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THE WHITE HOUSE

WASHINGTON

March 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 
SUBJECT: Statement of Samuel T. Currin
Concerning Food Stamp Fraud in
North Carolina

We have been provided with a copy of testimony Samuel T. Currin, the U.S. Attorney for the Eastern District of North Carolina, proposes to deliver before a hearing of the Senate Agriculture Committee on food stamp fraud and abuse. In his well-prepared testimony Currin describes "Operation Stampout," an undercover operation conducted by his office that resulted in a large number of indictments for food stamp abuse. Based on the results of Operation Stampout, Currin concludes that a black market exists for food stamps, with an exchange rate of about \$0.50 for \$1 worth of stamps. Stamps are used to purchase illegal guns, drugs, automobiles, alcohol -- anything that money can buy. Procedures to guard against abuse -- such as the requirement that food stamp users show their eligibility card when using the stamps -- are uniformly ignored. Currin calls for unspecified legislation to address these problems. I have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

March 16, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

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

SUBJECT: Statement of Samuel T. Currin
Concerning Food Stamp Fraud in
North Carolina

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

FFF:JGR:aea 3/16/84

cc: FFFielding/JGRoberts/Subj/Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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Received (YY/MM/DD) 1/1/Name of Correspondent: Greg Jones☐ MI Mail Report

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Subject: Statement of Samuel T. Curran concerning
the food stamp fraud in North Carolina.**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>CUHOU</u>	ORIGINATOR	<u>84,03,16</u>			<u>1/1/</u>
<u>CUAT 18</u>	Referral Note: <u>D</u>	<u>84,03,16</u>			<u>84 03, 20?</u>
	Referral Note:	<u>1/1/</u>			<u>1/1/</u>
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DRAFT

STATEMENT OF SAMUEL T. CURRIN, UNITED STATES ATTORNEY,
EASTERN DISTRICT OF NORTH CAROLINA

Mr. Chairman, it is a pleasure to appear before you today to discuss the operation of the food stamp program in North Carolina. As United States Attorney, I have observed and prosecuted fraud, and abuse in the food stamp program. I, therefore, welcome the willingness of the Senate Agriculture Committee to address these problems by seeking the recommendations of us who are involved daily in the investigation and prosecution of food stamp abuse cases.

Evidence of significant fraud and waste in the food stamp program has been well documented by the General Accounting Office, the Office of Inspector General (within the Department of Agriculture), congressional hearings, and by the Administration. As a result of these findings, several reform measures have been adopted and other worthy proposals are now pending in the Congress. In my view, Congress simply cannot ignore the pressing need to make further improvements in this program. An amazing amount of fraud has been revealed here in the Eastern District of North Carolina; yet, we know that we are only scratching the surface. Far more needs to be done. But it will require far more

investigators than are now available and further tightening of the program's operation.

Although the three United States Attorney's offices in North Carolina have prosecuted more food stamp fraud cases within the past two years than ever before, the magnitude of the problem is so great that, in spite of what we are doing, I have serious doubts about the continued integrity of the program.

Based on our experience in the Eastern District of North Carolina, food stamp fraud consists of three basic criminal schemes: 1) food stamp trafficking, 2) discounting, and 3) recipient fraud. Investigations and prosecutions that have taken place in this district indicate the scope and magnitude of these various schemes.

An undercover operation aimed at food stamp trafficking and discounting has just been completed in the Eastern District of North Carolina. The investigation was code named "Operation Stampout." This particular investigation took place in Fayetteville, in Cumberland County. Fayetteville was selected as the site for the undercover operation because of the numerous complaints of food stamp abuse which arise there and because Cumberland County receives more food stamps than any other county within the Eastern District--well over a million dollars each month in food

stamps. To date, 33 individuals have been convicted as a result of "Operation Stampout."

Two agents from the Office of Inspector General (USDA) were assigned to conduct this particular undercover operation in Fayetteville. The goal of the operation was for these agents to establish a residence in Fayetteville, to attempt to infiltrate the underground market in food stamp trafficking in the area, and to make "sting-type" sales to participants in this illegal exchange system. The agents lived in and operated out of a small apartment in Fayetteville. With the assistance of local telephone officials and law enforcement agencies, the agents established documentation to support their false identities.

The undercover agents were issued approximately \$20,000 in food stamps. They used a specially designed van during the course of the operation. This van was wired for sound, so that a conversation between the driver and a passenger could be recorded by a concealed agent in the rear of the van. The van also had two-way glass windows, special lock-down shock absorbers, and other "James Bond" type gadgetry that fascinate a largely desk-bound lawyer like myself. With the assistance of local informants that were already cooperating with law enforcement, the

undercover agents began to make contact with food stamp traffickers in Cumberland County. What the agents discovered was well beyond their expectations.

