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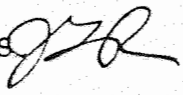
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THE WHITE HOUSE

WASHINGTON

June 7, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 
SUBJECT: Update of 18 U.S.C. § 1751 List

David Kline of the Justice Department Criminal Division, who maintained at the Department the list of individuals covered by 18 U.S.C. § 1751, called my office several weeks ago to request an updated list. Kline has since left the Department, and accordingly I recommend that you transmit the updated list to Lowell Jensen, who will see that it is routed to the appropriate operational people. Dianna compiled the list; I prepared the transmittal memorandum.

Attachment

THE WHITE HOUSE
WASHINGTON

June 7, 1985

MEMORANDUM FOR D. LOWELL JENSEN
DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Update of 18 U.S.C. § 1751 List

Attached is an updated list of those individuals covered by 18 U.S.C. § 1751, as of today. In light of the various changes in the White House staff, I thought it advisable to provide a current list.

Attachment

FFF:JGR:aea 6/7/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

June 7, 1985

MEMORANDUM FOR D. LOWELL JENSEN
DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Update of 18 U.S.C. § 1751 List

Attached is an updated list of those individuals covered by 18 U.S.C. § 1751, as of today. In light of the various changes in the White House staff, I thought it advisable to provide a current list.

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FFF:JGR:aea 6/7/85
cc: FFFielding
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Subj
Chron

The President
The Vice President

Ronald W. Reagan
George Bush

EXECUTIVE OFFICE OF THE PRESIDENT

Council of Economic Advisers
Chairman

Beryl W. Sprinkel

Council on Environmental Quality
Chairman

A. Alan Hill

Office of Management and Budget
Director

David A. Stockman

Office of the U.S. Trade
Representative

vacant

Office of Science and Technology
Policy - Director

George A. Keyworth II

Office of the Vice President
Chief of Staff

Craig L. Fuller

The White House Office

Counsellor to the President

vacant

Chief of Staff and Assistant
to the President

Donald T. Regan

Deputy Chief of Staff and
Assistant to the President

vacant

Assistant to the President
and Press Secretary

James Scott Brady

Assistant to the President
and Deputy to the Chief of Staff

vacant

Counsel to the President

Fred F. Fielding

Assistant to the President and
Legislative Strategy Coordinator

Max L. Friedersdorf

Assistant to the President
for Cabinet Affairs

vacant

Assistant to the President
for Communications

Patrick J. Buchanan

Assistant to the President for Presidential Personnel	vacant
Assistant to the President and Director of Special Support Services	Edward V. Hickey, Jr.
Deputy Counsellor to the President	vacant
Assistant to the President for National Security Affairs	Robert C. McFarlane
Assistant to the President and Deputy to the Deputy Chief of Staff	vacant
Assistant to the President for Legislative Affairs	M.B. Oglesby
Assistant to the President for Management and Administration	vacant
Assistant to the President for Political Affairs	Edward J. Rollins
Assistant to the President and Principal Deputy Press Secretary	Larry M. Speakes
Assistant to the President for Policy Development	John A. Svahn
Assistant to the President for Intergovernmental Affairs	Lee L. Verstandig
Assistant to the President for Public Liaison	vacant

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

72003

☐ O - OUTGOING

☐ H - INTERNAL

☐ I - INCOMING

Date Correspondence
Received (YY/MM/DD) 1 / 1

COPY

from ORM Dept

Name of Correspondent: Edward C. Schmults

☐ MI Mail Report

User Codes: (A) (B) (C)

Subject: Asks for list of those White House officials protected by Section 1751 of title 18, USC (providing penalties for persons who commit offenses against certain White House officials)

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Completion Date YY/MM/DD
WHOL	ORIGINATOR	83, 11, 18		C 83, 12, 15
CUFIER	Referral Note: S	83, 12, 15	IF	A 83, 12, 15
	Referral Note:	1 / 1		1 / 1
	Referral Note:	1 / 1		1 / 1
	Referral Note:	1 / 1		1 / 1
	Referral Note:	1 / 1		1 / 1

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure

I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:

A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: Nov 19 83 FFF memo to C. Boyden Gray attached

Keep this worksheet attached to the original incoming letter.

Send all routing updates to Central Reference (Room 75, OEOB).

Always return completed correspondence record to Central Files.

Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

THE WHITE HOUSE

WASHINGTON

December 15, 1983

Dear Mr. Schmults:

In response to your letter of November 16, 1983, attached is a list of all individuals in the Executive Office of the President who fall within the purview of 18 U.S.C. §1751. I will provide changes to your office as they may occur. Also, as to the designation of a 24 hours a day contact, I shall be that person and may be reached through the following numbers: 202/456-2632, 202/456-1414 or 202/395-2000.

Sincerely,



Fred F. Fielding
Counsel to the President

The Honorable Edward C. Schmults
Deputy Attorney General
Department of Justice
Room 5111
Washington, D.C. 20530

The President
The Vice President

Ronald W. Reagan
George Bush

EXECUTIVE OFFICE OF THE PRESIDENT

Council of Economic Advisers
Chairman

Martin S. Feldstein

Council on Environmental Quality
Chairman

A. Alan Hill

Office of Management and Budget
Director

David A. Stockman

Office of the U.S. Trade
Representative

William E. Brock

Office of Science and Technology
Policy - Director

George A. Keyworth II

Office of the Vice President
Chief of Staff

Adm. Daniel J. Murphy

The White House Office

Counsellor to the President

Edwin Meese III

Chief of Staff and Assistant
to the President

James A. Baker, III

Deputy Chief of Staff and
Assistant to the President

Michael K. Deaver

Assistant to the President
and Press Secretary

James Scott Brady

Assistant to the President
and Deputy to the Chief of Staff

Richard G. Darman

Counsel to the President

Fred F. Fielding

Assistant to the President
for Cabinet Affairs

Craig L. Fuller

Assistant to the President
for Communications

David R. Gergen

Assistant to the President
for Presidential Personnel

John S. Herrington

Assistant to the President and
Director of Special Support Services

Edward V. Hickey, Jr.

Deputy Counsellor to the President

James E. Jenkins

Assistant to the President for
National Security Affairs

Robert C. McFarlane

Assistant to the President and Deputy
to the Deputy Chief of Staff

Michael A. McManus

Assistant to the President
for Legislative Affairs

M.B. Oglesby

Assistant to the President
for Management and Administration

John F.W. Rogers

Assistant to the President
for Political Affairs

vacant

Assistant to the President and
Principal Deputy Press Secretary

Larry M. Speakes

Assistant to the President
for Policy Development

John A. Svahn

Assistant to the President
for Intergovernmental Affairs

Lee L. Verstandig

Assistant to the President
for Public Liaison

Faith Ryan Whittlesey

THE WHITE HOUSE

WASHINGTON

November 19, 1983

MEMORANDUM FOR C. BOYDEN GRAY
COUNSEL TO THE VICE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Attached Letter from Deputy
Attorney General Edward C. Schmults

In order to provide the information as requested from Ed Schmults in the attached letter, would you please provide to me as soon as possible a list of the individuals on the Vice President's staff identified as follows:

The employees appointed pursuant to 3 U.S.C. §106(a)(1)(A), that is persons who are appointed by the Vice President, employed in the Office of the Vice President, and paid "at rates not to exceed the rate of basic pay then currently paid for level II of the Executive Schedule of section 5313 of title 5"

Thank you for your attention to this matter.

