "the Senate will finish the Alaska bill before the August recess."

Jackson also indicated that he intends to hold no further hearings and to move straight into mark-up.

DOI reports some skepticism about the likelihood of Jackson realizing this goal.

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news

13. Nominations

GSA - Adm. Rowland Freeman

As reported last week, the FBI was asked to investigate a "whistle-blower" complaint about an alleged request to destroy some documents. We received the FBI report on Tuesday, it was reviewed by Governmental Affairs Committee staff on Wednesday. Committee staff will do a routine interview of Freeman today and will prepare a report for Committee members. Probable hearing time -- week of July 18. If this shows signs of slippage we will ask you to call Senator Pryor, who will chair the hearing.

ICC - Darius Gaskins, Tad Trantum, Marcus Alexis.

In preliminary discussions with Commerce Committee staff they indicated that they will try to schedule hearings in time for confirmation before the July 4 recess. If the nominations get caught up in the trucking deregulation dialogues, it may be difficult to hold to this schedule.

14. AMTRAK

The FY '80 Transportation Appropriations and the Amtrak Authorization bills will provide opponents of the restructure with further opportunities to restore deleted trains.

The Senate is expected to take up the authorization later in June. The House Rules Committee has not received a request from the Commerce Committee to schedule the bill.

The gasoline shortages and recent Amtrak press accounts of increasing ridership on Amtrak trains are providing encouragement for congressional opponents.

II. FOREIGN POLICY ISSUES

1. Panama Implementing Legislation

WHCL met with the Leadership staff Friday to resolve the timing of the Panama legislation. We agreed that it would be preferable to put off the legislation until June 20-21 if possible. This would allow us to round up more votes on the Panama legislation while the House finishes action on the Department of Education this week.

For this to occur Chairman Whitten will have to agree to give up June 20-21 previously scheduled for appropriations bills. The Vice President will meet with the Speaker this afternoon to determine if Whitten is willing to accommodate us. I will report to you on the outcome when you return. If June 20-21 cannot be guaranteed, we will attempt to keep Panama on the schedule for next week. We cannot afford to let the legislation go into July.

The Panama Canal Subcommittee continued its hearings on allegations of Panamanian assistance to Nicaraguan guerrillas. Press reports have characterized the hearings as a "right wing" effort to "cripple" the implementing legislation. Jack Murphy (in a statement issued in his absence) and Bob Bauman, launched a vociferous attack on Panama, but reaffirmed their view that implementing legislation is needed. Congressman David Bowen was very helpful in getting the Nicaraguan witness, Vice President Luis Pallais, to agree that the United States should keep its treaty obligations and that our government would have more influence over Panamanian policy were it to remain a partner in the operation of the Canal. The former head of the Inter-American Defense Board, General Gordon Sumner charged that Omar Torrijos was a "Marxist" (in league with Fidel Castro), and was interested in destabilizing Central America.

These hearings have not been helpful, but there are no indications yet that they have had a noticeable effect on the vote count. In fact, we continue to gain strength.

Outside lobbyists are beginning to have an impact on this issue, and we are getting excellent support on editorial pages. Our vote count shows us with 182 sure votes for final passage with 30 or more leaning with us. However, we are still short of a majority for some of the crippling amendments.

2. Rhodesia

Hill reaction to your decision has been predictable. Conservatives are irate and have vowed to legislate a lifting of sanctions; the Black Caucus and the liberals are happy and have pledged to fight by our side. However, the large group in the middle are concerned about political fallout and believe a legislative victory is impossible. One thing remains consistent -- few understand the issue and many need intensive education.

The legislative picture is complicated and imminent. The Defense Authorization Bill, due to be considered on the Senate floor today, contains language lifting the sanctions. In light of your decision we must fight to remove the language. We don't expect to win but our goal will be to better our margin from the 75-19 defeat on the Schweiker resolution. We hope to get 33+ votes which would be symbolic of sustaining a veto. This will also send a signal to the House that we intend to fight for your position.

In the House, the first Rhodesia vote will come on instructions to the conferees on the State Authorization Bill to accept the Schweiker resolution. We hope to postpone naming conferees until after the Panama vote to avoid tradeoffs on commitments between the two. We are working with Zablocki on this, but he is anxious to name conferees.

In any event we can expect Helms and company to come after us on every legislative vehicle available. We can expect amendments on the Foreign Aid Authorization Bill the week of June 18 in the Senate, and on the Export Administration Authorization Bill should its schedule be accelerated in either House. We are forming an interagency CL group chaired by Tate and Beckel to coordinate Administration lobbying efforts. We will work with Anne Wexler and Louis Martin on public outreach.

3. Turkish Assistance

Clem Zablocki agreed to postpone naming House conferees for the Security Assistance bill until today at the earliest. He hopes an agreement can be worked out with John Brademas that is acceptable to the Administration, thus nipping in the bud any move by Administration foes to have conferees instructed to vote against the \$50 million grant

military aid for Turkey authorized by the Senate. Most House Democrats, including our previously strong supporters on the Turkish issue -- Zablocki and Hamilton -- would like to avoid a floor fight and hence want a compromise arranged.

We are continuing to maintain the position that we want \$50 million in grant MAP for Turkey and are seeking to line up supporters on both sides of the aisle to make our case on the House floor for grant military aid for Turkey.

4. Senate Moves to Limit Presidential Powers to Terminate Treaties

On June 6 the Senate voted 59-35 to support a review of the Senate resolution proposed by Harry Byrd requiring Senate approval to terminate any mutual defense treaty. Byrd's language was a substitute for a moderately acceptable version reported by the SFRC. Church, Javits and Majority Leader Byrd failed in efforts to make the resolution prospective (so that it would not affect Taiwan), and to limit its potentially adverse impact on a future court test of the Administration's decision to terminate the U.S.-Taiwan Mutual Defense Treaty.

Three elements appear to explain the size of the vote for Byrd:

- Continuing resentment of the way we handled our China initiatives;
- The Senate's normal proclivity to champion Congressional prerogatives; and
- The unexpected announcement of Judge Gasch's decision on the Goldwater suit.