The agents soon learned that there was a well established practice of using food stamps as currency in Cumberland County through which virtually anything could be purchased. The individuals that the agents approached were not the least bit hesitant about dealing in food stamps in exchange for drugs, firearms, automobiles, and much more. This practice was often so blatant that the agents felt compelled on numerous occasions to inform those with whom they were dealing that it was illegal to engage in this type of activity. In spite of their warnings, without exception the response would be that the party involved knew it was illegal, that they simply did not care whether it was illegal, and that no one ever got caught. At one point, the agents became so well known in certain communities as the "Food Stamp Men," that women would literally run out of their homes in their housecoats to stop the agents' automobile on the street, thrust hundreds of dollars through the open window, and demand food stamps in exchange.

Several automobile dealers readily prepared fraudulent purchase contracts to indicate the receipt of cash when in fact the down payment and all installment

payments were made in food stamps. Local drug dealers and drug traffickers accepted food stamps in exchange for controlled substances, and afterwards informed the agents that this had been their practice for years. The food stamps had a known exchange rate on the streets of fifty cents on the dollar, but occasionally a more favorable exchange was possible when the amounts involved were larger.

The magnitude of the food stamp abuse in the Fayetteville area is best illustrated by the discovery during this investigation of the "Jackson family." The "Jacksons" are a white, predominately middle-class group, all of whom are related by blood or marriage, and who reside in Fayetteville, North Carolina. The major figure in the family is Gary Jackson, who was also referred to as "Roe" or "Uncle Roe." The undercover agents were successful in winning the confidence of Gary Jackson's nephew, Preston Lee Jackson. With Preston Lee Jackson's unwitting cooperation, the agents were introduced to numerous members of the Jackson family, many of whom indicated that they had regularly dealt in the illegal acquisition of food stamps for years. In addition, several members of the Jackson family—including Gary Jackson and his son-in-law, Michael Lynn Thompson—were drug dealers and gun runners. The agents made repeated trips to the residence of Gary Jackson,

and with the help of Preston Lee Jackson, the agents regularly exchanged food stamps for drugs, guns, and cash.

As a result of "Operation Stampout," 38 people have been indicted, many of whom are members of or connected with the Jackson family. Preston Lee Jackson, Michael Lynn Thompson, and Gary Jackson all elected to go to trial before juries in the Eastern District of North Carolina. Preston Lee Jackson was convicted of 21 separate felony offenses, and faces 105 years in prison for drug charges, food stamp trafficking, and gun sales. Michael Lynn Thompson and Gary Jackson were tried together, and both were found guilty on all counts and face 35 and 23 year prison terms respectively.

As previously noted, of the 38 people indicted in "Operation Stampout", 33 have been convicted. Charges were dropped against one minor defendant, and the remaining four defendants are either pending trial or still at large. Most of the defendants waived the jury trial and plead guilty.

In my view, the abuse and fraud in the food stamp program so vividly revealed by "Operation Stampout" accurately reflect the widespread problem of fraud throughout North Carolina. It is certainly no exaggeration to say that fraud of the type found in Cumberland County could be brought to light in any city

or county in North Carolina where a similar undercover operation might be attempted.

Even though "Operation Stampout" was immensely successful and will, hopefully, have some deterrent impact, it would be naive to conclude that this investigation even scratched the surface of the food stamp fraud occurring in Cumberland County. The operation, however, does demonstrate to us the large scale and well established illegal use of food stamps by people who simply do not need them.

During the course of "Operation Stampout", the undercover agents witnessed firsthand widespread violations of the Food Stamp Act by retail stores in the redeeming of stamps. In fact, several dishonest retail store operators were indicted and convicted in this undercover operation.

We found retail stores that would accept or even purchase food stamps from people whom they knew were not entitled to them. However, most of the stamps that were illegally acquired by individuals during "Operation Stampout" were accepted in the normal course of business by local stores. These stores did not know how the stamps were acquired, nor did they seem to care. Regulations require a retail store to have anyone offering food stamps in exchange for eligible items to produce their "green card" showing

that they are a legitimate recipient of this aid. We found that this is not done almost without exception. If the person has the food stamps and claims that he forgot his card, there is little incentive for the store to refuse to accept those stamps and demand cash. The risk to the store of being apprehended and ultimately removed from participation in the food stamp program is virtually non-existent. Unfortunately, this is the well-founded belief among dishonest retail store owners and operators. If we learned anything at all from "Operation Stampout" it is that more stringent controls and sanctions must be placed on retail outlets who have been given the privilege of redeeming food stamps.

