16 JUN 1983

THE WHITE HOUSE

WASHINGTON

June 14, 1983

Dear Pete:

Your letter of May 26, 1983 to Ed Meese seeking advice regarding a Presidential pardon for Monroe Wingate has been referred to me for response.

Please be advised that before a request for a pardon may be considered, formal application must be made through the Office of the Acting Pardon Attorney, 280 Park Place Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815, telephone: 301/492-5910. I recommend that you suggest to Mr. Wingate or his attorney that they contact that office which will be able to provide guidance regarding Mr. Wingate's eligibility for a pardon and, if appropriate, provide him with the necessary forms. Please be assured that once his application is received, it will be given every consideration by the Acting Pardon Attorney and, in turn, the White House.

I have taken the liberty of forwarding a copy of your letter to the Acting Pardon Attorney for inclusion in Mr. Wingate's file once his application is received. I am returning to you Mr. Wingate's file for his possible use in making his application.

Thank you for sharing your views with us.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

Mr. Peter D. Hannaford
905 16th Street, N.W.
Washington, D. C. 20006

cc: E. Meese

Peter D. Hannaford
905 Sixteenth Street, N.W.
Washington, D.C. 20006
202/638-4600

149197

May 26, 1983

The Honorable
Edwin Meese, III
Counsellor to the President
The White House
Washington, D.C. 20500

Dear Ed,

The enclosed represents an unusual case from Oakland. The subject, Monroe Wingate, called me recently and asked to meet with me when next I was in the Bay area. He had been on my campaign committee when I ran in the 7th Congressional district in 1972. He was recruited by my old friend Art Hecht who was active with Monroe in Jewish community activities. I had not met Monroe before 1972 and not seen him in 10 years when he called me for the appointment.

I remembered Monroe as a quiet, sincere businessman; a successful property developer with a serious turn of mind and, apparently, a model citizen. When we met in San Francisco recently, I was astonished to learn, after we had exchanged pleasantries, that he had been convicted of a felony in 1975. It seems that in his development work his company sold a rehabilitated house in Oakland to a veteran who did not intend to occupy it. The specific charge was the submission of false statements to the VA. He says he was aware at the time that it was against VA policy, but not that it was a federal crime. He did not contest the matter and received a suspended sentence. He paid the fine imposed and served 1,000 hours in a volunteer work program. He was deeply ashamed by the experience and found it difficult to tell me about it. He says he never had a blemish on his record before or since and that his one hope is that he can obtain a Presidential pardon so that his record can be cleared.

Peter D. Hannaford
905 Sixteenth Street, N.W.
Washington, D.C. 20006
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I was heartsick to hear of his problem for I could sense his anguish and I had always had a high regard for him. He is known to his friends as a good family man and one with a genuine interest in his community. He is back in business now, managing property but not, as I understand it, in development work.

He asked me where he might turn. I am unfamiliar with procedure in such matters, but I told him I would bring his file to your attention and ask your advice.

Sincerely,

PDH/ed

Enclosure

ID # 149197

JL001

WHITE HOUSE
COUNSELLOR'S OFFICE TRACKING WORKSHEET

JUN -9

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 83 10 5 28

Wally

Name of Correspondent: Peter D. Hannaford

☐ **CN Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

Subject: Writer requests a Presidential Pardon for Monroe Wingate, who was convicted in 1975 for submitting false statements to the VA.

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
	CNHAMM	O DB	83 06 06			
	CUFIEL	R DD	83 06 08		C	83 06 14
	CUAT14	D	83 06 10		C	83 06 14
	UFIEL	C	83 06 12	FF	A	83 06 14

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: _____

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.