The issue will be before the Senate again this week. The resolution will emerge calling on you to recognize a Congressional role in treaty termination. It would be worded vaguely enough for its supporters to maintain their contention that U.S.-Taiwan MDT has not been terminated but remains in effect until January 1, 1980. Their objective will also be to get language that will obtain standing for Goldwater in Judge Gasch's court. This in turn could set the stage for renewed pressure for

formal Senate vote on terminating the U.S.-Taiwan MDT -- Goldwater's objective. Senator Church and the Leadership will be pushing for an amendment exempting treaties for which notice of termination has already been given.

important
To make the Church strategy work, we must persuade approximately 15 Senators who either did not vote Wednesday or who voted against us on the Byrd Amendment, to support new Church language. Of the 30 or so who have been identified as possible targets, there are about 12-15 who should be with Church in the end. The remainder have not had a very encouraging voting record on China issues. We will work closely with State on this.

5. FY '79 Supplemental Appropriations Request

The House passed the Omnibus '79 supplemental request providing full funding for the Middle East Peace Package, refugees and \$100 million in economic assistance for Turkey. The House restored \$27.7 million for UN technical assistance lost last year under the Helms' amendment. We hope to also restore the \$41.2 million for technical assistance cut from our FY '80 request when the bill goes to the House floor June 19.

The supplemental now goes to the Senate where Inouye's Appropriations Subcommittee will mark it up -- probably within the next two weeks.

6. FY 1980 Defense Authorization Bill

The FY 1980 Authorization Bill is scheduled for Senate floor action this afternoon. We are working with Defense and State to establish that the Zimbabwe-Rhodesia provision is not germane to the authorization. We hope that Frank Church will be able to persuade his colleagues to consider the issue as a separate matter. We do not anticipate any significant opposition to the other provisions of the Bill except for a probable Committee amendment dealing with draft registration. This could generate a considerable amount of debate during the floor action. We also expect quite a bit of debate on the recent MX decision.

III. MISCELLANEOUS

Department of Education -- One House Member who has been working with us on the Department of Education reported some disturbing news: He said that when he approached three of his colleagues to seek their support of our bill, he was told that they had been called previously by Secretary Califano; and, it was alleged that the Secretary had told them "privately and confidentially" of his objections to the creation of a separate Cabinet-level Department of Education.

UDAG Revisions -- The House unexpectedly adopted by a vote of 357 to 48 an amendment by Congressman Neal to include pockets of poverty in the UDAG program. Following this action on the close of consideration of the Bill, the House further adopted an amendment by Congressman Ashley adding a new title to the Bill which contains pockets of poverty for the UDAG program in a form which more closely tracks the proposals of the Administration.

Coal Slurry Pipeline -- On June 7 Congressman Eckhardt, together with Congressional co-sponsors Wright, Udall and Kazen, conducted a press conference on the interaction of his newly introduced Coal Slurry Pipeline bill. Congressman Eckhardt expressed pleasure that the Administration has joined in support of the legislation.

Mortgage Revenue Bonds -- Mark-up has been suspended pending evaluation of a "tax credit" approach suggested by Andy Jacobs. A number of changes to the Ullman-Conable bill were made before suspension -- all are apparently acceptable to Treasury.

MONDAY

June 11

HOUSE MEETS AT NOON
District (No Bills)
Suspensions (No Bills)

1. H.R. 2444 -- Department of Education Organization Act
(Votes on Amendments and Bills)
(Complete Consideration)

TUESDAY

June 12

HOUSE MEETS AT NOON
Suspensions (No Bills)

1. H. Res. 198 -- Dismiss Contested Election in Maryland's
Seventh District.
2. H.R. 111 -- To Provide for the Implementation of the
Panama Canal Treaty of 1977
(Votes on Amendments and Bill)
(Complete Consideration)

WEDNESDAY

June 13

HOUSE MEETS AT 10 a.m.

1. H.R. 4388 -- Energy and Water Appropriations, FY '80
(Subject to a Rule Being Granted)
2. H.R. 4390 -- Legislative Appropriations, FY '80
(Subject to a Rule Being Granted)

THURSDAY

June 14

HOUSE MEETS AT 10 a.m.

1. H.R. 4394 -- HUD/Independent Agencies Appropriations,
FY '80.
(Subject to a Rule Being Granted)
2. H.R. 3821 -- Intelligence and Intelligence-Related
Activities Authorizations, FY '80.
(Open Rule, one hour)

FIRDAY
June 15

HOUSE MEETS AT 10 a.m.

1. H.R. 4393 -- Treasury-Postal Service Appropriations,
FY '80.
2. H.R. 2462 -- Maritime Authorizations, FY '80.
(Open Rule, one hour)

THE HOUSE WILL ADJOURN BY 3 p.m. on Friday and by 5:30 p.m. ON
ALL OTHER DAYS EXCEPT TUESDAY and WEDNESDAY.

THE WHITE HOUSE

WASHINGTON

8 June 1979

Q

MEMORANDUM FOR THE PRESIDENT

FROM:

RICK HUTCHESON *Rick*

SUBJECT:

Status of Presidential Requests

SECRETARY VANCE:

1. (5/17) (and Owen, McIntyre) Ambassador Marvin Warner is a competent business man, especially interested in trade and management. Please comment on his major points -- Done. *done*

BRZEZINSKI:

1. (5/29) Check with Frank concerning the timing of the Vice President's trip to China. The President needs the Vice President here during key Senate decisions; then resubmit -- Done. *done*

MOORE:

1. (6/4) You and OMB give me the potential veto list -- don't be timid -- In Progress, (expected 6/20).