While food stamp trafficking and discounting are major problems, our experience in the Eastern District of North Carolina indicates that the greatest federal financial losses in the food stamp program occur with regard to eligibility determination. This typically occurs when either an eligible or ineligible candidate for food stamps reports information on their application which is false. The most recent information from the Department of Agriculture indicates that, on a national level, 9.75% of all food stamp benefits issued were issued to ineligible recipients or distributed in excess of levels to which recipients were entitled. An audit conducted by the Office of Inspector General

(USDA) in Wake County (Raleigh), North Carolina during the period of January, 1980 through December, 1981 confirmed this Agriculture Department finding locally. The audit turned up 574 Wake County food stamp applicants believed to have understated their incomes when applying for food stamps. The discrepancies were uncovered by checking social security numbers against Employment Security Commission records to show if the recipients were earning more income than they had claimed on food stamp applications. The computer check showed that about 10% of those receiving food stamps in Wake County had misrepresented their income. According to the OIG audit, unreported wages resulted in over-issuances estimated at \$300,000 in the food stamp program in Wake County alone.

I note that there are several worthy legislative proposals tightening up the food stamp application process and eligibility requirements. I urge the Committee to seriously consider these proposals and remove the incentives and loopholes which make such widespread cheating possible. The scope of this cheating is so prevalent that prosecution of offenders is totally beyond the capability of prosecutors. If the enormous federal losses are to be reduced, it must be accomplished by legislation which closes the loopholes,

provides the states with more incentive to detect fraud and abuse, and creates tough administrative sanctions for those who are defrauding the system.

The State of North Carolina receives approximately 20 million dollars in food stamps each month, or 240 million dollars annually. Based upon the fraud, waste, and abuse which we have uncovered in our audits and investigations in the Eastern District of North Carolina, it is clear that losses statewide are running in the millions of dollars. This mammoth entitlement program is being heavily abused. The food stamp program is an easy "target" for scheming and deceitful swindlers. And for those dishonest individuals who choose to line their pockets with profits from the food stamp black market, stamps have become a second currency. They are being used to purchase everything imaginable--drugs, guns, automobiles, and alcoholic beverages. Anything you can buy with money, you can buy with food stamps.

I commend you, Mr. Chairman, for the improvements which Congress and the Reagan Administration have already made in the operation of the food stamp program. Without additional changes and reforms, however, the abuses will continue to the detriment of the poor and needy, and the taxpayer as well. I thank you, Mr. Chairman, for addressing this

problem and for soliciting the recommendations of those who work closely with the food stamp program.

THE WHITE HOUSE

WASHINGTON

March 26, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS 

SUBJECT:

Statement of James I.K. Knapp
Concerning Assault on Federal Officers

We have been provided with a copy of testimony Deputy Assistant Attorney General James I.K. Knapp proposes to deliver on March 28 before the Subcommittee on Criminal Justice of the House Judiciary Committee. The testimony concerns H.R. 5150, a bill to strengthen the laws covering assaults and murders of federal officials and to make it a federal offense to kill or assault certain relatives of federal officials. The testimony expresses basic support for the objectives of this legislation, but notes a preference for the formulation in S. 779 and Parts G and K of Title X of S. 1762, the Senate-passed Comprehensive Crime Control Act. The House bill completely redrafts 18 U.S.C. §§ 111 and 1114, while the Senate bill selectively amends those sections. The Senate approach is preferable because it preserves favorable judicial precedent interpreting the current law. I have reviewed the testimony and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

March 26, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING *Orig. 3/26/84*
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of James I.K. Knapp
Concerning Assault on Federal Officers

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

FFF:JGR:aea 3/26/84

cc: FFFielding/JGRoberts/Subj/Chro

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DRAFT

STATEMENT

OF

**JAMES I. K. KNAPP
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION**

BEFORE

THE

**SUBCOMMITTEE ON CRIMINAL JUSTICE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES**

CONCERNING

ASSAULT ON FEDERAL OFFICERS

ON

MARCH 28, 1984

Mr. Chairman and members of the subcommittee, I am pleased to be here today to present the views of the Department of Justice on H.R. 5150, a bill designed to strengthen the present laws punishing assaults and murders of federal officers and employees and to make it a federal offense to kill or assault close relatives of certain federal officers and employees. We support these goals which are also accomplished in legislation which has passed the Senate as S. 779 and as Parts G and K of Title X of S. 1762, the Comprehensive Crime Control Act.¹ We greatly appreciate the Subcommittee's willingness to consider this important area. We believe, however, that the approach taken in H.R. 5150 of completely rewriting the underlying statutes, 18 U.S.C. 111 and 1114, rather than selectively amending them, is needlessly cumbersome and leads to certain problems. At the same time, my statement will acknowledge the presence of certain improvements which would be made by H.R. 5150 as compared with the corresponding portions of S. 1762, although again we note that these changes could be just as well accomplished without the necessity for a wholesale restructuring of the existing statutes.