THE WHITE HOUSE
WASHINGTON

W H 30
12/1

November 19, 1983

MEMORANDUM FOR C. BOYDEN GRAY
COUNSEL TO THE VICE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Attached Letter from Deputy
Attorney General Edward C. Schmults

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Thank you for your attention to this matter.



U.S. Department of Justice
Office of the Deputy Attorney General

DSH

The Deputy Attorney General

Washington, D.C. 20530

November 16, 1983

Honorable Fred F. Fielding
Counsel to the President
White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

188134 *CE*

Dear Mr. Fielding:

While the President was playing golf in Augusta, Georgia, on October 22, 1983, Mr. Charles R. Harris allegedly ran his pickup truck through the course's gate and took hostages at the pro shop. One of the hostages was the Special Assistant to the President, David Charles Fischer.

Section 1751 of title 18, United States Code, in part, provides penalties for persons who commit offenses against White House officials who are paid at the same level as deputy cabinet officers. Thus, for the assault against Mr. Fischer to have been a federal offense, he had to be such a White House official. It was not until the afternoon of October 23rd, a day after the incident occurred, that federal law enforcement officers learned that Mr. Fischer was not an official protected under 18 U.S.C. §1751.

Although federal law enforcement officers had investigatory jurisdiction in this particular matter pursuant to 18 U.S.C. §871, which prohibits threats against the President, other situations may arise where the existence of federal jurisdiction turns solely on whether the victim is an official falling within the purview of 18 U.S.C. §1751. Indeed, the likelihood of offenses occurring against White House officials is liable to increase during the 1984 Presidential Campaign. In order to respond appropriately to such offenses, law enforcement officials must be able to determine quickly whether a person like Mr. Fischer is a person protected by section 1751.

To avoid any future difficulty in resolving who is and who is not an official falling within the purview of section 1751, we request either that you provide us with a list of the appropriate officials, and update it as the officials change, or that you designate a person or persons, who will be available 24 hours a day, to consult about such a list with representatives from the Federal Bureau of Investigation or Secret Service as the need for

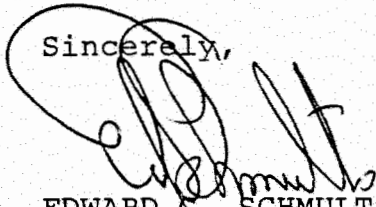
- send list
FF

such consultation arises. The list should include the names of the following two kinds of officials who are protected by 18 U.S.C. §1751:

1. The employees appointed pursuant to 3 U.S.C. §105(a)(2)(A), that is persons who are appointed by the President, employed in the Executive Office of the President, and paid "at rates not to exceed the rate of basic pay then currently paid for level II of the Executive Schedule of section 5313 of title 5" and
2. The employees appointed pursuant to 3 U.S.C. §106(a)(1)(A), that is persons who are appointed by the Vice President, employed in the Office of the Vice President, and paid "at rates not to exceed the rate of basic pay then currently paid for level II of the Executive Schedule of section 5313 of title 5"

I appreciate your assisting us in this matter.

Sincerely,



EDWARD C. SCHMULTS
Deputy Attorney General

OFFICE OF THE VICE PRESIDENT
WASHINGTON, D.C.

Boyden,

Gary Engelstad dropped by and
wanted to relay from Sue Cockrell
that Admiral Murphy is the only person
who falls into the category
described in the memo.

Evelyn

*Please
attach to
follow-up*

NOV 22 1983

THE WHITE HOUSE

WASHINGTON

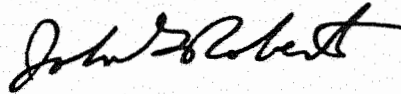
July 29, 1985

Dear Mr. Lindstrom:

Thank you for your letter of June 28 to the President. In that letter you expressed your support for William Bradford Reynolds.

We appreciate your taking the time and effort to share your views with us. As the President has remarked, Mr. Reynolds has done a superb job implementing the civil rights policies of the Administration, and he will continue in that role. Thank you for your supportive comments.

Sincerely,



John G. Roberts
Associate Counsel to the President

Mr. Vernie G. Lindstrom, Jr.
President, The Associated General
Contractors of America
1957 E Street, N.W.
Washington, D.C. 20006

JUL 03 1985

ID# 317636

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

FB017

DATE RECEIVED: JULY 02, 1985

NAME OF CORRESPONDENT: MR. VERNIE G. LINDSTROM JR.

JRSUBJECT: WRITES IN SUPPORT OF WILLIAM BRADFORD
REYNOLDS

ACTION

DISPOSITION

ROUTE TO: OFFICE/AGENCY	(STAFF NAME)	ACT CODE	DATE YY/MM/DD	TYPE RESP	C D	COMPLETED YY/MM/DD
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LINDA CHAVEZ

ORG 85/07/02

C 85/07/09

REFERRAL NOTE:

FRED FIELDINGA 85/07/091 1

REFERRAL NOTE:

CUAT18R 85/07/12S 85/07/12

REFERRAL NOTE:

REFERRAL NOTE:

REFERRAL NOTE:

COMMENTS:

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: _____

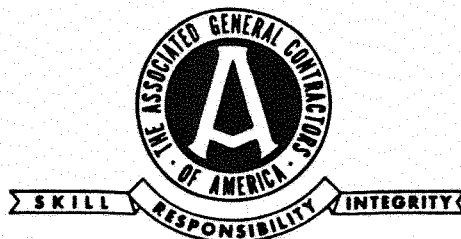
PL MAIL USER CODES: (A) _____ (B) _____ (C) _____

*ACTION CODES:	*DISPOSITION	*OUTGOING	*
*	*	*CORRESPONDENCE:	*
*A-APPROPRIATE ACTION	*A-ANSWERED	*TYPE RESP=INITIALS	*
*C-COMMENT/RECOM	*B-NON-SPEC-REFERRAL	*OF SIGNER	*
*D-DRAFT RESPONSE	*C-COMPLETED	*CODE = A	*
*F-FURNISH FACT SHEET	*S-SUSPENDED	*COMPLETED = DATE OF	*
I-INFO COPY/NO ACT NEC		*OUTGOING	*
*R-DIRECT REPLY W/COPY *			*
*S-FOR-SIGNATURE *			*
*X-INTERIM REPLY *			*

REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE
(ROOM 75, OEOb) EXT-2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING
LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS
MANAGEMENT.

317636

Linda Chaffey



THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

1957 E Street, N.W. • Washington, D.C. 20006 • (202) 393-2040 • TWX: 710-822-9406 AGC WSH

VERNIE G. LINDSTROM, JR., *President*

RICHARD E. HALL, *Senior Vice President*

DANA HUESTIS, *Vice President*

WALTER K. PRIESTER, *Treasurer*

HUBERT BEATTY, *Executive Vice President*

June 28, 1985

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

Dear Mr. President:

Every time I think my respect and regard for you is at its zenith you raise it yet another notch. Your statement in continued support of William Bradford Reynolds, as reported in today's Washington Post, "Let me emphasize that Mr. Reynolds' civil rights views reflect my own. The policies he pursued are the policies of this Administration, and they remain our policies as long as I am President," is another example of what makes you great.

I totally agree with you that some members of the Senate Judiciary Committee used the confirmation process to conduct an ideological assault on a superbly qualified candidate. Their actions were, indeed, unjust and deeply wrong a good and honorable man.

Neither you, Brad Reynolds or your Administration is in the least diminished.

Again, with every day that passes, you make me proud to be an American and grateful that our country enjoys your leadership.