THE VICE PRESIDENT:

1. (6/4) Congressman Mickey Leland wants to discuss the campaign with you; please call him. He also wants to meet with Ham briefly -- In Progress, (the Vice President will meet with him on 6/11 and Ham will see him 6/20). *done*

SCOUTEN:

1. (5/15) In the drains on the east side of the South lawn driveway there is a constant rush of water. Let the President know the source of this waste -- In Progress, (Rex Scouten's note to you of May 16 reported that the water is used to cool White House computer and communications gear. A revised proposal for redesigning the White House power plant is expected by 8/15. Once this proposal is approved,

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actual replacement of the water cooling system
may take as long as a year.)

done

EIZENSTAT:

1. (4/6) Assess Admiral Rickover's memo concerning the Renegotiation Act (and the extension thereof). (5/23) What is this letter from Representatives Minish and Gonzalez about the extension for the filing under the Vinson-Trammel Act about? -- In Progress, (OMB is preparing a memo to Stu Eizenstat on this, expected 6/15; Stu will then prepare a memo for you.)
2. (4/10) Advise on how to move on Alaska/Mexico/Japan swap -- In Progress, (status report in 6/11 Congressional report).
3. (6/4) Hold up on Presidential decision on the legislative proposal for "Oil and Hazardous Substance Response Liability and Compensation Legislation" until the costs in bureaucracy and dollars are explained to the President -- Done. (6/4) The President does not like this response. It could become another uncontrotable federal government responsibility and expense requiring another large bureaucracy. It must be tightened up drastically to require state, local and private sharing of the problem -- In Progress, (McIntyre/Eizenstat memo expected 6/12 outlining how issues have been resolved; transmittal to Congress expected by 6/13).

done

SECRETARY SCHLESINGER:

1. (5/17) Draft a reply for the President to sign to Congressman Billy Lee Evans concerning energy-related problems -- In Progress (with DPS, expected 6/13).
2. (5/25) (and McIntyre) Jointly assess how DOE can respond more effectively to Congress' questions and complaints; expedite -- In Progress, (expected by 6/12).

LIPSHUTZ:

1. (6/1) Expedite as much as possible the confirmation of Rowland G. Freeman as Administrator of GSA -- In Progress, (confirmation hearing will probably be the week of 7/18).

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FOR ACTION
FYI

	FOR STAFFING
	FOR INFORMATION
/	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND
	NO DEADLINE
	LAST DAY FOR ACTION

VICE PRESIDENT

JORDAN

EIZENSTAT

KRAFT

LIPSHUTZ

MOORE

POWELL

RAFSHOON

WATSON

WEXLER

BRZEZINSKI

MCINTYRE

SCHULTZE

ADAMS

ANDRUS

BELL

BERGLAND

BLUMENTHAL

BROWN

CALIFANO

HARRIS

KREPS

MARSHALL

SCHLESINGER

STRAUSS

VANCE

ARONSON

BUTLER

H. CARTER

/ CLOUGH

CRUIKSHANK

FIRST LADY

HARDEN

HERNANDEZ

/ HUTCHESON

KAHN

LINDER

MARTIN

MILLER

MOE

PETERSON

PETTIGREW

PRESS

SANDERS

WARREN

WEDDINGTON

WISE

VOORDE

ADMIN. CONFIDEN.

CONFIDENTIAL

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EYES ONLY

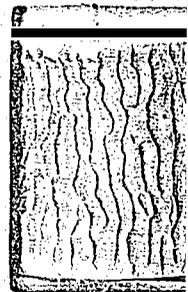
THE WHITE HOUSE
WASHINGTON
12 June 79

STu Eizenstat
Tim Kraft
Arnie Miller

The attached was returned in
the President's outbox today
and is forwarded to you for
your information.

Rick Hutcheson

2660



THE WHITE HOUSE
WASHINGTON

Personnel

THE WHITE HOUSE

WASHINGTON

June 12, 1979

MEMORANDUM FOR: THE PRESIDENT

FROM: STU EIZENSTAT *Stu*

SUBJECT: Selection of Commissioner
of Food and Drugs

The selection of a nominee to succeed Don Kennedy as Commissioner of Food and Drugs in HEW is an important appointment. Don provided brilliant leadership at FDA, possibly the best in its history, and brought significant credit to you in the process. Without his cooperation on inter-agency regulatory reform efforts like the Regulatory Council, these initiatives could well have floundered. While legally a part of HEW -- as OSHA is part of DOL -- FDA has a quasi-independent stature and is in some respects comparable to free-standing Executive Branch regulatory agencies like EPA.

Because of the importance of this selection to your efforts to make regulation more effective and efficient, I recommend that Tim Kraft and Arnie Miller play the role they normally play in helping agency heads develop a list of recommended candidates, and assuring that your choice is based on a variety of perspectives within and outside the administration. I have attached a memo from you to Secretary Califano, which you can sign and send if you approve.

Tim and Arnie concur in this recommendation.

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR SECRETARY JOSEPH A. CALIFANO, JR.

SUBJECT: Selection of Commissioner of Food and Drugs

The selection of a nominee to succeed Don Kennedy as Commissioner of Food and Drugs is extremely important to the Administration. Please furnish Tim Kraft with a list of the candidates you are developing, and work with Tim and Arnie Miller in considering these and other possible candidates, and in providing me with advice on the final selection.

Jimmy Carter

THE WHITE HOUSE
WASHINGTON

6/12/79

Bob Lipshutz

The attached was returned in
the President's outbox today
and is forwarded to you for
your information.

Rick Hutcheson

THE WHITE HOUSE
WASHINGTON

June 12, 1979

ok
J

FIFTH CIRCUIT (TEXAS)

There are now two appointments to be made to this Circuit Court, and our recommendations are:

1. Judge Sam Johnson; and
2. Andrew L. Jefferson, Jr. (a black male).

In addition, Frank Moore is going to urge Senator Bentsen to recommend David R. Richards to become a District Court judge; with the death of Judge Wood there are now two additional vacancies in the District Court.

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TEXAS

(Selected)

REYNALDO GARZA, U. S. District Judge, Brownsville

JAMES GREENWOOD, III., Attorney, Houston

CLARENCE A. GUITTARD, Chief Justice, 5th Court of
Civil Appeals, Dallas

MORRIS HARRELL, Attorney, Dallas

PATRICK E. HIGGINBOTHAM, United States District
Judge, Dallas

✓ ANDREW L. JEFFERSON, JR., Attorney, Houston

✓ SAM D. JOHNSON, Associate Justice, Supreme Court
of Texas, Austin

WILLIAM WAYNE JUSTICE, United States District Judge,
Tyler

JOHN F. ONION, Presiding Judge, Court of Criminal
Appeals, Austin

PHIL PEDEN, Associate Justice, First Court of Civil
Appeals, Houston

(Selected)
(Selected)

CAROLYN RANDALL, Attorney, Houston

THOMAS M. REAVLEY, Attorney, Austin

DAVID R. RICHARDS, Attorney, Austin

CARL L. WALKER, JR., Assistant U. S. Attorney, Houston

JERRE S. WILLIAMS, Professor of Law, University of
Texas School of Law, Austin

Enclosed is further information on each person recommended

It has been a pleasure for the Panel to assist you in your
selection of nominees to fill the vacancies.