As indicated, H.R. 5150, unlike Parts G and K of Title X of S. 1762, completely redrafts sections 111 and 1114 of title 18, the sections that proscribe, respectively, assaults upon and murders of a long list of federal employees while they are

¹ These provisions as passed by the Senate are simple, straightforward and attracted virtually unanimous bipartisan support. S. 779 was passed by the Senate on a voice vote on November 18, 1983. S. 1762 passed by a vote of 91-1 on February 2, 1984 with no opposition being voiced to Parts G and K.

engaged in or on account of the performance of their official duties. The revision of section 111 generally follows the format adopted in House criminal code revision bills considered in preceding Congresses. Unfortunately, not only does the new language employed make the section very difficult to follow, in part because the rewriting is unaccompanied by all of the clarifying definitions and rules of construction included in the prior code revision bills, it also has the substantive effects of rendering the proposed new sections less inclusive than current law, and of lowering the authorized term of imprisonment for some types of violations.

First, the rewriting of section 111 has the effect of changing it from one which punishes both assaults and batteries to one which would punish only batteries. Present section 111 punishes one who "forcibly assaults, resists, opposes, impedes, intimidates or interferes with any person designated in section 1114 of this Title while engaged in or on account of the performance of his official duties." While the use of force is an essential element of the offense, whether force is present in a particular case is a question of fact. Cases under the section have held that force does not necessarily entail physical contact. See United States v. Bamberger, 452 F. 2d 696 (2d Cir. 1971). Force may entail, for example, a menacing gesture of the hands as though to shove or strike the federal officer victim. United States v. Alsondo, 486 F. 2d 1339, 1345 (2d Cir. 1973), rev'd on other grounds, 420 U.S. 671. By contrast, section 111

as redrafted by H.R. 5150 would require the use of "physical force" against a person listed in section 1114. "Physical force" is defined in the bill as "physical action against another and includes confinement." This would seem to require a physical touching and would thus render the section inapplicable in situations where the defendant threatened to strike the federal officer with his hands or with a weapon. At the very least, the rewriting of section 111 to include new terms such as "physical force" and "physical action" would cause an unsettling of the law and require a series of appellate cases to reclarify its meaning.

The reason for dividing section 111 into subsections (a) through (d) is not clear but apparently subsection (a) is intended to cover the causing of serious bodily injury or the use of a dangerous weapon and the causing of non-serious bodily injury; subsection (b) is intended to cover the causing of non-serious bodily injury without a weapon; subsection (c) is intended to cover creating a substantial risk of a serious bodily injury (although no injury occurs); and subsection (d) is intended to cover the use of physical force even though no injury occurs or is threatened. All the subsections require an intent to impede or interfere with the performance of the victim officer's duties, although subsections (a), (b), and (c) state that the assault may also be done with the intent to retaliate against the officer whereas subsection (d) has no such provision.

This rewriting of the section would probably preclude the use of the statute in a situation involving a highly offensive actual touching of the victim such as by spitting or throwing a foul smelling substance on him, conduct which has been specifically held to be within the coverage of the present section. See United States v. Frizzi, 491 F.2d 1231 (1st Cir. 1974). This results from the requirement in subsections (a), (b), and (c) that the conduct cause "bodily injury" or at least be likely to cause "serious bodily injury". Being spat upon, while obviously an extreme indignity that may be more calculated to induce a violent response than some acts that do bodily harm, does not appear to be a "bodily injury" as the term is defined in the bill. Subsection (d), in turn, while not requiring the infliction of an injury, requires the use of physical force with intent to impede or interfere with the officer's duties. Proving, for example, that the spitting or throwing of a noxious liquid was intended to impede, oppose, or interfere with the officer's duties would often be very difficult. The statute as presently written requires only that the victim be engaged in the performance of his duties at the time of the assault or that the assault be on account of those duties, and we believe this is a preferable and more inclusive formulation.

Similarly, we see no justification for lowering the authorized period of imprisonment for a violation of section 111 involving the use of a dangerous or deadly weapon. Under present law the punishment for such a violation may extend to ten years'

imprisonment. The revised section 111 in H.R. 5150 would lower the maximum punishment for the use of a dangerous weapon to five years' imprisonment if bodily injury results (subsection (a)) and to only three years if only a substantial risk of serious bodily injury is created (subsection (c)). While H.R. 5150 does greatly increase the maximum fine authorized for violations of section 111, a position with which we concur, for many violations of this section substantial imprisonment is also appropriate.