Sincerely,

Vernie G. Lindstrom, Jr.
Vernie G. Lindstrom, Jr.
President

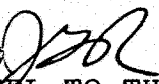
cc: The Honorable Edwin Meese, III
William Bradford Reynolds

THE WHITE HOUSE

WASHINGTON

August 1, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Federal Juvenile Delinquency Programs Report

You have asked for our views on whether the President should submit a report to Congress and the Coordinating Council on Juvenile Justice and Delinquency Prevention in response to the Eighth Analysis and Evaluation submitted to the President and Congress by the Director of the Office of Juvenile Justice and Delinquency Prevention (OJJDP). As pointed out by Dan Marks in his memorandum for you dated July 30, the President is in fact required by 42 U.S.C. § 5614(c) to submit such a report, within 90 days of receipt of the analysis and evaluation from the Director of OJJDP (in this case, by September 24).

Although this requirement seems to have been ignored in the past, it should certainly be complied with now. OPD and OMB should prepare a report, in consultation with OJJDP. The statute specifies that the report should contain "a detailed statement" of actions taken or planned in response to the OJJDP analysis and evaluation, but OPD and OMB have considerable flexibility in framing a response. The only prior report was very brief and general.

ID #

CU

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1 1Name of Correspondent: D. Chew☐ MI Mail Report

User Codes: (A) _____

(B) _____

(C) _____

Subject: Federal Juvenile Delinquency Programs
Report**ROUTE TO:****ACTION****DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CUHole</u>	ORIGINATOR	<u>85,07,31</u>			<u>1 1</u>
<u>CUat 18</u>	Referral Note: <u>R</u>	<u>85,07,31</u>		<u>S</u>	<u>85,08,07</u>
	Referral Note:	<u>1 1</u>			<u>1 1</u>
	Referral Note:	<u>1 1</u>			<u>1 1</u>
	Referral Note:	<u>1 1</u>			<u>1 1</u>
	Referral Note:	<u>1 1</u>			<u>1 1</u>

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

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S - For Signature
X - Interim Reply

DISPOSITION CODES:

A - Answered C - Completed
B - Non-Special Referral S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
Code = "A"

Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.

Send all routing updates to Central Reference (Room 75, OEOB).

Always return completed correspondence record to Central Files.

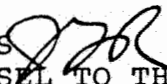
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

THE WHITE HOUSE

WASHINGTON

August 2, 1985

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Justice Views on H.R. 704, a Bill to
Amend Title 18 of U.S. Code to Establish
Constitutional Procedures for Imposing
the Death Penalty in Cases of Treason and
Espionage

Counsel's Office has reviewed the above-referenced views,
and finds no objection to them from a legal perspective.

ND006**WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**☐ **O - OUTGOING**☐ **H - INTERNAL**☐ **I - INCOMING**Date Correspondence
Received (YY/MM/DD) 1 1**JR**Name of Correspondent: James mun☐ **MI Mail Report**

User Codes: (A) _____ (B) _____ (C) _____

Subject: Justice memo on H.R. 704, a bill to amend
title 18 of U.S. Code to establish constitutional
procedures for imposing the death penalty
in cases of treason & espionage**ROUTE TO:****ACTION****DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>Curran</u>	ORIGINATOR	<u>85.07.31</u>			<u>1 1</u>
<u>curt 18</u>	Referral Note: <u>R</u>	<u>85.08.01</u>	<u>TR</u>	<u>S</u>	<u>85.08.11</u>
	Referral Note:				
		<u>1 1</u>			<u>1 1</u>
	Referral Note:				
		<u>1 1</u>			<u>1 1</u>
	Referral Note:				
		<u>1 1</u>			<u>1 1</u>
	Referral Note:				

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DISPOSITION CODES:

A - Answered
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S - Suspended

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Type of Response = Initials of Signer
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Completion Date = Date of Outgoing

Comments: _____

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Refer questions about the correspondence tracking system to Central Reference, ext. 2590.



**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503**

July 30, 1985

LEGISLATIVE REFERRAL MEMORANDUM

334800 *cu*

TO: Department of Defense
Central Intelligence Agency
Department of the Treasury
Department of State

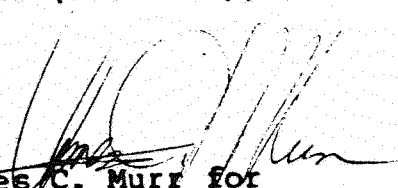
SUBJECT: Justice views on H.R. 704, a bill to amend title 18 of the United States Code to establish constitutional procedures for imposing the death penalty in cases of treason and espionage

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with Circular A-19.

Please provide us with your views no later than August 16, 1985.

(Unless objections are received, we anticipate that Justice, after making appropriate revisions, will transmit the attached to Congress as its views on H.R. 704.)

Direct your questions to Gregory Jones (395-3454), of this office.


James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

cc: A. Curtis
F. Kalder
J. Cooney
F. Fielding ✓



Office of the Assistant Attorney General

Washington, D.C. 20530

July 25, 1985

The Honorable David A. Stockman
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Stockman:

This is in response to your request for the views of the Department of Justice on H.R. 704, a bill to amend title 18 of the United States Code to establish constitutional procedures for imposing the death penalty in cases of treason and espionage. The Department strongly supports the death penalty as a sentencing option for these crimes, but in our view the death penalty is also justified for several other offenses as well. Consequently, we do not favor the piecemeal approach of H.R. 704.

From a technical standpoint, H.R. 704 is an extremely well drafted bill. It closely follows the procedures set out in death penalty bills that the Department of Justice has supported in the last two Congresses such as S. 239 in the 99th Congress, S. 1765 in the 98th Congress, and Title X of H.R. 2151 in the 98th Congress, the Administration's Comprehensive Crime Control Bill as introduced in the House. Its procedures and criteria for the imposition of the death penalty are, in our judgement, fully consistent with those approved by the Supreme Court in its landmark decisions in Gregg v. Georgia, 428 U.S. 153 (1976); Proffitt v. Florida, 428 U.S. 242 (1976); Jurek v. Texas, 428 U.S. 262 (1976); Woodson v. North Carolina, 428 U.S. 280 (1976); and Roberts v. Louisiana, 428 U.S. 325 (1976). In those cases the Supreme Court held that the death penalty was a constitutionally permitted sanction if imposed under certain procedures and criteria which guarded against the unfettered discretion condemned in Furman v. Georgia, 408 U.S. 238 (1972), but which retained sufficient flexibility to allow the consideration of aggravating and mitigating factors in each case. H.R. 704 also appropriately tailors the provisions in the Administration's bills to limit them to the offenses of treason and espionage.

Nevertheless, the Department believes that the death penalty should be available for other heinous crimes such as murder rather than for just these two offenses. While we fully appreciate the position expressed in H.R. 704 that treason and espionage

are so harmful to the national interest that they should be treated separately, there are other crimes for which such an argument could also be made. For example, probably no offense has as great an impact on the United States as a nation than a Presidential assassination. Very possibly an attempted Presidential assassination that nearly succeeds, a murder of a foreign head of state while in our country, and certain aircraft hijackings resulting in death, may place the country in as much danger as treason or the type of aggravated espionage covered by H.R. 704. Yet these offenses are not covered by the bill. In our view, it would be preferable to take advantage of the understandable present Congressional interest in the death penalty for espionage and treason as a way of seeking consideration by the Congress (especially the House) of the more broadly applicable death penalty provisions contained in the above bills that the Department has supported.