Respectfully,

William C. Harvin
William C. Harvin
Chairman

President Jimmy Carter
The White House
Washington, D. C. 20500

Eastern Fifth Circuit (Florida: one vacancy)*

↓
↓
Tampa
Carl Clyde Atkins (white male) -- U.S. District Judge since 1966; Chief Judge since 1977; civil practice 1941-1966.

Thomas Clark (white male) -- private practice since 1955; now partner in one of Florida's largest firms; specializes in civil litigation. ← JC

Joe Eaton (white male) -- U.S. District Judge since 1967; state court judge 1959-1967.

Stephen Grimes (white male) -- judge, intermediate state appellate court since 1973; private civil practice 1954-1973.

James King (white male) -- U.S. District Judge since 1970; state court judge 1964-1970.

Robert Mann (white male) -- Chairman of Florida Public Service Commission since January 1979; Professor of Law, University of Florida, 1974-1978; state appellate judge 1968-1974; private practice 1963-1968.

John Reed, Jr. (white male) -- U.S. District Judge since 1973; state appellate judge 1967-1973.

Robert Shevin (white male) -- Attorney General of Florida 1971-1979; private practice at present and 1959-1971.

Robert Smith, Jr. (white male) -- state appellate judge since 1975; private practice 1957-1975.

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*You have already selected Joseph Hatchett to fill the other Florida vacancy.

Morris S. Dees, Attorney at Law

May 30, 1979

The President
The White House
Washington, D. C.

Dear President Carter:

I recommend that you appoint David Byrne of Montgomery as Federal District Judge for the Middle District of Alabama.

Senator Donald Stewart has recommended Mr. Byrne for the newly created judgeship. Senator Howell Heflin has recommended Truman Hobbs of Montgomery for the same position. Both Mr. Byrne and Mr. Hobbs were recommended by the citizen committee established by the two Alabama senators.

Both Mr. Hobbs and Mr. Byrne are qualified for the appointment. I would like to set forth the reasons why I feel that Mr. Byrne should be appointed.

1. Mr. Byrne is 38 years old. Mr. Hobbs is 58. Mr. Byrne is an aggressive energetic young man who has established a reputation of absolute impartiality and complete adherence to federal and constitutional law. Judge Frank M. Johnson was 36 when appointed federal judge. I know it is presumptuous to compare anyone with such a great judge, but I feel David Byrne has the makings of becoming another "Judge Johnson." Judge Johnson thinks very highly of Mr. Byrne. I understand that Judge Johnson had offered Mr. Byrne the position as his assistant when Judge Johnson was appointed F.B.I. Director.

2. Mr. Byrne graduated from the University of Alabama Law School with top academic honors. Upon graduation he joined the Army and served in the Judge Advocates. He was selected as a Military Judge, the youngest in the nation. From 1966 to 1970, he presided over more than 1,900 military cases.

3. Upon returning to Montgomery, Mr. Byrne served three years as an Assistant United States Attorney in Judge Frank Johnson's district. In 1974 he was selected by the Executive Office of the United States Attorney to receive the Outstanding Assistant United States Attorney's Award for Superior Performance. This award is given annually to only twelve federal prosecutors nationwide.

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President Carter
May 30, 1979
Page 2

4. After leaving the U.S. Attorney's office, Mr. Byrne joined one of Montgomery's largest and most prestigious law firms as a trial attorney. During his career, he has tried 91 federal cases and appealed 28 cases to federal appellate courts. This is a record equalled by few lawyers twice his age.

President Carter, I have spent nearly twenty years practicing law in the Middle District of Alabama. I know how much it has meant to have a courageous federal judge like Frank Johnson to set a tone of leadership. David Byrne, like Frank Johnson, will not be influenced to make "popular decisions."

It is very important to me that you appoint David Byrne. Please call if I can answer any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Morris S. Dees".

Morris S. Dees

MSD/lb

UNITED STATES CIRCUIT JUDGE NOMINATING COMMISSION
SOUTHERN NINTH CIRCUIT PANEL

1 WEST SIXTH STREET
SUITE 2220
LOS ANGELES, CA 90017
(310) 626-0671

April 21, 1979

Michael J. Egan, Esq.
Associate Attorney General
Room 5133
U. S. Department of Justice
Washington, D.C. 20530

RE: REPORT OF THE U.S. CIRCUIT JUDGE NOMINATING
COMMISSION, SOUTHERN NINTH CIRCUIT PANEL
CALIFORNIA

Dear Mr. Egan:

The Commission met in San Francisco, California on March 30 and 31, 1979 and in Los Angeles, California on April 16 and 17, 1979, interviewed a total of fifty-three (53) persons, and has concluded to recommend the following persons from the State of California for the President's consideration for appointment to the Ninth Circuit Court of Appeals:

ARTHUR L. ALARCON

Arthur L. Alarcon is a Justice of the California Court of Appeal, to which he was appointed in 1978. Justice Alarcon is 53 years old, and received both his undergraduate and law degrees from the University of Southern California. Justice Alarcon served as a law clerk to Los Angeles Superior Court Judge Edward T. Bishop from 1951 to 1952, and was a Deputy District Attorney for Los Angeles County from 1952 to 1961. From 1961 through 1964 he was Executive Assistant to Governor Edmund G. (Pat) Brown of California, and was appointed to the Superior Court of California for the County of Los Angeles in 1964, on which court he served until appointed to his current position. Justice Alarcon is currently an instructor at Loyola Marymount University, the University of Southern California School of Law, and the California Judicial College. He has written, in whole or in part, several legal publications.