In sum, we are opposed to the rewriting of section 111, a statute around which a substantial body of case law has been developed since it was enacted in its present form in 1948 and which is working well.

We also see no need to completely revise section 111⁴ as is done in H.R. 5150, although some minor changes are needed in this statute. For example, H.R. 5150 (as does S. 1762) adds an attempt provision, which is clearly warranted to remedy a serious gap in the present law which does not proscribe the attempted murder of the persons listed. Moreover, H.R. 5150 (similarly to S. 779 and S. 1762) adds United States magistrates, probation officers, pretrial services officers, and officers and employees of several components of the intelligence community to the persons listed for coverage in the present section. These persons are all in some appreciable degree of danger because of their jobs and should be added to the list of protected persons.

We point out, however, that S. 1762 also included a provision not in H.R. 5150 which would give the Attorney General the authority to designate other classes of federal employees for coverage under the section by the issuance of a regulation. This would provide a workable mechanism for extending federal protection to other persons who come into dangerous or adversarial contact with the public as the need arises (e.g., certain employees in the Census Bureau) without the necessity of continually amending the statute. As you may know section 1114 has had to be amended 16 times in the past 16 years either to add new categories of federal employees or to reflect changes in agency names. We think that authorizing the Attorney General to act to keep the statute current is an important improvement which should be included in this legislation.

Moreover, we do not think it is necessary to relist all the persons covered by section 1114 as does H.R. 5150. In essence, the revised section 1114 repeats most of the classes of persons covered by the present section, adds magistrates, probation officers, pretrial services officers, and intelligence community officers and employees, but condenses the first portion of the section which lists United States Attorneys, FBI agents and several other persons involved in criminal law enforcement by describing them as "any officer, agent, or employee of the United States authorized by law to engage in the detection, investigation, or prosecution of any violation of Federal criminal law." This description actually expands the present law's coverage

because it would include such persons as the Inspectors General and their staffs and Strike Force attorneys. We concur that such persons ought to be covered but this can be equally well accomplished by authorizing the Attorney general to add other persons by regulation.

On the other hand, the addition of federal jurors to the list of persons covered, a provision not found in S. 1762, is salutary. Presently, injuring a federal juror on account of his service is punishable under 18 U.S.C. 1503 by five years' imprisonment and a \$5,000 fine, but there is no greater punishment for murder of a juror. Including jurors in section 1114 would allow the more appropriate punishment of life imprisonment for such a crime. However, restating the entire section is not necessary to accomplish this result or to overcome any other known problem with the present law.

We also believe that H.R. 5150 takes an unnecessarily complicated approach to punishing assaults and murders of relatives of certain federal officials and employees in situations where the crime is committed because of the federal employee's job. First, it adds a new section 115 to proscribe assaults on relatives of federally protected officers (i.e., the persons listed in the revised section 1114(c)(1)) and assaults on relatives of United States officials, a term defined by cross reference to 1114(c)(2). Section 1114(c)(2), in turn, defines

the term "United States official" in part by reference to the persons listed in still another section, section 1751(a)(1) of title 18.

Second, H.R. 5150 proscribes the killing of a family member of a federal officer or federal official in section 1114. Third, it proscribes threats against family members by adding a new section 880 to title 18.

We think it would be preferable to combine all of these offenses against family members and the offense of kidnaping of a family member into one section as is done in Subpart G of Title X of S. 1762. Such an approach makes the statute easier to understand and apply. We fully appreciate that the decision to split up the offenses against family members among various sections of title 18 was motivated by a desire to keep the protection of the family members of federal officials and federal officers parallel with that afforded the federal officials and officers themselves. This is a laudable objective and we would support the addition of a new threat offense to punish persons who threaten to assault or kill a federal officer in violation of section 111 or 1114. The omission of such a threat offense from S. 1762 was inadvertent and we appreciate it being brought to our attention.

In our view, kidnaping of a family member of a federal law enforcement officer should also be a federal crime even though it is not presently a federal offense to kidnap the federal officer

himself.² We believe that the resulting disparity should be rectified by amending the kidnaping statute (18 U.S.C. 1201) to provide for federal jurisdiction over the kidnaping of a person listed in section 1114, as was done in Part F of S. 1762. The inclusion of kidnaping of federal officials is amply warranted and is clearly preferable to ignoring altogether the problem of kidnaping of federal officers and members of their families if the kidnaping is related to their federal employment. As you know, kidnaping is a favorite tactic of terrorists, and a kidnaping can be far more traumatic for the victim than a minor assault.