11/81

THE WHITE HOUSE

WASHINGTON

June 14, 1983

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Counsel to the President

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Washington, D. C. 20006

FFF:DBW:kl
FFFielding
DBWaller
Subject
Chron

Peter D. Hannaford
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202/638-4600

149197

May 26, 1983

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Counsellor to the President
The White House
Washington, D.C. 20500

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Sincerely,

PDH/ed

Enclosure

Monroe J. Wingate

REAL ESTATE DEVELOPMENT & INVESTMENT

3515 Grand Avenue

Oakland, California 94610

(415) 465-2620

May 16, 1983

PERSONAL

Mr. Peter D. Hannaford
The Hannaford Company, Inc.
444 South Flower Street, Suite 2620
Los Angeles, California 90017

Dear Peter:

I want to thank you very much for taking the time to meet with me last week in San Francisco. It was good to see you again after all these years.

Pursuant to our conversation, I've prepared a file on my matter with the Justice Department. It contains all the pertinent documents, the FBI reports and statements I made to the Probation Office concerning my personal background and this particular case.

If there is anything which can be done to obtain a presidential pardon, I would be grateful for the rest of my life. Other than this one matter, I believe I have lived a good and decent life. I must take full responsibility for my own actions, but I would like to leave a better legacy to my sons and my family than that of a convicted felon. I feel there are circumstances in my case which, if considered, could warrant a pardon. I would certainly like the opportunity to present my appeal to the proper authorities and anything which you could do in this regard would be forever appreciated.

Sincerely,

Monroe Wingate

MONROE J. WINGATE

MJW:ac
Encl.

04 DEC 1981

Pardons

THE WHITE HOUSE

WASHINGTON

December 3, 1981

MEMORANDUM FOR THE PRESIDENT

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

SUBJECT: Executive Clemency - Marvin Mandel
W. Dale Hess

Former Governor Marvin Mandel has formally petitioned for Executive Clemency, seeking a commutation of sentence to permit his release from incarceration prior to his presumptive parole date of May 14, 1982.

Briefly stated, Mandel and five other codefendants were convicted of mail fraud and racketeering. After some four years of trials and appeals, including one mistrial, Mandel was sentenced to four years, which was reduced by the Trial Judge to a sentence of three years with eligibility for parole at any time at the discretion of the United States Parole Commission. The Parole Commission has taken the position that Mandel must serve at least twenty-four (24) months, of which he has now served over eighteen (18) months.

Thus, the actions of the Parole Commission (1) require Mandel to serve virtually the maximum prison term permitted by law, thereby effectively denying him parole; (2) require Mandel to serve more prison time than his codefendants even though they received identical sentences from the court; and (3) ignore the intent of the sentencing judge, who made Mandel immediately eligible for parole.

Based on these reasons and others, after careful review of Mandel's petition by the Department of Justice, it is the recommendation of the Attorney General, Deputy Attorney General and Associate Attorney General that Mandel's sentence be commuted to expire on January 13, 1982, which would coincide with the presumptive parole dates of his two codefendants still under sentence. The Justice Department recommendation is attached at Tab A.

For your further information, Paul Laxalt and Jack Kemp, among others, strongly favor commutation for Mandel.

I agree with the recommendation that you exercise Executive Clemency in favor of Mandel. There is no perceived need for further incarceration, and despite his severe crime of breach of public trust, it appears that he has been subjected to disparate treatment. (See Tab B, for comparison of sentences of other convicted political figures in recent years.)

Pursuant to our discussion of yesterday, I recommend that Mandel's sentence be commuted to expire on December 20, 1981, the day before Hanukkah (symbolic day of hope and faith to the Jewish people). As you know, Messrs. Baker, Meese and Deaver concur. The Attorney General has no objection.

In order to be fair and consistent, I further recommend that you also grant a like commutation to W. Dale Hess, the only other codefendant still incarcerated, and who has a favorable prison record. This commutation will not include any remission of outstanding fines he owes. Although Mr. Hess has not filed a formal petition, you have the unfettered power to grant clemency under Article II, Section 2 of the Constitution.

RECOMMENDATION:

That you execute the two (2) warrants attached at Tab C, granting Executive Clemency in the form of commutation of the sentences of Marvin Mandel and W. Dale Hess, such sentences to expire on December 20, 1981.