COMMISSION MEMBERS

SAMUEL L. WILLIAMS, CHAIRMAN
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RAMON CASTRO
SAN DIEGO, CALIFORNIA

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LAS VEGAS, NEVADA

JOHN P. FRANK
PHOENIX, ARIZONA

ANN MILLER
SAN FRANCISCO, CALIFORNIA

JOE MONTOYA
EL MONTE, CALIFORNIA

BETH PACKARD
FLAGSTAFF, ARIZONA

PHILIP SCHAEFER
SAN FRANCISCO, CALIFORNIA

ELIZABETH SNYDER
LOS ANGELES, CALIFORNIA

JUDITH LESLIE SOLEY
FRESNO, CALIFORNIA

BARBARA THORNTON
RENO, NEVADA

Hispanic (selected)

cc to MUCK 4/25

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ARTHUR BALDONADO

Arthur Baldonado is 46 years old and now serving as a Judge of the Superior Court of the State of California for the County of Los Angeles, to which he was appointed in 1977. He received his undergraduate degree from the University of California at Los Angeles, and his law degree from Georgetown University Law Center. While attending law school, he worked as an aide to the then senator, Lyndon B. Johnson. Judge Baldonado served as law clerk to Judge Macklin Fleming of the Los Angeles Superior Court in 1961, prior to going into private practice in which he engaged until 1977 when he was appointed to the bench.

WINSLOW CHRISTIAN

*in October
ok
J*

Winslow Christian is a 53 year old Justice of the California Court of Appeal, serving in the First Appellate District on Division 4 thereof. He attended the University of Maryland and graduated from Stanford University, obtaining a B.A. and L.L.B. at that institution. In his early years of practice he was a Deputy Attorney General for the State of California, and City Attorney and District Attorney in Sierra County. He was elected to the bench in 1958, and appointed to his present position in 1966. He is the author of numerous articles and is recognized nationally for his expertise in the area of court reform.

JOHN J. CLEARY

John J. Cleary is the Executive Director of Federal Defenders of San Diego, Inc., the organization providing representation to those financially unable to employ counsel in criminal matters in the Southern District of California. Mr. Cleary is 43 years of age and received his undergraduate and law degrees from Loyola University, Chicago, Illinois, both with distinction. After completion of his legal training, Mr. Cleary served in the United States Army from 1960 to 1964, where he compiled an outstanding record. He served as a Military Police Corps officer, a member of the Judge Advocate General's Corps, and was the first judge advocate to serve with Special Forces ("Green Berets"). In 1964, after four months of private practice, Mr. Cleary became the Deputy Director of the National Defender Project of the National Legal Aid & Defenders Association where he served as the second principal staff officer until 1969. In 1970 he served as Attorney-in-Residence of the Illinois Law Enforcement Commission, and has occupied his current position in the Southern District of California since 1971. He is the author of numerous articles on criminal law and procedure, and other related matters.

Michael J. Egan, Esq.
April 21, 1979
Page three

WARREN J. FERGUSON

*rec. Sen. Cranston
ok
JC*

Warren J. Ferguson is presently a Judge of the United States District Court, Central District of California. He is 58 years of age, and received his undergraduate degree from the University of Nevada at Reno. He attended law school at the University of Southern California, and thereafter was in private practice until he was appointed to the bench in 1959. He has also been a professor at Loyola Law School in Los Angeles. Judge Ferguson has sat on the bench since October 1959 when he was appointed by Governor Edmund G. (Pat) Brown to the Municipal Court in Orange County. Since then he has served on the Superior Court for the State of California, and, now, on the United States District Court. Judge Ferguson received the highest rating on a federal judicial evaluation poll conducted by the Beverly Hills Bar Association in 1976.

JOANNE M. GARVEY

Norman

Joanne M. Garvey is a partner in the law firm of Cotton, Seligman & Ray. She is 44 years of age, and graduated with an A.B., and later an M.A., from the University of California, and attended law school at Boalt Hall of the University of California at Berkeley. She received several awards and scholarships during her tenure in law school. Ms. Garvey has taught a seminar in corporate tax law at Boalt Hall, and is the first and only woman to be elected as a governor of the State Bar of California. Her law practice consists primarily of business matters, with an emphasis on taxation. She has authored several articles on legal matters for the California Law Review, as well as the California State Bar Journal. She has been particularly active in affairs of the State Bar of California, the California Women Lawyers Association, and in the American Bar Association.

EARL JOHNSON, JR.

Earl Johnson, Jr., who is 45 years of age, is a professor of law at the University of Southern California Law Center. In addition, he is the director of the Program for the Study of Dispute Resolution Policies sponsored by the University of Southern California. Professor Johnson received his law degree from the University of Chicago Law School where he was the book review editor on the law review, and holds an L.L.M. from Northwestern University School of Law. Professor Johnson has been active in a number of professional community activities, and is presently a member of the panel on Predicting Judicial Impact of

New Legislation. He is president of the Board of Trustees of the Western Center on Law & Poverty, and on the advisory panel for the Special Committee on Housing & Urban Development of the American Bar Association. Professor Johnson practiced law with the U. S. Department of Justice from July 1961 through November 1964, and thereafter became involved with various legal services programs until he took his present position at the University of Southern California Law Center. He is the author of many articles and books on a variety of legal subjects.

STUART L. KADISON

Stuart L. Kadison is a senior partner in the law firm of Kadison, Pfaelzer, Woodard, Quinn & Rossi in Los Angeles. He is 55 years of age, and received his undergraduate degree from the University of Maryland and his law degree from Stanford University. Mr. Kadison is currently a lecturer of law at the Stanford University School of Law, and teaches a course in federal appellate advocacy. Mr. Kadison has been continuously engaged in the private practice of law in Los Angeles since 1948. During the early 1950's, he represented, without fee, more than twenty functionally indigent individuals who had been denied security clearances necessary to their continued employment by defense contractors. He has an extensive trial and appellate practice, approximately 90% of which is in the federal courts. From 1973 to 1976, Mr. Kadison served as a member of the Board of Governors of the State Bar of California.

LOREN MILLER, JR.

Black male

Loren Miller, Jr. is a Judge of the Superior Court of the State of California for the County of Los Angeles. He is 42 years of age, and received his undergraduate degree from the University of Oregon and his law degree from the Loyola University School of Law, from which he graduated with great distinction. Judge Miller has been a law instructor at Loyola Law School and the Valley College of Law, teaching courses in law & poverty, and civil rights law. From 1963 to 1968, Judge Miller served in the office of the Attorney General of the State of California, engaging primarily in tax and civil rights litigation and criminal appellate work. From 1969 to 1972, Judge Miller was engaged in the private practice of law in Los Angeles. From 1972, until he was appointed to the Los Angeles Municipal Court in 1975, Judge Miller was engaged in general trial work for a major national corporation. In 1977 Judge Miller was elevated to the Superior Court for the County of Los Angeles, where he currently sits as a judge in the Pomona, California area.

