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THE WHITE HOUSE

WASHINGTON

April 3, 1986

MEMORANDUM FOR DIANNA G. HOLLAND

FROM:

JOHN G. ROBERTS 

SUBJECT:

Letter to the President from Alabama
Attorney General Charles Graddick

This item should be closed out. Mr. Fielding decided to hold my draft response, as indicated by his notations on the memorandum, and then the proposed response was overtaken by events.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 28, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*SUBJECT: Letter to the President from Alabama
Attorney General Charles Graddick

*To JGR -
per our conversation
of this date, hold for
1 week so we can
deal with the
CT's proposal -
Thanks -*

General Graddick has written the President to note his opposition to the Chief Justice's proposal to create a temporary national court of appeals. Graddick argues in his letter that the proposal treats only a symptom and not the more serious problem of the federal litigation explosion. In suggesting more significant reform, Graddick focuses on abuse of habeas corpus by state court prisoners, praising the Administration proposals but asserting that reform has become a "very low priority" in the Administration and requires the President's personal involvement. Graddick then calls for limiting § 1983 suits, and requiring every bill considered by Congress to carry a "judicial impact" statement. Graddick concludes by citing the general problem of judicial activism and the need to appoint judges who are more restrained.

As you know, we have not yet taken a position on the Chief's proposal. All we can tell Graddick is that Justice is looking at the proposal and that we will make his views known to the appropriate individuals. Graddick's criticism of our habeas corpus effort is unfair and can be dismissed by noting that habeas reform is a prominent part of the new crime package. Justice has been looking into several avenues of § 1983 reform -- § 1983 abuse really has become the most serious federal court problem -- but the general sense is that it would be impolitic to touch the provision, which authorizes most actions for civil rights violations, until after 1984. Our record in resisting judicial activism is, of course, quite good.

I have drafted a reply to Graddick for your signature, sympathetically sharing his concerns, and advising that Justice is reviewing the Chief's proposal and that you have forwarded his letter to Justice for appropriate consideration. Also attached is a cover memorandum to the Deputy Attorney General.

Attachments

→
4/29

THE WHITE HOUSE

WASHINGTON

April 28, 1983

Dear General Graddick:

Thank you for your letter of March 10 to the President. In that letter you noted your opposition to the Chief Justice's proposal to create a national court of appeals, reasoning that such a court would treat only a symptom of a much larger and more serious problem. In particular, you focused on the causes of the litigation explosion in the federal courts, including abuse of habeas corpus by state prisoners, the increase in § 1983 filings, enactment of legislation without regard for judicial consequences, and the tendency of some federal judges to exceed the limited role envisioned for them by the Framers.

The Administration has not yet taken a position on the proposal of the Chief Justice. A working group within the Department of Justice is currently reviewing the question. I will see to it that your views are made known to the Department, so they may be given every appropriate consideration throughout the process of developing our position.

I think you know that this Administration shares your concern about the root causes of the explosion in federal litigation, and that we are trying to do something about them. Our habeas corpus reform proposal, designed to restore federal-state comity and the finality of state court convictions, has been resubmitted to Congress as an integral part of the proposed Comprehensive Crime Control Act of 1983. Your suggestion that Congress be required to consider the judicial impact of proposed legislation is intriguing; for the present we make every effort to examine legislation from this critical perspective to avoid increasing the litigiousness of our society. The burden imposed by abuse of § 1983 is becoming intolerable, and we are examining what can be done to alleviate the problem without undermining the historic role of § 1983 in vindicating Constitutional rights.

I agree with your conclusion that judicial activism is the basic cause of the litigation burden on the federal courts. So long as courts view themselves as appropriate forums for resolving all of society's problems, they will, quite understandably, be overloaded. This is not the role envisioned by the Framers for the Third Branch. As you know,

Attorney General Smith has on frequent occasions articulated the Administration's program to promote the values of judicial self-restraint. This program includes resisting arguments in litigation that invite judicial activism, and appointing to the bench qualified men and women who recognize the limited nature of the judicial role.

Thank you for providing us with your considered views on these serious matters. I think it is evident that we share your concerns. We are committed to restoring faith in the federal court system, and protecting it from the abuses that threaten to overwhelm it.

Sincerely,

Fred F. Fielding
Counsel to the President

The Honorable Charles A. Graddick
Attorney General
State of Alabama
64 North Union Street
Montgomery, Alabama 36130

THE WHITE HOUSE

WASHINGTON

April 28, 1983

MEMORANDUM FOR EDWARD C. SCHMULTS
DEPUTY ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence from Attorney
General Graddick of Alabama

I attach for whatever consideration you deem appropriate a letter to the President from General Graddick, and a copy of my reply.