U.S. Department of Justice

Office of the Associate Attorney General

NOV 25 1981

Washington, D.C. 20530

November 25, 1981

MEMORANDUM

TO: Fred F. Fielding
Counsel to the President

FROM: Rudolph W. Giuliani
Associate Attorney General

SUBJECT: Marvin Mandel; Commutation of Sentence

Enclosed is a letter of advice to the President recommending that he commute the prison sentence of Marvin Mandel. Also enclosed is a warrant of clemency for the President's signature.

The reasons for this recommendation are set forth in the letter. To summarize, I believe that commutation is warranted because the actions of the United States Parole Commission (1) require Mandel to serve virtually the maximum prison time permitted by law, thereby effectively denying him parole; (2) require Mandel to serve more prison time than his codefendants even though they received identical sentences from the court and (3) ignore the intent of the sentencing judge, who made Mandel immediately eligible for parole.

I recommend that Mandel's sentence be commuted so as to expire on January 13, 1982. His release would thereby coincide with the parole date of the codefendant still in prison and the presumptive parole date of a codefendant previously released on habeas corpus. However, as a practical matter, Mandel would return to the Baltimore area immediately because the Director of the Bureau of Prisons intends to place Mandel in a Baltimore "halfway-house" some 45 days before final release from custody.

I have advised the Attorney General and the Deputy Attorney General of my recommendation and they agree.

Also enclosed is a memorandum from the Pardon Attorney setting forth certain information about the sentences of some political figures in recent years. I understand you requested this material.

I would appreciate your giving us as much notice as possible before the President acts on this case. Advance notice will enable our Office of Public Affairs to be ready with appropriate information for the media. Please return the warrant of clemency after signing so that we may affix the Department of Justice seal.

Thanks very much.

Enclosure

U.S. Department of Justice

Office of the Associate Attorney General

Washington, D.C. 20530

November 25, 1981

IN THE MATTER OF THE APPLICATION FOR EXECUTIVE CLEMENCY

OF

MARVIN MANDEL

The President

Sir:

This 62-year-old petitioner was convicted in the United States District Court for the District of Maryland of mail fraud and prohibited racketeering activities. On October 10, 1977, the District Court sentenced him to four years' imprisonment. On May 1, 1980, the District Court reduced his sentence to three years' imprisonment and imposed the sentence under a statutory provision (18 U.S.C. 4205(b)(2)) which permits petitioner's release at the discretion of the United States Parole Commission. Petitioner commenced service of the prison sentence on May 19, 1980. The Parole Commission has given him a presumptive parole date of May 14, 1982, after the service of 24 months' imprisonment. He presently is incarcerated at the Federal Prison Camp, Eglin Air Force Base, Florida. He has no other criminal record.

All of petitioner's five codefendants, except Ernest N. Cory, Jr., who was placed on one year's probation, received prison sentences. W. Dale Hess, Harry W. Rodgers, III and Irvin Kovens were each sentenced to three years' imprisonment, fined $40,000 and ordered to forfeit their stock in Southern Maryland Agricultural Association, the corporate owner of the Marlboro Race Track and the Bowie Race Track. William A. Rodgers was sentenced to one year and one day in prison, fined $40,000 and likewise ordered to forfeit his stock in the Association. Cory was also ordered to forfeit his stock in the Association.

OFFENSE

The offense for which clemency is sought began between January 1969 and no later than the spring of 1971, and continued thereafter until the filing of the indictment in November 1975, during which time petitioner, then in his fifties, was Governor of the State of Maryland. Petitioner and his five codefendants were convicted of devising and executing a scheme involving the use of the mails to defraud the citizens of the State of Maryland. The fraud lay in denying the citizens of Maryland the faithful, unbiased performance of official duties free from bribery and corruption in connection with the consideration and passage of legislation concerning the Maryland horse racing industry.