DOROTHY W. NELSON

*woman
(selected)*

Dorothy W. Nelson is the dean of the University of Southern California Law Center, where she teaches courses in legislation, judicial administration, and other subjects. She is 50 years of age, and received both her undergraduate and law degrees from the University of California at Los Angeles. In 1957, after receiving her master of laws degree with great distinction from the University of Southern California, she was asked to serve on the faculty of the law school and was appointed dean in 1969. She is recognized nationally for her expertise in the area of judicial administration, and is the author of numerous articles and books on that subject and related legal topics. *ok J*

WILLIAM A. NORRIS

William A. Norris is engaged in private practice with a medium-sized law firm in the City of Los Angeles. He is 51 years of age, and received his undergraduate degree from Princeton University and his law degree from the Stanford School of Law, both with great distinction. Mr. Norris was law clerk to Justice William O. Douglas of the United States Supreme Court from 1955 to 1956. He has been his firm's senior litigator, specializing in business litigation, from 1956 to the present date. Mr. Norris has served as a member of the California State Board of Education from 1961 to 1967, and a member of the Board of Trustees of the California State Colleges from 1966 to 1972. From 1973 to 1974 he served as president of the Board of Police Commissioners of the City of Los Angeles. Mr. Norris was the Democratic nominee for Attorney General of the State of California in 1974.

CECIL F. POOLE

*Black male
(selected)*

Cecil F. Poole is a Judge of the United States District Court, Northern District of California. He is 64 years of age, and received his undergraduate and law degrees from the University of Michigan. In addition, he has received a master of laws degree from Harvard Law School. For two years, prior to entering the service in 1943, Judge Poole was engaged in the private practice of law in Pittsburg, Pennsylvania. In 1946, after service with the North Atlantic Wing of the Air Transport Command during the Second World War, he was the chief of the West Coast briefing and appellate unit of the Office of Price Administration. From 1949 to 1958, he served as Assistant District Attorney for the City and County of San Francisco. From 1958 to 1961, he was the Clemency Secretary and Legal Counsel to Governor Edmund G. (Pat) Brown of California. From 1961 to 1970 he served as United States

Michael J. Egan, Esq.

April 21, 1979

Page six

Attorney for the Northern District of California. From 1970 to 1976 he was engaged in the private practice of law in a medium-sized San Francisco law firm. In July 1976 he was appointed by President Gerald Ford as a United States District judge. He has been active in the American Bar Association, serving in its House of Delegates from 1972 to 1974, and is a Fellow of the American Bar Foundation.

HARRY PREGERSON

*rec. Jim Corman
+ Ed Sanders* *dk*
J

Harry Pregerson is a Judge of the United States District Court, Central District of California. He is 53 years of age, and received his undergraduate degree from the University of California at Los Angeles and his law degree from Boalt Hall School of Law, University of California at Berkeley. From 1951 to 1965, Judge Pregerson was engaged in the private practice of law in the Los Angeles area as a sole practitioner or with a small firm. In 1965 he was appointed to the Los Angeles Municipal Court, and was elevated to the Superior Court of the State of California for the County of Los Angeles in 1966. In 1967, he was appointed to the United States District Court. Judge Pregerson served with distinction in the United States Marine Corps during the Second World War, and was awarded the Purple Heart for gunshot wounds sustained on Okinawa in 1945. He remains active in veterans' affairs and has served as President of the San Fernando Valley Chapter of the Marine Corps Reserve Officers Association.

STEPHEN R. REINHARDT

rec. Tom Bradley *ok*
J

Stephen R. Reinhardt is engaged in private practice with a medium-sized law firm in the City of Los Angeles. He is 48 years of age, and received his undergraduate degree from Pomona College and his law degree from Yale Law School, both with distinction. From 1954 to 1956, Mr. Reinhardt served in the United States Air Force where he was assigned to the Office of the General Counsel in the Pentagon, practicing administrative law for the Air Force. From 1957 to the present date, he has been engaged in the private practice of law, where he has specialized primarily in labor law litigation. From 1969 to 1974, Mr. Reinhardt served as Vice Chairman of the California Advisory Committee to the United States Commission on Civil Rights, and he currently serves as President of the Board of Police Commissioners of the City of Los Angeles. Mr. Reinhardt has been active in the American Bar Association, chairing several of its committees on labor law, and is a Fellow of the American Bar Foundation.

CHARLES B. RENFREW

Charles B. Renfrew is a Judge of the United States District Court, Northern District of California. He is 50 years of age, and received his undergraduate degree from Princeton University and his law degree from the University of Michigan School of Law. From 1956 to 1972, Judge Renfrew was engaged in the private practice of law with a large San Francisco law firm where he specialized in litigation, principally in the area of antitrust. He was appointed to the United States District Court in November 1971. He has taught courses in criminal law and civil trial practice at Boalt Hall, the law school of the University of California at Berkeley. Judge Renfrew has written several articles on the sentencing of criminal defendants, and other legal subjects.

MURRAY L. SCHWARTZ

Murray L. Schwartz is a professor of criminal law, judicial administration, and other subjects at the University of California at Los Angeles School of Law where he served as Dean of the law school for many years. He is 58 years of age, and received his undergraduate degree from Pennsylvania State College and his law degree from the University of Pennsylvania Law School, both with great distinction. Professor Schwartz was law clerk to Justice Fred M. Vinson, Chief Justice of the U.S. Supreme Court, from 1949 to 1951. He was in the private practice of law in Washington, D.C. until 1952, when he joined the Office of the Solicitor General, U. S. Department of Justice, where he worked as a special assistant to the Attorney General of the United States until 1953. From 1956, until he joined the faculty of the UCLA School of Law in 1958, Professor Schwartz was in the private practice of law in Philadelphia, Pennsylvania. Professor Schwartz was a consultant to President Kennedy's Panel on Mental Retardation in 1962, a consultant to President Johnson's Task Force on the War Against Poverty in 1963 and 1964, and was an advisor to the President's Commission on Law Enforcement and the Administration of Justice in 1966. He is the author of many articles and books on criminal law, judicial administration and other legal subjects, and has been extremely active in the area of criminal law revision.