In sum, Mr. Chairman, we again commend you for the effort and objectives, reflected in your bill. We believe that our mutual goals of strengthening the criminal laws punishing attacks on federal officers and their families can be fully achieved if the following changes are made. First, we would not amend section 111 at all. Second, section 1114 should be amended only (a) by adding magistrates, probation officers, pretrial services officers, intelligence community employees, and federal jurors -- defined to clearly include both grand and petit jurors -- to the list of persons covered; (b) by adding an attempt provision; and (c) by authorizing the Attorney General to add new persons to the

² The kidnaping of Members of Congress, Cabinet Officers and their principal deputies, the Director of the CIA and its Deputy Director, and Supreme Court Justices is covered by 18 U.S.C. 351 and the kidnaping of the President, Vice President and top-level White House staff members is covered by 18 U.S.C. 1751.

coverage of the section by regulation. Third, the new section 115 should cover assaults, murders, and kidnappings of family members of federal law enforcement officers and of high level government officials and these terms should be defined in the new section itself as is done in Part G of Title X of S. 1762.

Fourth, the federal kidnaping statute should be amended to include the kidnaping of the persons designated in section 1114 if the act is done while the person is engaged in or on account of the performance of his official duties.

Mr. Chairman, that concludes my prepared statement and I would be happy to answer any questions the subcommittee may have.

THE WHITE HOUSE

WASHINGTON

April 20, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Statement of Victoria Toensing
Concerning Financial Bribery and
Fraud -- H.R. 5405, on April 26, 1984

We have been provided with a copy of testimony Deputy Assistant Attorney General Victoria Toensing proposes to deliver before the Subcommittee on Criminal Justice of the House Judiciary Committee on April 26. The testimony supports proposed changes in 18 U.S.C. §§ 215 and 216, the federal bank bribery statutes. The changes would increase inadequate penalties, extend coverage to bribe offerors as well as recipients, and extend coverage to all federally insured or chartered financial institutions. In particular, the testimony urges passage of Parts E-G of Title XI of S. 1762, the Comprehensive Crime Control Act of 1983, which contains the Administration's proposed revision of 18 U.S.C. §§ 215 and 216. The testimony also generally supports H.R. 5405, which is substantially similar to the Administration proposal, although it recommends several changes in the bill.

The testimony also supports enactment of a separate federal statute making it a crime to defraud a federally chartered or insured financial institution. Prosecutions for such actions have been brought under the mail fraud statutes, but recent Supreme Court decisions have severely hampered use of those statutes in the banking context.

I have reviewed the proposed testimony, and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

April 20, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING - - - - -
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Victoria Toensing
Concerning Financial Bribery and
Fraud -- H.R. 5405, on April 26, 1984

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

FFF:JGR:aea 4/20/84
cc: FFFielding/JGRoberts/Subj/Chron

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Subject: Statement of Victoria Toensing
Concerning Financial Bribery and Fraud -
H.R. 5405 On April 26, 1984

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DRAFT

STATEMENT

OF

VICTORIA TOENSING
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

SUBCOMMITTEE ON CRIMINAL JUSTICE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

FINANCIAL BRIBERY AND FRAUD - H.R. 5405

ON

APRIL 26, 1984

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before you today to present the views of the Department of Justice on Parts E through G of Title XI of S. 1762 and on H.R. 5405, both of which deal primarily with bribery and frauds concerning banks and other financial institutions. The Department firmly supports the objectives of these proposals, but we will suggest certain modifications to H.R. 5405 along the way.

Initially, Mr. Chairman, we stress that the present federal bank bribery statutes (18 U.S.C. 215 and 216) are out of date and are ineffective deterrents to crime. We also emphasize that cases involving frauds perpetrated on banks are usually very difficult to investigate since they frequently entail highly complex financial transactions designed and carried out by sophisticated perpetrators. Unraveling the transactions in a bank fraud case requires a laborious tracing of money from account to account, proving over-valuation or non-existence of collateral, and determining the person or persons responsible for each phase of the transaction. Because of the volume of documents involved and the number of witnesses to be debriefed, a major bank fraud case can take years to investigate and a bank fraud trial is an arduous process. In some ways, these problems are common to white collar crimes in general. However, as I will describe shortly in more detail, bank fraud prosecutions have also been hampered by Supreme Court decisions which have rendered inapplicable existing statutes that were formerly used in combating common bank fraud schemes.

To respond to these problems, the Administration has already proposed legislation, Parts F and G of Title XI of S. 1762, which passed the Senate on February 2, 1984, to update and strengthen the bank bribery statutes and to provide for a new offense of bank fraud. I am delighted that you too, Mr. Chairman, have recognized the problems with the existing statutes and have addressed them in H.R. 5405.