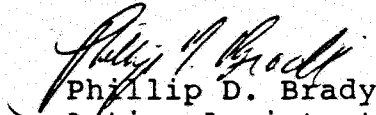
If, however, the Administration decides to support or not to oppose H.R. 704, there is one minor drafting change which we think should be made. Proposed subsection 2381(c) of title 18 in that bill states that the government must serve on the defendant and file with the court a notice that it intends to seek the death penalty "a reasonable time before trial or acceptance by the court of a plea of guilty." The comparable provision in the Department-drafted bills provides for serving and filing this notice "a reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause." This latter phrase would enable the government to file notice of its intention to seek the death penalty a short time before the scheduled start of the trial or the taking of a plea if it obtains evidence indicating such a penalty is justified that could not reasonably have been discovered sooner. We think that in this type of situation the government should be allowed to file notice of its intention to seek the death penalty so long as the defendant is given an adequate opportunity (which in many cases would necessitate a delay in the starting date of the trial) to enable him or her to prepare for a constitutionally required voir dire of the jury and otherwise get ready for the trial and the possible sentencing hearing.

We also note the presence of an apparent typographical error in line 20 of page four of H.R. 704. The line should read: "given fair opportunity to present argument as to the adequacy of".

In sum, for the reasons stated, the Department of Justice would prefer the enactment of a more broadly applicable death penalty bill than H.R. 704. We think that the Administration

should not, at least at this point, support Congressional efforts to make the punishment of death available only for treason and espionage, as much as it is justified for those two offenses.

Sincerely,

A handwritten signature in cursive script, appearing to read "Phillip D. Brady".

Phillip D. Brady
Acting Assistant Attorney General
Office of Legislative and
Intergovernmental Affairs

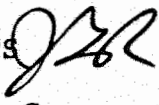
6

THE WHITE HOUSE

WASHINGTON

August 20, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 
SUBJECT: Letter from 92 Congressmen
Expressing Support for OSI

Ninety-two Congressmen have written the President expressing their support for the Justice Department Office of Special Investigations, the unit in the Criminal Division charged with finding, denaturalizing, and deporting former Nazis who emigrated to the United States. The signatories call upon the President "to publicly express" his support for OSI as well, despite "an effort in some quarters to discredit the achievements" of the Office.

As you know, numerous East European ethnic groups have objected to the activities of OSI, and alleged OSI collaboration with the KGB in obtaining evidence against alleged former Nazis. According to some of the ethnic organizations, OSI investigators harass East European ethnic communities and brand anti-Soviet emigres as former Nazis. Quite apart from this dispute, some have questioned the existence of a separate office in Justice, and the expenditure of significant law enforcement funds, to find, denaturalize, and deport a handful of septuagenarians. The signers of the letter obviously hope to prompt a pronouncement from the President on these issues.

I recommend referring the letter to Justice and requesting guidance from that Department on a reply. Some of the ethnic opposition to OSI is probably motivated by historic anti-Semitism among certain East European communities, but legitimate concerns have been raised, particularly with respect to use of KGB-supplied evidence in OSI-initiated proceedings. A response supporting OSI, but without generally dismissing all the critics of the office's procedures, would probably be appropriate.

Attachment

THE WHITE HOUSE

WASHINGTON

August 20, 1985

MEMORANDUM FOR D. LOWELL JENSEN
DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

FROM: FRED F. FIELDING ^{F3}/RAH
COUNSEL TO THE PRESIDENT

SUBJECT: Letter from 92 Congressmen
Expressing Support for OSI

Ninety-two Congressmen have signed the attached letter asking the President to express publicly his support for the Office of Special Investigations. As you know, there has been some criticism of OSI from certain ethnic groups. I would appreciate your views on how to respond to this letter.

Many thanks.

FFF:JGR:aea 8/20/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

August 20, 1985

MEMORANDUM FOR D. LOWELL JENSEN
DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Letter from 92 Congressmen
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Many thanks.

FFF:JGR:aea 8/20/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

FB017

DATE RECEIVED: JULY 29, 1985

NAME OF CORRESPONDENT: THE HONORABLE JOHN EDWARD PORTER

SUBJECT: EXPRESSES CONTINUED SUPPORT FOR JUSTICE
DEPARTMENT'S OFFICE OF SPECIAL INVESTIGATIONS

ROUTE TO:		ACTION		DISPOSITION	
OFFICE/AGENCY	(STAFF NAME)	ACT CODE	DATE YY/MM/DD	TYPE RESP	C COMPLETED D YY/MM/DD
M. B. OGLESBY		ORG	85/07/29		1/1
CU HOLL	REFERRAL NOTE:	D	85/08/15		1/1
CUAT 18	REFERRAL NOTE:	D	85/08/16		85/08/26
	REFERRAL NOTE:		1/1		1/1
	REFERRAL NOTE:		1/1		1/1
	REFERRAL NOTE:		1/1		1/1

COMMENTS:

ADDITIONAL CORRESPONDENTS: 91 MEDIA:L INDIVIDUAL CODES: 1230 1240

MAIL USER CODES: (A) (B) (C)

*ACTION CODES:	*DISPOSITION	*OUTGOING	*
*	*	*CORRESPONDENCE:	*
*A-APPROPRIATE ACTION	*A-ANSWERED	*TYPE RESP=INITIALS	*
*C-COMMENT/RECOM	*B-NON-SPEC-REFERRAL	*OF SIGNER	*
*D-DRAFT RESPONSE	*C-COMPLETED	*CODE = A	*
*F-FURNISH FACT SHEET	*S-SUSPENDED	*COMPLETED = DATE OF	*
I-INFO COPY/NO ACT NEC		*OUTGOING	*
*R-DIRECT REPLY W/COPY *			*
*S-FOR-SIGNATURE *			*
*X-INTERIM REPLY *			*

REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE
(ROOM 75, OEOB) EXT-2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING
LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS
MANAGEMENT.

THE WHITE HOUSE

WASHINGTON

August 15, 1985

MEMORANDUM FOR: DIANNA HOLLAND
FROM: KATHY RATTE JAFFKE *KRJ*
SUBJECT: Office of Special Investigations

Per our conversation today, attached is a letter to the President from 92 Members of Congress regarding the Office of Special Investigations (OSI) at Justice. The Members indicate their strong support for OSI and urge the President to publicly express his support for that office.

I would appreciate your advice on how to respond to the attached.

Thank you for your help in this regard.

cc: Records Management - FYI

Congress of the United States

House of Representatives

Washington, D.C. 20515

July 22, 1985

President Ronald Reagan
The White House
Washington, D.C. 20500

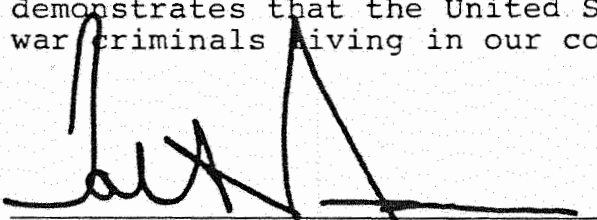
Dear Mr. President:

We are writing to express our continued support for the Justice Department's Office of Special Investigations (OSI), and to urge that you join us in expressing your personal support for the significant work of this important agency.

As you know, OSI was created at the urging of Congress in 1979 to look into suspected Nazi war criminals living in the United States under false pretenses. Many of these individuals gained access to our country by purposefully withholding information from U.S. government officials regarding past involvement in Nazi criminal activities. We are confident that you would agree that those who perpetrated crimes against the Jews and other victims of Nazism should not be afforded the privilege of residence in our country. This is why we so emphatically support the work of the Office of Special Investigations.