THE WHITE HOUSE
WASHINGTON

MISC

THE WHITE HOUSE
WASHINGTON

6/11/79

Mr. President:

The VP says you must meet with Prime Minister Nordli of Norway at least 15 minutes tomorrow. This is the first I've been told it was to be anything other than a photo session.

approve 15 minutes

disapprove

Phil

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THE WHITE HOUSE

WASHINGTON

June 12, 1979

MEMORANDUM FOR THE PRESIDENT

FROM: HUGH CARTER *HC*

SUBJECT: List of Accomplishments

In reviewing my detailed memo on White House Administration, you suggested we prepare a one-page list for The First Lady and others.

Attached is a copy of the list which has been sent to The First Lady and Jerry Rafshoon, who serves as a focal point for preparing staff-wide talking points.

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SUMMARY OF INTERNAL ADMINISTRATIVE ACCOMPLISHMENTS
IN THE WHITE HOUSE OFFICE

Staff

The White House Staff has been cut from 485 to 351.

(We have fewer people doing as much, if not more work than ever before.)

Budget

We have cut the White House expenses to the extent that even with inflation, the 1979 budget is only \$1,000 more than the 1977 budget we inherited from the prior administration.

(Our goal, however, is eliminating excess and increasing value received for money spent, not cost cutting for the sake of cutting.)

Computers

We have brought modern management methods to the White House, and have over 40 computer applications in operation, as compared to less than 10 when we arrived.

(The White House was five to ten years behind in computers.)

Limousines

We cut the number of White House cars 50% from 56 to 28.

(We also eliminated home to office limousines for Senior White House Staff.)

Military Support

We've cut \$3MM per year in military costs by elimination of aircraft and communications support.

(Much of this was excessive or unnecessary.)

Energy

We estimate that energy consumption in the White House has been reduced by about 22%.

(We have done this mostly through common-sense conservation, such as re-setting thermostats.)

6/1/79

Phil had
seen

THE WHITE HOUSE
WASHINGTON

~~I told
Frank~~

THE WHITE HOUSE
WASHINGTON

JUNE 12, 1979

MR. PRESIDENT

ROSALYNN IS SCHEDULED TO SEE
EVIND TOMORROW AT 5 P.M.

WOULD YOU WANT YOUR HAIR CUT
AT 4:00?

4:00 OKAY

WAIT UNTIL RETURN FROM VIENNA _____

OTHER _____

PHIL

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J

THE WHITE HOUSE
WASHINGTON

JUNE 12, 1979
10:15 a.m.

MR. PRESIDENT

DO YOU WANT ZBIG TO JOIN YOU
AND JOHN McCLOY FOR LUNCH
TODAY?

ZBIG TO JOIN _____

EAT WITH McCLOY ALONE

PHIL
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THE WHITE HOUSE
WASHINGTON

Mr. President:

I was notified last night that Sec. Schlesinger will not be able to attend a 3 pm energy meeting but could be back in town in time for a 4 pm. Shall I move the meeting to 4 pm today?

yes no

 Phil

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telephone call, senator byrd 6/11/79

Jackson's bill

Call Baker

Told Byrd re Helms

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Mr. President --

Senator Robert Byrd wants you to
call him (Note: I asked Frank
to call him this morning to let him
know you were going to Leetown).

Also, just a reminder about the calls
to Meany and Fraser if you feel up to it.

re Health Ins.

fran

Meany - "ok"

Fraser "not yet satisfied"

Ch E SALT, Panama -

Frank Helms → JC "Thumbs up"

THE WHITE HOUSE
WASHINGTON

June 12, 1979

9:00 a.m.

MR. PRESIDENT

SECRETARY BLUMENTHAL CALLED.

PHIL

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*Goodby - good luck in Vienna
→ OECD
EPG Δ good*

THE WHITE HOUSE
WASHINGTON

JUNE 12, 1979
12:10 P.M.

MR. PRESIDENT

SENATOR MOYNIHAN CALLED.

PHIL

*Will support Pres. on
Vance testimony - Rhodes
syn. comm. - U. Nam
set - communists - snowed*

THE WHITE HOUSE
WASHINGTON

2:55 P.M.
TUESDAY - JUNE 12, 1979

MR. PRESIDENT

DR. ARTHUR BURNS CALLED.

*Wait 6 yrs for
freedom"
Govt subsidize synthetics
Nelson Rockefeller + Burns
Finance on international basis
a) US costs less
b) Positive program - US leader
c) Impress OPEC*

panama legislation briefing
house members 6/11/79

*Panama
Sec Clifford Alexander
Gen M. S. Auliffe
Amb Moss
Ratified 41. Effective 10/1
1903 treaty ends - territory → Pan
Implem leg lets us open/defend
Murphy, Derwinski, Bowen
Sum Rb + = Civ govt.
Payments → Pan for falls
~ 870 m → Defense/open*

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Office of the Attorney General
Washington, D. C. 20530

June 11, 1979

c
/

MEMORANDUM FOR THE PRESIDENT

Re: Voting Rights Act Objection to
proposed "Open Primary" system
in Mississippi

Under the Voting Rights Act, I have authorized the Assistant Attorney General for the Civil Rights Division to enter an objection to Mississippi's proposed "open primary" plan. This decision will be announced later today. (See attached letter.) The proposal, which must receive federal pre-clearance under the Voting Rights Act, would eliminate party primaries and substitute a single primary open to all candidates with a run-off general election in the absence of a majority vote for any one candidate. The proposal would apply to every election in Mississippi, from U.S. Senator to governor to county and municipal officials. While the proposal has strong political support among whites in the state, it is almost universally opposed by blacks.

Under present law, general elections in Mississippi are determined by a plurality vote, except in races for non-federal state-wide offices. In this latter case, failure of any candidate to obtain a majority throws the matter into the Mississippi House of Representatives for its resolution.

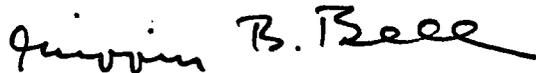
In recent years blacks, principally under the leadership of Mayor Charles Evers, have frequently run as independents, with a view to winning by plurality or to maximizing their political leverage. The proposed system would eliminate this advantage of the existing law and therefore diminish black political effectiveness.