In May 1971 then Governor Mandel vetoed legislation which would have transferred 18 racing days from Maryland's Hagerstown Race Track to the Marlboro Race Track, a small half-mile track in Prince George's County, Maryland. In December 1971 petitioner's codefendants secretly purchased the Marlboro track. Thereafter, in its 1972 session, the Maryland legislature, with the support of the Governor, overrode the earlier veto and transferred the lucrative extra racing days to the Marlboro track. (Whether the Governor actively supported the effort to override his earlier veto, or merely took no action to lobby against the legislative override, was the subject of considerable dispute during the trial.) In December 1972 the Marlboro track was sold to the Bowie Race Track. Further legislation benefiting the defendants' interest in Bowie was enacted in 1974.

When petitioner's codefendants purchased Marlboro in December 1971, they did so in the names of nominees in order to conceal their identities. The key issue during petitioner's trial was whether or not he knew that his codefendants owned the Marlboro track prior to its sale to Bowie in December 1972. Petitioner based his trial defense principally on his assertion that he did not become aware that his codefendants owned the race track until 1975. However, there was substantial circumstantial evidence at the trial that he

was aware at a much earlier date of the true ownership of the track by those who were described as being among his oldest and closest friends and political advisors -- who periodically rewarded him throughout the life of the scheme with a substantial and varied flow of financial and other benefits.

With regard to the mail fraud counts, the Government specifically alleged bribery and misrepresentation and concealment of material information by petitioner's co-defendants, along with specific uses of the mails in executing the scheme. In the racketeering counts, the Government charged petitioner with acquiring (from Hess) and maintaining a secret financial interest (perhaps worth as much as $140,000) in and control of the Security Investment Company through a pattern of racketeering activity which included mail fraud and bribery. The Government also charged petitioner with financially benefiting from an interest (perhaps worth $35,000) secretly given him by codefendants Hess and Harry and William Rodgers in Ray's Point, Inc., a land development company. (The jury found petitioner not guilty of this charge.) In addition, he allegedly received in return for his support of certain race track legislation, several thousand dollars worth of clothing, travel and vacations for himself and his family between 1969 and 1974

and $155,000 worth of bonds (from Kovens) to assist him in obtaining a property settlement with his first wife.

LEGAL PROCEEDINGS

Petitioner's first trial ended in a mistrial. His second trial resulted in a guilty verdict, returned in August 1977, on 17 counts of mail fraud and one count of prohibited racketeering activities. On January 11, 1979, a panel of the Court of Appeals for the Fourth Circuit reversed the conviction, with one judge dissenting. The court held that the charge to the jury was deficient because it (1) failed to give a crucial bribery instruction in connection with the mail fraud counts and (2) failed specifically to instruct that petitioner could not be convicted of mail fraud on a misrepresentation theory unless the jury found that he knew that his codefendants were the true owners of Marlboro Race Track. See United States v. Mandel, 591 F.2d 1347 (1979). On July 20, 1979, upon an en banc rehearing of the appeal, the judgment of conviction was affirmed by an equally divided court (three to three). On November 1, 1979, upon another en banc rehearing of the appeal, after the addition of two judges to the court, the judgment was again affirmed by an equally divided court (four to four). On April 14, 1980, the Supreme Court denied certiorari.

PERSONAL HISTORY

Following his divorce in 1974 after 33 years of marriage, and his agreement to a rather generous divorce settlement, petitioner married Jeanne Blackistone Dorsey in August 1974. Upon his release he plans to return to the Annapolis, Maryland area to live with his wife and family. He has two adult children from his first marriage and his present wife has four children from her previous marriage. As a result of the cost of his divorce settlement and mounting legal expenses, he is heavily indebted.

The pressures precipitated by petitioner's prosecution apparently had a severe adverse effect on his health. He was admitted to Prince George's General Hospital in Cheverly, Maryland in April 1977 after having suffered a stroke. He now appears to have recovered and is in relatively good health, although he controls a diabetic condition through a special diet.