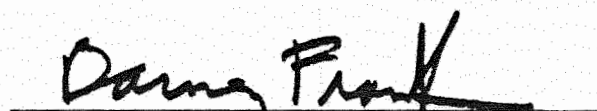
Our concern, however, regards an effort in some quarters to discredit the achievements of the Office of Special Investigations. In light of the recent attack on OSI, we believe it is time to reaffirm our commitment to sustaining the work of this agency. As members of Congress, we will continue to support the Office of Special Investigations and we respectfully urge you to publicly express your support as well.

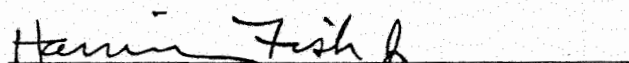
We firmly acknowledge that the values of our great Nation dictate that we preserve our moral commitment never to forget the horrors of the Holocaust. The vital work of the Office of Special Investigations demonstrates that the United States government will not tolerate Nazi war criminals living in our country.

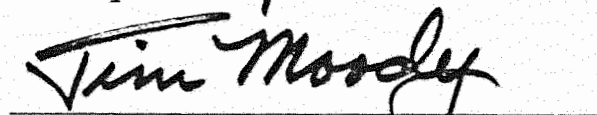

John Edward Porter

Sincerely,

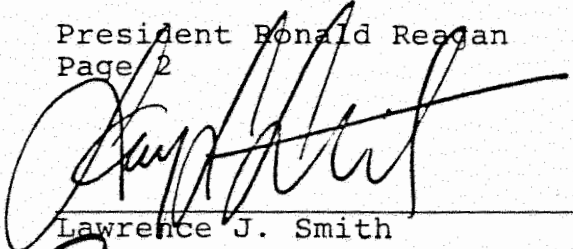

Gary L. Ackerman


Barney Frank

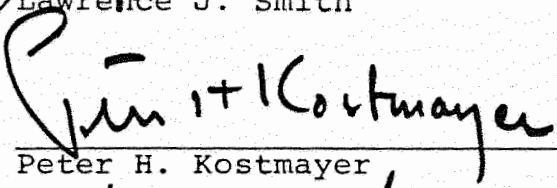

Hamilton Fish


Jim Moody

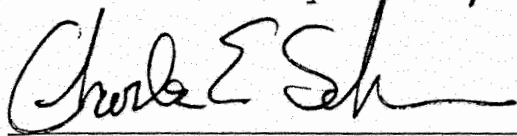

Silvio O. Conte



Lawrence J. Smith



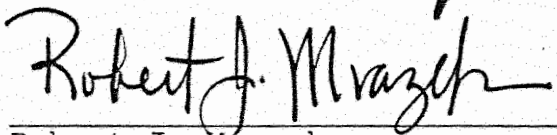
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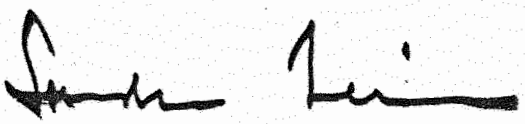
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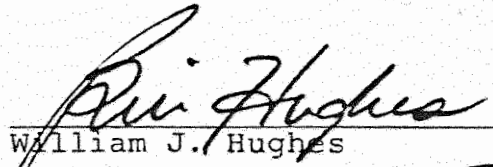
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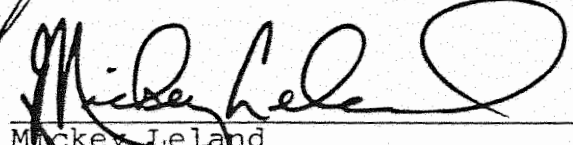
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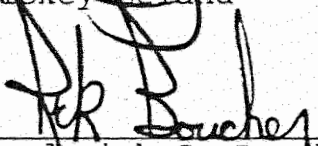
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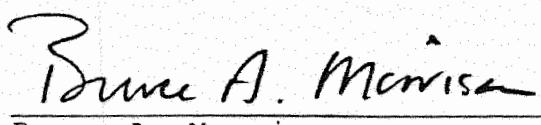
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Mickey Leland



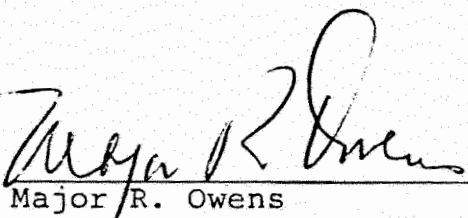
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Bruce A. Morrison



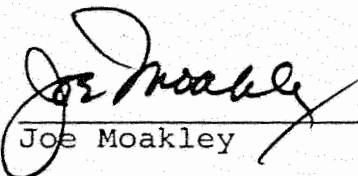
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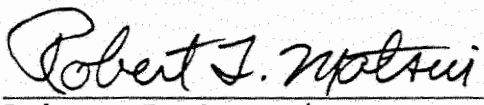
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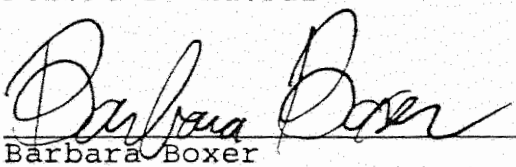
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Joe Moakley



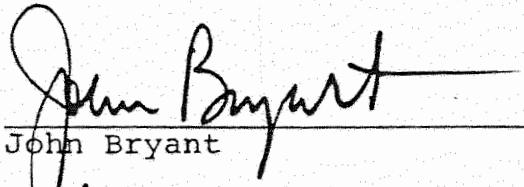
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Barbara Boxer



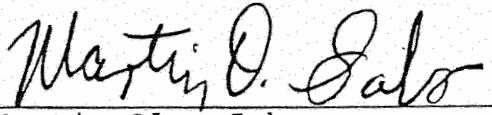
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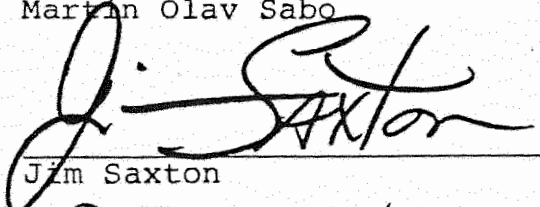
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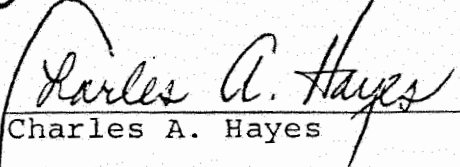
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Martin Olav Sabo



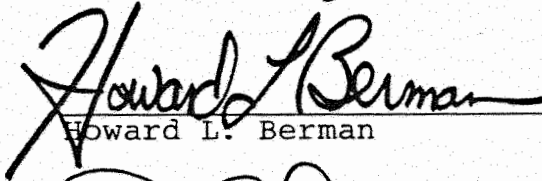
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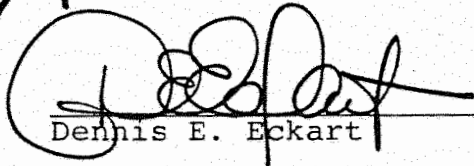
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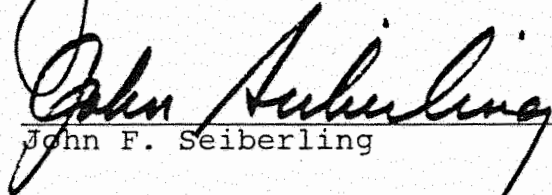