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This same proposal has been twice rejected by prior Attorneys General in 1974 and 1976; federal law still requires an objection. Although blacks are now participating much more freely in state Democratic Party affairs (e.g., Aaron Henry is party co-chairman), they are still under-represented and even black Democrats oppose the open primary proposal. Under the strictures of the Voting Rights Act, there appears to be no way that Mississippi can eliminate the real but unintended advantage blacks enjoy under the present system and I am therefore unable to conclude that the proposed open primary law would not abridge rights protected by the Act.

A change to such a system in Louisiana in 1975 was found unobjectionable under the Voting Rights Act. The circumstances there were quite different. In Louisiana blacks had not found it necessary to resort to the independent candidacy as a means for getting on the ballot. Even though blacks in that state had initial concerns with the proposal, the state took action to resolve them, so that there was no local black resistance to the Louisiana plan.

The Voting Rights Act does allow the Attorney General to reconsider such a decision on the basis of new evidence and also permits Mississippi to obtain an independent court review of the proposal -- a procedure it recently successfully followed in a legislative reapportionment matter. Until the change is approved, by the Justice Department or the court, it may not be implemented.



Griffin B. Bell
Attorney General



ASSISTANT ATTORNEY GENERAL

United States Department of Justice

WASHINGTON, D.C. 20530

JUN 11 1979

Honorable A. F. Summer
Attorney General
State of Mississippi
Jackson, Mississippi 39105

Dear Mr. Attorney General:

This is in reference to the Mississippi "Open Primary" law, Senate Bill No. 2802 (Chapter 452), Laws of Mississippi of 1979, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on April 12, 1979, and while we have noted your request for expedited consideration we have been unable to respond until this time.

Senate Bill 2802 provides a new system for the nomination and election of elected officials in the State of Mississippi. Under the existing system, political parties nominate candidates by means of a primary and (if no candidate receives a majority of the votes) a run-off primary. The general election includes party nominees and candidates qualifying as independents and, as a general rule, the candidate receiving the most votes is declared the winner.

Under the proposed system, as we understand it, all candidates would run together in a "preferential" election. A candidate affiliated with a political party may have the name of that party listed next to his name, but nominations by political parties would not be indicated on the ballot and there would be no limit on the number of candidates affiliated with the same party who could be candidates for the same position.

The names of the two candidates receiving the most votes for each position would be listed on the "general" election ballot (unless a candidate received a majority of the votes in the preferential election, in which case only that candidate's name would appear on the general election ballot). In the general election, the candidate receiving the most votes, which is necessarily a majority since only two candidates are involved, would be declared the winner. In addition, Senate Bill 2802 repeals all statutory provisions with respect to partisan primary elections and makes other ancillary adjustments in Mississippi election law.

We have considered carefully the information presented by you and obtained from other sources in connection with this submission. Our analysis reveals that, for purposes of Section 5 evaluation, Senate Bill 2802 is identical to House Bills 362 and 363 (1970 Regular Session), to which an objection pursuant to Section 5 was interposed on April 26, 1974, and to House Bill 114 (1976 Regular Session), to which an objection was interposed on August 23, 1976, and reaffirmed on January 25, 1977. In other words, our analysis shows that, like its predecessors, Senate Bill 2802 eliminates or substantially reduces the role of political parties in the electoral system of the State of Mississippi and introduces a majority vote requirement in the general election, where a plurality of the votes previously has been sufficient.

Under Section 5 an objection is required if the modifications of the electoral system of the State of Mississippi made by Senate Bill 2802 would "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1970). On the basis of a thorough study of the information you have provided, information previously before us from prior submissions of the referenced similar legislation, court decisions with respect to the status of blacks in the electoral system of the State of Mississippi, and the views of other interested parties,

we are unable to conclude now, as we were in the past, that the changes wrought by Senate Bill 2802 will not lead to such a retrogression. Nor can we conclude that such a retrogression was not intended.

The information provided in your submission and an analysis of recent elections show the important role that blacks have acquired in the Democratic Party in Mississippi. The elimination of the present system of partisan primaries and party nominations will eliminate this political advantage that blacks have obtained. In addition, we note that during the hearings black leaders in the state consistently opposed this legislation, which was enacted despite this universal black opposition.

Our analysis also reveals the importance to blacks of the plurality-win system in the State of Mississippi. Our research shows, for example, that the situation in Mississippi is not distinguishable from that in Rome, Georgia, where the court, in a declaratory judgment action brought under Section 5, found that the majority vote requirement was retrogressive in effect. City of Rome v. United States, C.A. No. 77-0797 (D.D.C. April 9, 1979):

With respect to the majority vote and runoff election provisions, the discriminatory effect is clear beyond peradventure. Under the plurality-win system, a black candidate in Rome would stand a good chance of election if white citizens split their votes among numerous candidates and the black voters engaged in "single-shot" voting, i.e., voted

only for the candidate or candidates of their choice. Under the majority vote/runoff election scheme, however, the black candidate, even if he gained a plurality of votes in the general election, would still have to face the runner-up white candidate in a head-to-head runoff election in which, given bloc voting by race and a white majority, the black candidate would be at a severe disadvantage. (Emphasis added. Slip opinion, pp. 54-55).

In State of Mississippi v. United States, a Section 5 declaratory judgment action involving the reapportionment of the Mississippi legislature, the District Court for the District of Columbia very recently found racial bloc voting to be a fact in Mississippi politics. (Slip opinion, p. 10). More specifically, in relation to the instant submission, the court there, in granting the declaratory judgment sought by Mississippi, took particular note of the opportunity afforded under the existing electoral system for persons to run as independents and win with a plurality. (Slip opinion, p. 9).

Under these circumstances, I cannot conclude, any more than could my predecessors, that the changes here sought to be accomplished do not have the purpose and will not have the effect of discriminating on the basis of race or color. Accordingly, on behalf of the Attorney General, I must interpose an objection to the electoral system provided by Senate Bill 2802 insofar as it seeks to effectuate a nonpartisan electoral system and the imposition of a majority vote requirement for general elections.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition,

the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make Senate Bill 2802 legally unenforceable. If you have any questions about this letter, please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Drew S. Days III". The signature is written in dark ink and is positioned above the typed name. There are horizontal lines above and below the signature.

Drew S. Days III
Assistant Attorney General
Civil Rights Division