Turning first to section two of that bill which deals with bank bribery and graft, I note that it undertakes a long overdue revision of 18 U.S.C. 215 and 216, sections proscribing the bribery of certain bank officers and employees and of other persons. Under 18 U.S.C. 215, the officers, directors, employees, agents, and attorneys of any bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, and of two other types of financial institutions¹ are prohibited from stipulating for, receiving, or agreeing to receive anything of value from any person, firm, or corporation "for procuring or endeavoring to procure," for the giver or for anyone else, "any loan or extension or renewal of loan, or substitution of security, or the purchase or discount or acceptance of any paper, note, draft, check, or bill of exchange" by any such bank or financial institution.

¹ The other two institutions are "a Federal intermediate credit bank," and a "National Agricultural Credit Corporation."

This statute is deficient in at least three respects.

First, it reaches directly only the recipient of the bribe, not the offeror, although such a person could be punished by means of the aiding and abetting or conspiracy statutes. Second, the list of financial institutions covered omits several components of the banking system. For example, bribery of employees of savings and loan associations or of credit unions would not be covered even though the government also insures the deposits in federally chartered savings and loan associations and credit unions much as it insures the deposits in banks through the FDIC. Finally, the penalty for a violation of the section -- one year's imprisonment and a \$5,000 fine -- is woefully inadequate.

18 U.S.C. 216 reaches employees and officials of federal land banks, a federal land bank association, joint stock land banks, and small business investment companies² who receive "directly or indirectly, any fee, commission, gift, or other consideration for or in connection with any transaction or business of such association or bank" other than the usual salary or fee. It is somewhat broader in scope than section 215 by virtue of the "for or in connection with" phraseology and in that it also reaches the person who "causes or procures" the payment of the bribe to one of the enumerated officials. But this statute, too, is obsolete because it does not clearly cover

² Small business investment companies are organizations created under Public Law 85-699 (15 U.S.C. 661 et seq.) to provide venture capital in the form of equity financing, long term loans, and management services to small businesses.

officers and employees of other agricultural credit organizations³ and in its reference to "joint stock land banks" which no longer exist. Moreover, the penalty for both the offeror and the receiver of the illegal payment under this section is, like that in section 215, set at the inadequate misdemeanor level of one year's imprisonment and a \$5,000 fine.

H.R. 5405 would combine and completely revise both sections 215 and 216. The new section 215 would cover the giving, offering, or agreeing to give, anything of value to any person with intent to influence official action to be taken by or to induce the violation of a legal or fiduciary duty by an officer, employee, agent, or attorney of a "national credit institution." It would also cover the soliciting, accepting, or agreeing to accept anything of value in such circumstances by the officer, employee, agent, or attorney. The punishment would extend to imprisonment for five years and a fine of up to \$250,000 for individuals and to a fine of up to \$1,000,000 for defendants other than individuals. In essence, then, the new section 215 would be a bribery statute which proscribes giving or taking

³ For example, it does not cover banks for cooperatives. These organizations are established in each of the 12 farm credit districts to lend money to farm cooperative associations and cooperative processing organizations. See 12 U.S.C. 2121, et. seq. An employee of such a bank who took a bribe might, however, be considered an employee of a "National Agricultural Credit Corporation" and thus covered under 18 U.S.C. 215.

anything of value (other than a bona fide salary or fee) as a payment for specific future action to be taken by the bank employee or officer.

The new section 216 is entitled "graft in financial operations" and would proscribe the offering, giving, or agreeing to give "anything of pecuniary value" to any person to reward an officer, employee, agent, or attorney of a national credit institution for past official actions he has taken or for a legal or fiduciary duty he has violated. It also would punish the soliciting, accepting, or agreeing to accept anything of pecuniary value by such an officer or employee because of a past official action he has taken or because of a past legal or fiduciary duty violated. Apparently because the element of a corrupt bargain or intent to influence is not required as it is in the proposed new section 215 -- that is, the payment is for past actions, not future conduct and can have been made even if the past actions were in fact legal -- the punishment is slightly less for a violation of section 216. It would extend only to three years' imprisonment and a \$250,000 fine for individuals and to a \$1,000,000 fine for organizations. Moreover, the term "anything of pecuniary value" is defined to include money or economic advantage in any amount but other things -- for example, meals, liquor, or a country club membership -- are included only if they are valued in excess of \$100.

The lesser penalty for the "graft" offense under section 216 than for the bribery offense under section 215, and the provision that the graft offense is not committed at all if the conduct involves a payment in goods or services valued at less than \$100 are the principal differences between section two of H.R. 5405 and Part F of Title XI of S. 1762. Part F combines the bribery and graft offenses into one section since the phrase "for or in connection with any transaction or business of such financial institution" employed in that Part would cover the taking or giving of something of value for past actions as well as for a specific agreement to perform some future action.