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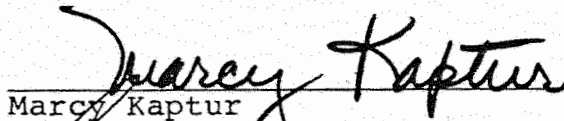

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Howard L. Berman

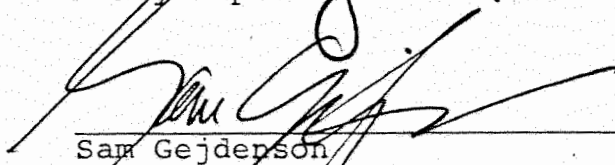

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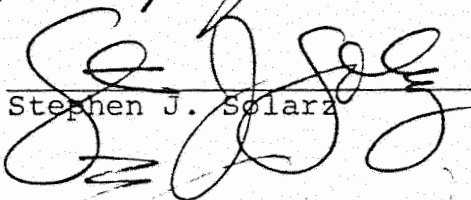

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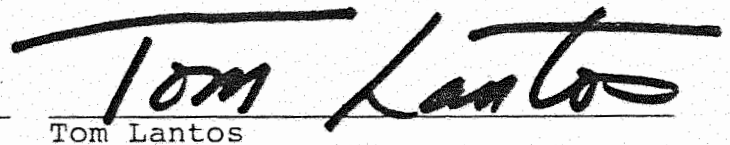

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Martin Frost

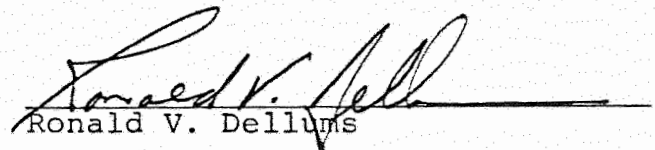

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Vic Fazio

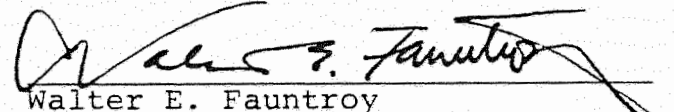

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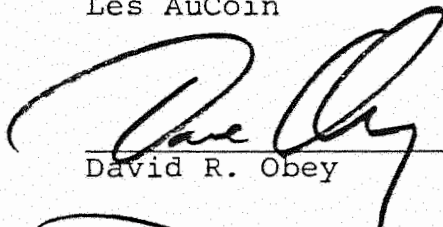

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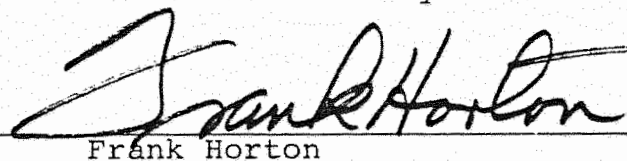

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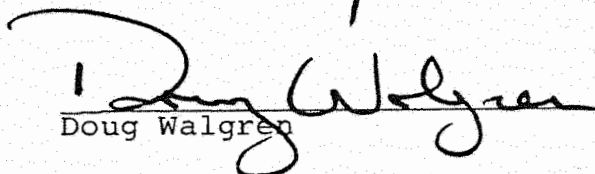

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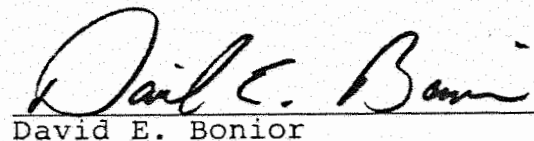

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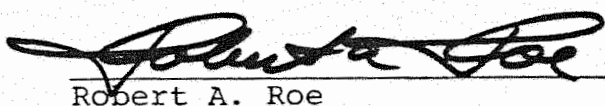

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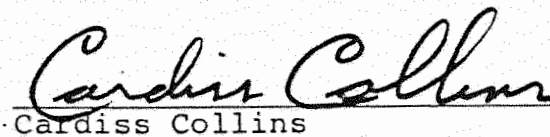

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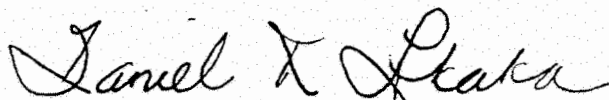

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Doug Walgren

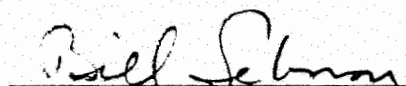

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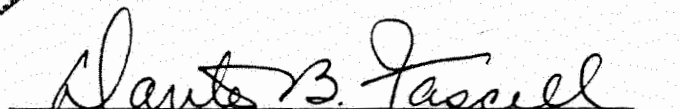

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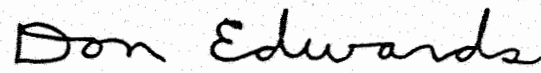

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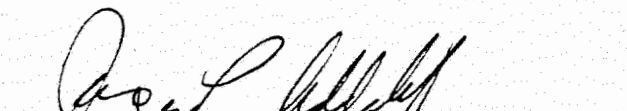

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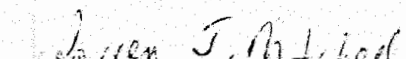

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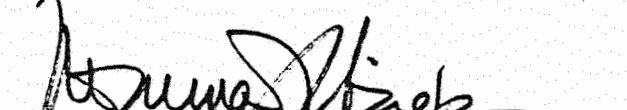

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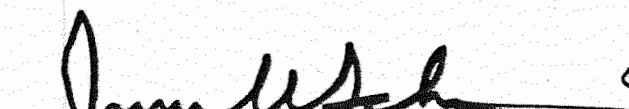

Dante B. Fascell


Don Edwards

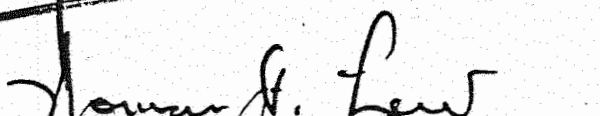

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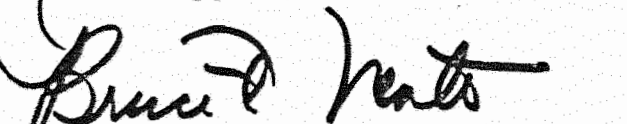

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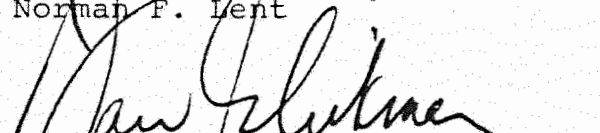

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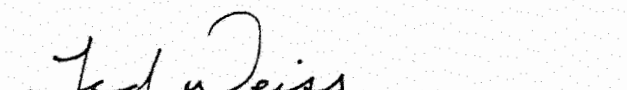

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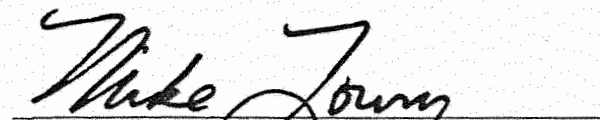