Attachment

THE WHITE HOUSE

WASHINGTON

April 28, 1983

Dear General Graddick:

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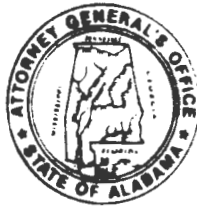
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Sincerely,

Fred F. Fielding
Counsel to the President

The Honorable Charles A. Graddick
Attorney General
State of Alabama
64 North Union Street
Montgomery, Alabama 36130

OFFICE OF THE ATTORNEY GENERAL



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WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL

JANIE NOBLES
ADMINISTRATIVE ASSISTANT

March 10, 1983

ADMINISTRATIVE BUILDING
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 834-5150

The Honorable Ronald R. Reagan
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

131630 CU

Re: Proposed National Court of
Appeals to Assist the
Supreme Court with its
Caseload

Dear President Reagan:

As you know, Chief Justice Burger has proposed the creation of a national court of appeals as a temporary or experimental procedure for reducing the United States Supreme Court's burgeoning caseload. While I share the Chief Justice's concern about the problem, I disagree with his proposed solution and would like to take this opportunity to outline my reasons.

My basic objection to the national court of appeals proposal is that it is a remedy which would treat only a symptom of a much larger and more serious problem. The Supreme Court's increasing workload simply reflects the enormous growth in federal court litigation in recent years which is the real malady. As the Chief Justice has noted, in the past three decades the caseload of lower federal appellate courts has increased more than 16 times faster than this country's population.

A recent study, reported in the journal of one of the American Bar Association's sections, reached some alarming conclusions about the rate at which federal court litigation is growing. According to that study, if the growth rate

The Honorable Ronald R. Reagan
March 10, 1983
Page Two

continues unabated, in three decades the federal appellate courts alone will be rendering one million decisions annually. That will require 5,000 federal appellate judges instead of the fewer than one hundred and fifty we have now, and their decisions will fill 1,000 federal reporter volumes a year, approximately the same number that have been filled in the previous two centuries of the Republic. The journal also predicted that three decades from now 10 million new cases will be filed in the federal trial courts each year.

Creating another layer of federal courts will do nothing to rescue this country from the grave danger of having its political, social, and governmental institutions submerged in a flood of federal litigation. Indeed, history suggests that additional courts may actually result in more litigation because of complex institutional reasons that have more than a little to do with human nature. Adding another level of litigation to the federal court system to relieve the case overload is somewhat like giving an addict one more fix. It may relieve his pains for a short while but in the long run it only postpones the ultimate day of reckoning and increases the problem that will have to be faced then.

Only by examining the causes for the enormous increase in federal court litigation can meaningful, long term solutions to the problem be found. One cause is the tremendous number of habeas corpus petitions filed in federal courts by state prisoners each year. Even prisoners whose guilt is clear and undisputed routinely challenge their state court convictions on technical grounds in federal courts. The hospitality federal courts show to state prisoners and their readiness to overturn state judgments on tenuous grounds have undermined federal-state comity and utterly destroyed any notion of finality of judgment. Federal judge-made law provides that there is no absolute bar to overturning a state court conviction ten, fifteen, or twenty years after it was entered, and federal courts can do so even though the prisoner has unsuccessfully challenged it on identical grounds two or more times before. It is no wonder that prisoners inundate the federal courts with habeas corpus petitions, since they have nothing to lose and everything to win as the law stands now.

The Honorable Ronald R. Reagan
March 10, 1983
Page Three

The federal habeas corpus reform bill that your administration proposed last year would go a long way towards remedying the major problems in this area and as a result would ease some of the current burden on the federal courts. The problem is that federal habeas corpus reform has apparently become a very low priority of your administration, and reform will come only if you personally emphasize its importance and work for passage of meaningful legislation such as that which has been proposed by your administration.

Another reason federal courts are overburdened is the incredible number of §1983 federal civil rights cases filed by state prisoners. Such cases have increased more than four-fold in the past decade. In some areas they constitute a very significant part of the federal court caseload. For example, in the middle district of Alabama, for the twelve month period ending September 30, 1981, one out of every three cases filed in the federal trial court was a §1983 action. The vast majority of such actions are filed pro se by state prisoners who had nothing better to do than harass the state officials required to answer the lawsuits. Indeed, some prisoners have filed more than a dozen §1983 lawsuits. Every objective observer argues that 99% or more of these filings are frivolous and that it is difficult to weed out the few meritorious ones because they get buried in all the others.