There is some precedent for the approach in H.R. 5405 of creating a separate graft offense with a lesser punishment than that for a bribery offense since 18 U.S.C. 201, dealing with corruption of public officials, makes a similar distinction. Subsections (b) and (c) of that section extend only to the giving or receiving of a corrupt payment to affect specific future actions and provide for a more severe punishment than do subsections (f) and (g) which involve payments for past acts as well as payments made in the apparent hope of exerting a sort of general influence over official actions.

While such a distinction in the area of bank bribery and graft is thus not wholly illogical, it should be kept in mind that the reasons for federal legislation in this area are to protect the stability of the money markets and to protect the federal insurance programs against losses caused by defaults on

loans obtained through improper influence. Rewards for past services may not seem as harmful to these interests as would a bribe for specific future action, but on closer examination it would appear that the amount of the reward or bribe may well represent a truer measure of the conduct's harm. For example, a "gratuity" of \$100,000 to a bank officer who approved a \$10,000,000 loan may well be more of a threat to the federal insurance system than a payment of a few hundred dollars to an officer to persuade him to approve a \$50,000 loan. On balance, therefore, we would prefer that the bank bribery and graft statutes be combined and punished equally.

We also question the wisdom, if a separate graft offense is retained, of exempting from the graft provision payments in goods and services of less than \$100. The understandable intent is evidently to exempt such actions as buying a bank officer a meal or sending him a few bottles of liquor at the conclusion of negotiations concerning a loan where there is no evidence that the loan was made improperly. Apart from the fact that such a practice would not normally even be brought to the attention of investigative authorities and would be rejected routinely as an appropriate case for prosecution, thus rendering the \$100 exemption unnecessary, in our view it is also unwise. The repetitive giving of small gratuities to bank employees could, over time, act as a corrupting influence if the customers who give the best gifts get preferential treatment in the future. At any rate, the practice should not be encouraged by a statutory

exemption. Moreover, while even a long series of \$100 gifts given to a senior vice president of a major Wall Street bank may be unlikely to be a corrupting influence, providing gifts and entertainment in such an amount to a loan officer of a small credit union could be.

Finally, we note that the bank bribery and graft provisions in H.R. 5405 are both felonies. While we agree that the present misdemeanor penalty for bank bribery is inadequate, we do not think it is wise to eliminate entirely the possibility of a misdemeanor prosecution. Rather, we prefer the provisions of S. 1762 which provide for a misdemeanor penalty of one year's imprisonment and a \$1,000 fine if the bribe or gratuity involved is \$100 or less.

Turning next to section three of the bill, as I mentioned earlier serious gaps now exist in our ability to assert federal jurisdiction over frauds against banks and other credit institutions whose deposits are federally insured or which are organized under federal law. While the need for federal jurisdiction over crimes against such institutions has been recognized by the Congress in its passage of statutes punishing bank robbery, burglary, larceny, and embezzlement, as well as false statements to banks, there is presently no federal statute generally proscribing bank fraud.

For many years this was not a serious problem as usually a fraud on a bank could be prosecuted under the mail or wire fraud statutes (18 U.S.C. 1341 and 1343) or under 18 U.S.C. 1014 which

institutions. The section is unduly generous to wrongdoers because it has been interpreted to require that the government prove not only that the defendant knew that the property was stolen, but that he knew it was stolen from a bank.⁵ Just as the government need not show knowledge by the defendant that the bank he or she robbed was federally insured, it should not be necessary for the government to prove scienter as to the jurisdictional fact that the property was stolen from a bank so long as the government proves that the defendant knew that the property he received was stolen. Hence, we would recommend that the Subcommittee amend subsection (c) of section 2113, as in Part E of Title XI of S. 1762, to read as follows:

"Whoever receives, possesses, conceals, stores, barter, sells, or disposes of, any property or money or other thing of value which has been stolen from a bank, credit union, or savings and loan association in violation of subsection (b), knowing the same to be property which has been stolen shall be subject to the punishment provided in subsection (b) for the taker."

In sum, Mr. Chairman, we again appreciate your time and interest in the important subject of crimes against banks. As stated, we thoroughly support the goals of your bill, H.R. 5405.

⁵ See, e.g., United States v. Kaplan, 586 F.2d 980 (2d Cir. 1978); United States v. Tavoularis, 515 F.2d 1070 (2d Cir. 1975).

Nevertheless, for the reasons previously discussed, we urge the Subcommittee to redraft the bank fraud provision to follow the mail and wire fraud statutes as closely as possible. The changes we have suggested to the bank bribery and bank provisions would also, in our estimation, substantially strengthen the bill.

Mr. Chairman, that concludes my prepared remarks and I would be happy to answer any questions the members of the subcommittee may have.