Mario Biaggi

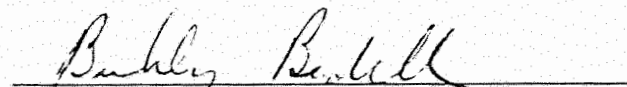

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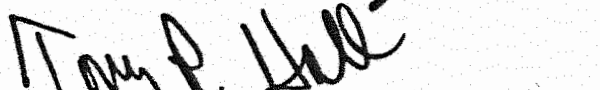

Bruce F. Vento


Dan Glickman

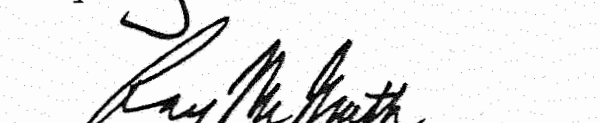

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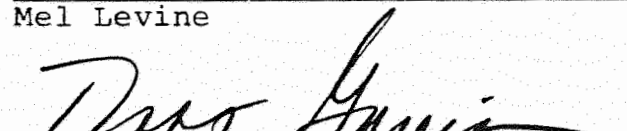

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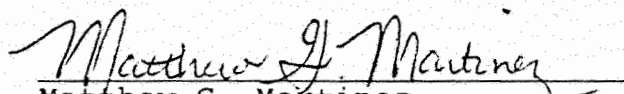

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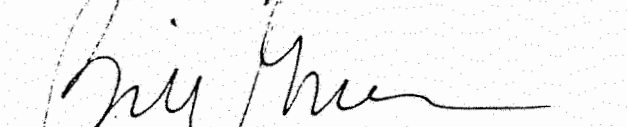

Tony P. Hall


Mel Levine

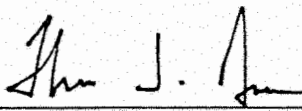

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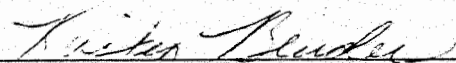

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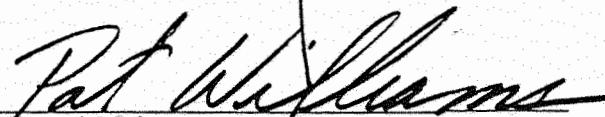

Matthew G. Martinez

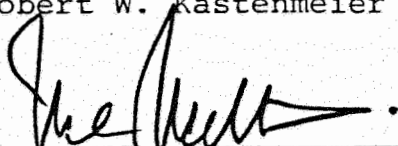

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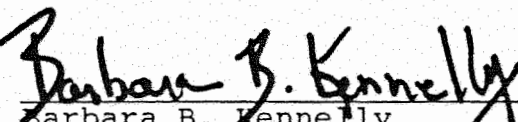

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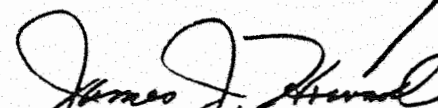

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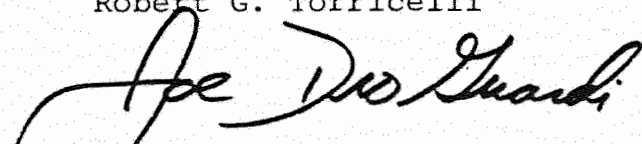

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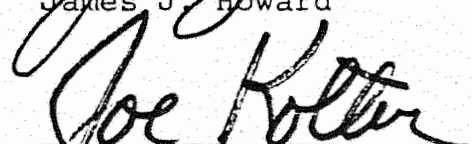

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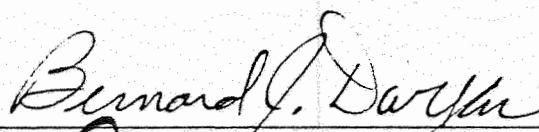

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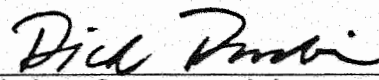

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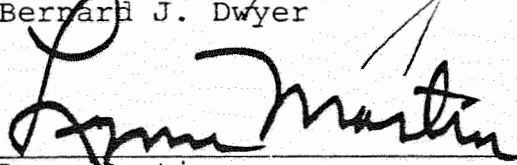

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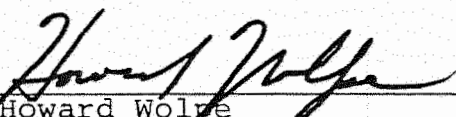

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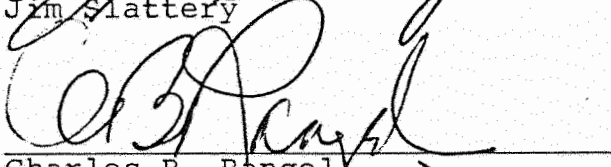

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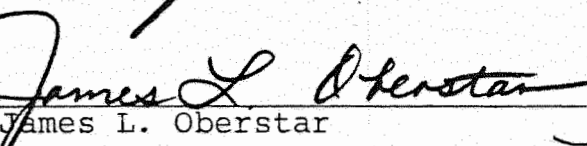

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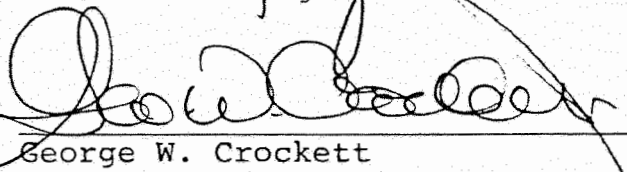

Lynn Martin


Jim Slattery


Howard Wolpe


Charles B. Rangel


James L. Oberstar


George W. Crockett

THE WHITE HOUSE
WASHINGTON

8-27

TO: DGH

FROM: John G. Roberts, Jr.
Associate Counsel
to the President

☐ FYI

☐ COMMENT

☐ ACTION

THANK YOU FOR SENDING THIS
TO ME. SINCE I DELIVERED
IT FOR RALPH TO FFF, I
ALREADY HAVE A COPY.

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copy.
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JBR

AF

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1/1

Name of Correspondent: Ralph Sarin

☐ MI Mail Report

User Codes: (A) (B) (C)

Subject: Implementation of Section 722(g) of the
International Security and Development Act of 1985

ROUTE TO:

ACTION

DISPOSITION

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CCHall		ORIGINATOR	85108126			1/1
		Referral Note:				
Curt 18		A	85108126			1/1
		Referral Note:				
			1/1			1/1
		Referral Note:				
			1/1			1/1
		Referral Note:				
			1/1			1/1
		Referral Note:				

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:

A - Answered C - Completed
B - Non-Special Referral S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments:

Keep this worksheet attached to the original incoming letter.

Send all routing updates to Central Reference (Room 75, OEOB).

Always return completed correspondence record to Central Files.

Refer questions about the correspondence tracking system to Central Reference, ext. 2590.



U.S. Department of Justice

Office of Legal Counsel

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Office of the
Assistant Attorney General

Washington, D.C. 20530

AUG 23 1985

MEMORANDUM FOR FRED F. FIELDING
Counsel to the President

RE: Implementation of Section 722(g) of the International Security and
Development Act of 1985

As you know, section 722(g) of the recently enacted International Security and Development Act (the Act) authorizes \$27 million to be appropriated "for humanitarian assistance to the Nicaraguan democratic resistance." That section provides, in relevant part, that:

Effective upon the date of enactment of this Act, there are authorized to be appropriated \$27,000,000 for humanitarian assistance to the Nicaraguan democratic resistance. Such assistance shall be provided to such department or agency of the United States as the President shall designate, except the Central Intelligence Agency or the Department of Defense.