Not only are §1983 filings choking the federal trial courts but they are also creating a serious financial burden on the states who are forced to respond to them. My office alone spends nearly a half million dollars each year responding to these frivolous lawsuits, not one out of a hundred of which has any basis. Badly needed statutory reform could alleviate much of the problem. For example, a simple provision that no state prisoner can have his §1983 complaint considered until he has exhausted his state administrative remedies and that a full and fair state determination of the matter is conclusive would remove virtually all of these frivolous lawsuits from federal court. Only Congress can enact such reform, but your administration must provide the leadership needed on the issue.

A third cause of the federal court litigation explosion is the fact that each year Congress enacts thousands of bills without any regard to the effect that such legislation will

The Honorable Ronald R. Reagan
March 10, 1983
Page Four

have on the federal courts or on the cost of litigation. Serious consideration should be given to a requirement that every bill considered by Congress carry a statement of its expected effect on the judicial system and an estimate of the annual cost of litigation that will result from any new rights or rules contained in the bill.

Finally, a more general cause of the workload crisis that federal courts are facing is the fact that they are increasingly becoming forums for the resolution of political and social issues once reserved for more democratic institutions or for the electorate itself. The history of federal courts has taught us that most life-tenured judges who have the raw power to impose their social and political views on others will eventually attempt to do so.

One of many examples of this phenomenon is in the area of capital punishment. No majority of the Supreme Court has ever held capital punishment to be per se unconstitutional; thirty-nine states have capital punishment statutes; and over eleven hundred murderers are on death row. Yet, the federal courts have allowed only two murderers to be executed against their will in the past 15 years. A substantial majority of federal appellate judges are personally opposed to capital punishment. As a result, they have misused their judicial power to fashion doctrines that have indirectly virtually abolished a punishment which the same judges acknowledge is constitutionally permissible. The only remedy for this kind of activist judicial abuse is through the power of appointment of federal appellate judges, a power which only you have. Your appointment of Justice O'Connor was an excellent one, and I sincerely hope that it will be followed by others of similar quality. 7/11

Please understand that my observations are in no way directed at Chief Justice Burger. Indeed, he has recognized many of the problems discussed in this letter and has worked hard in attempting to remedy them. Without him the problems would be much worse, but he needs the kind of help with Congress that only your active involvement can provide.

I disagree with the Chief Justice's national court of appeals proposal simply because I think it would treat only one symptom of a very serious malady. If any reasonable

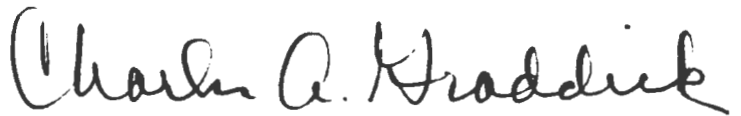
The Honorable Ronald R. Reagan
March 10, 1983
Page Five

semblance of the judicial system intended by the Founding Fathers is to survive, the underlying malady itself must be treated.

In addition, if there is to be a national court of appeals, even as a temporary institution, then I hope that appeals involving federal court review of state court judgments will be removed from its jurisdiction. Otherwise, the 6 to 8 years it now takes to have a state conviction reviewed in both state and federal courts will become 8 to 10 years. There will be yet another layer of federal judges before whom a convicted state defendant can take his case and delay the ultimate day of reckoning.

Thank you for your consideration, and please let me know if I can ever be of any assistance to you.

Sincerely,

A handwritten signature in cursive script, reading "Charles A. Graddick". The signature is written in dark ink and is positioned above the typed name.

CHARLES A. GRADDICK
Attorney General

CAG:ec

cc: Chief Justice Burger

ID # 131630CU

FGD52

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING

☐ H - INTERNAL

☐ I - INCOMING
Date Correspondence
Received (YY/MM/DD) 1 1

Name of Correspondent: Charles A. Braddeek

☐ MI Mail Report

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

Subject: Proposed National Court of Appeals
to assist the Supreme Court with the
caseload

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>WHolland</u>	ORIGINATOR	<u>83.04.04</u>			<u>1 1</u>
<u>CVATIS</u>	Referral Note:	<u>83.04.04</u>			<u>583.04.14</u>
	Referral Note:				
	Referral Note:				
	Referral Note:				
	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
- 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: _____

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OFFICE OF THE ATTORNEY GENERAL



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March 10, 1983

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Roberts -

- Pls prepare response
- this was given to me
by the AG at the
NAAAG Mtg.

- 4/2

131630 CU

The Honorable Ronald R. Reagan
March 10, 1983
Page Three

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Thank you for your consideration, and please let me know if I can ever be of any assistance to you.

Sincerely,

A handwritten signature in dark ink, reading "Charles A. Graddick". The signature is written in a cursive, slightly stylized font. The first letter "C" is large and loops around the first few letters. The last letter "k" has a long, sweeping tail that extends to the right.

CHARLES A. GRADDICK
Attorney General

CAG:ec

cc: Chief Justice Burger