131 Cong. Rec. H 6721 (daily ed. July 29, 1985). The President has not yet designated an agency or department to receive the assistance authorized by the Act. Certainly, this legislation authorizes the President to designate an existing agency or department of the United States, such as the State Department, the Agency for International Development, or the Executive Office of the President, to receive and thereupon to disburse the assistance. This designation could be accomplished in several ways, from a formal executive order to an oral directive from the President.

A more difficult question is whether the President could create a new entity within the Executive Branch, independent of existing agencies and departments, to receive the assistance and administer the program. We have reviewed this issue at some length and have concluded that in these circumstances the President lacks constitutional and statutory authority to do so.

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Our conclusion arises out of the language in the Appointments Clause of the Constitution, Art. II, sec. 2, cl. 2, that appears to vest responsibility for creating offices of the United States in Congress:

[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; . . .

(Emphasis added.) Although to our knowledge the question has never been definitively adjudicated, the language of the Appointments Clause and the historic practice of the Executive and Legislative Branches suggests strongly that offices of the United States must be created by Congress. Professor Corwin has noted, for example, that:

The Constitution, . . . by the "necessary and proper" clause assigns the power to create offices to Congress, while it deals with the appointing power in the . . . words of Article II, section 2, paragraph 2 An appointment is, therefore, ordinarily to an existing office, and one which owes its existence to an act of Congress.

Corwin, The President: Offices and Powers 83 (1948) (emphasis in original). See also The Constitution of the United States of America, Analysis and Interpretation, 92d Cong., 2d Sess. 523 (1973) ("That the Constitution distinguishes between the creation of an office and appointment thereto for the generality of national offices has never been questioned. The former is by law and takes place by virtue of Congress' power to pass all laws necessary and proper for carrying into execution the powers which the Constitution confers upon the government of the United States and its departments and officers." (Emphasis in original.)).

This dichotomy between creation of the office and appointment to the office is consistent with the historic view of the Executive and Legislative Branches as to the proper division of constitutional responsibility. Congress has provided by statute for establishment of Executive Branch agencies and particular positions within those agencies, and the President or heads of those agencies select individuals to fill those positions. Except as specifically provided by law the President assigns responsibilities to those agencies and positions to carry out substantive laws. This understanding has also generally been reflected in the Executive Branch's acquiescence in the need for reorganization legislation in order to restructure or consolidate agencies within the Executive Branch.

We believe that any agency created by the President to implement section 722(g) would, of necessity, have to be directed by an officer of the United States within the meaning of Buckley v. Valeo, 424 U.S. 1, 126 (1976), who would occupy an "office" of the United States. Because that office would be created to be independent of any other agencies or departments of the Executive Branch, that office would clearly be a new office. Therefore we do

not believe that, absent statutory authorization, the President would have authority to create such an office.¹

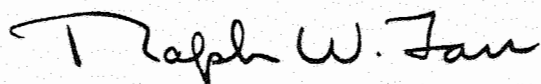
We have not found adequate statutory authority either in the Act or in the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2151 et seq., to allow the President to create a new office to implement the humanitarian assistance program. Under the Act, the President "shall designate" "such agency or department of the United States" as he deems appropriate to administer the program. On its face, that language appears to contemplate that the assistance will go to an existing agency or department. At least in the absence of some legislative history suggesting that Congress understood that the program would be administered through a new agency (which we have not found), we cannot read that language affirmatively to authorize the President to create an entity outside of existing agencies or departments. In similar language, the Foreign Assistance Act provides authority to the President to delegate functions "to such agency or officer of the United States Government as he shall direct." 22 U.S.C. 2381. Again, there is nothing in that language to suggest that Congress intended or contemplated that the President could use that language to create a wholly new administrative entity, outside the existing structures within the Executive Branch, to fulfill those statutory responsibilities. Therefore, we do not believe that the President could create a new agency outside of existing Executive Branch agencies and departments and designate that agency to receive the appropriated funds and implement the program of humanitarian assistance.

We are aware of one entity that has been advanced as precedent for presidential creation of such an agency. In Executive Order No. 11896 (Jan. 13, 1976), the President created the United States Sinai Support Mission to assist in the implementation of the "United States Proposal for the Early Warning System in Sinai." The letter prepared by the Office of Management and Budget to the Attorney General supporting the executive order recited that the mission was intended to be a "separate, independent mission, outside of the Department of State." Letter to the Attorney General from William M. Nichols, Acting General Counsel, OMB (Jan. 7, 1976). We do not believe that executive order is a clear precedent for creation of an independent agency to

¹ We do not mean to suggest that the President does not have some residuum of inherent constitutional authority to create offices or agencies, based on the direction in Art. II, sec. 1, that the "executive Power" shall be vested in the President and his mandate to "take Care that the Laws be faithfully executed." Such authority seems to be contemplated by 31 U.S.C. sec. 1347, which provides that "[a]n agency in existence for more than one year may not use amounts otherwise available for obligation to pay its expenses without a specific appropriation or specific authorization by law," and specifically refers to agencies "established by executive order." Section 1347 obviously cannot be read as an affirmative grant of authority to the President to create agencies by executive order, and we therefore do not believe we can rely on that language here to overcome the express language of the Appointments Clause. There may be cases, however, for example in a national emergency, in which we would conclude that the President may, in effect, create an office in order to carry out constitutional responsibilities that otherwise could not be fulfilled.

implement the Nicaraguan humanitarian aid program. As the OMB letter notes, the President was able in that instance to rely on the specific congressional authorization provided by section 631 of the Foreign Assistance Act of 1961, which gives the President the power to establish "missions" abroad. This specific authority would not appear to be available here. Second, the circumstances of the Joint Resolution of October 13, 1975, by which Congress authorized the establishment of a monitoring force to implement the "United States Proposal for the Early Warning System in Sinai," provide some evidence that Congress contemplated the creation of a new agency to fulfill the objective of the Resolution. Congress was specifically aware that a force of two hundred civilians was needed to monitor the system. As there were few precedents for such a civilian monitoring force and no agency with obvious expertise in providing such services, it is not unreasonable to infer that Congress contemplated that the President, pursuant to his broad authorization to implement the monitoring proposal, might create a new agency to serve as the monitoring force. Section 722(g) of the International Security and Development Cooperation Act of 1985, however, does not provide a similar factual background for an inference that Congress intended to empower the President to create a new agency, as we discussed above. Finally, the Sinai Support Mission received its allocation of funds from the Secretary of State rather than the President. See Ex. Order No. 11896, sec. 5. Moreover, the Secretary of State was ordered to exercise "continuous supervision and general direction" of the activities of the Mission. See *id.* at sec. 1(b). The vesting of the combined power to supervise and allocate funds in the Secretary raises serious question as to the formal independence of the Mission and suggests that the Mission should, as a technical matter, probably be considered to have been within the Department of State. Thus we do not view the creation of the Sinai Mission as particularly useful precedent here.

In conclusion, we believe that the assistance authorized for Nicaraguan humanitarian relief must be channeled through an existing department or agency of the United States. The choice of which agency or department is obviously a policy choice; aside from the prohibition against use of the Central Intelligence Agency or the Department of Defense, the Act gives no guidance and places no limitations on the choice of agency or department. However, we believe that creation of a new agency to administer the program, outside of the confines of existing agencies and departments, would raise substantial constitutional questions, and we therefore could not legally approve a presidential directive purporting to establish such an agency.



Ralph W. Tarr
Acting Assistant Attorney General
Office of Legal Counsel

cc: The Attorney General