Petitioner served honorably as an enlisted man in the Army during World War II, received a law degree from the University of Maryland Law School in Baltimore and practiced law in Baltimore between 1944 and 1969. Prior to his election to the governorship in 1969 he was a member of the Maryland House of Delegates (1952 to 1969), serving as Speaker of the House of Delegates between 1963 and 1969. Although he was

reinstated to the governorship temporarily when his conviction initially was overturned on appeal, he was forced to vacate the office permanently when his conviction ultimately was affirmed.

Petitioner has an excellent record of institutional adjustment and has received no incident reports. His supervisors state that he wastes little time, shows no hostility or resentment, needs little supervision and has a good record of dependability and promptness. He has participated in the social furlough program, traveling to Annapolis and returning to the Eglin Camp without incident.

PAROLE COMMISSION PROCEEDINGS

The United States Parole Commission determined that petitioner's offense behavior falls within the Commission's "very high" severity category because it involved a fraudulent scheme from 1971 to 1975 which produced in excess of $100,000 and included the use of the office of Governor to further the scheme. Thus, it "caus[ed] a significant breach of the public trust." (See Parole Commission Notice of Action dated October 6, 1980.) Under the Parole Commission's guidelines, those factors, when coupled with good institutional performance and adjustment, indicate that a range of from 24 to 36 months should be served before release. The Parole Commission set

a presumptive release date of May 14, 1982, after the service of 24 months' imprisonment.

On December 11, 1980, the Parole Commission's National Appeals Board, with one commissioner dissenting, affirmed the presumptive release date of May 14, 1982. The dissenting commissioner voted that petitioner be granted presumptive parole on November 16, 1981 after the service of 18 months' imprisonment. In her opinion the offense should have been rated in the "moderate" severity category, calling for service of from 10 to 14 months' imprisonment. The dissenting commissioner recommended parole after the service of 18 months -- a decision four months above the maximum "moderate" guideline -- because petitioner held the office of Governor when the offense occurred. (See Order of Parole Commission's National Appeals Board dated December 12, 1980.)

Although the Parole Commission's decision purports to benefit petitioner by granting parole at the minimum guideline date, the Commission's action, under the peculiar circumstances of this case, effectively denies him early release. With credit for statutorily mandated "good time", the maximum sentence which petitioner legally could be required to serve without any parole would be 24 months and 17 days. Thus, the decision of the Parole Commission requires the petitioner to serve only 17 days less than the maximum sentence allowed by law.

A review of the Parole Commission's actions with regard to petitioner's codefendants discloses the following. William Rodgers, who was sentenced to imprisonment for one year and one day, began serving his sentence on May 15, 1980 and was mandatorily released on February 4, 1981. Kovens, who was sentenced to three years' imprisonment, was released in November 1980 for medical reasons after the service of less than seven months' imprisonment. Hess, who was sentenced to three years' imprisonment, has been given presumptive parole on January 13, 1982, after the service of 20 months' imprisonment. Harry Rodgers, who was sentenced to three years' imprisonment, also was given presumptive parole on January 13, 1982, after the service of 20 months' imprisonment.*

In sum, the decisions of the Parole Commission require petitioner to serve virtually the maximum amount of prison time which he legally could be required to serve under a

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* However, on August 14, 1981, a U.S. Magistrate in Florida granted Rodgers' petition for a writ of habeas corpus and ordered him paroled on August 28, 1981, after the service of only 15 months' imprisonment. The Magistrate held that the Commission, in violation of the constitutional proscription against ex post facto legislation, had calculated Rodgers' release date using more stringent guidelines contained in regulations promulgated after his sentencing date. (See Memorandum Decision in Rodgers v. McCall, et al., PCA 81-0460 (N.D. Fla. 1981)). As ordered, the Parole Commission released Rodgers under protest and appealed the order to the Court of Appeals for the Eleventh Circuit.

three-year sentence. Those decisions also require petitioner to serve at least four months more than any of his codefendants, even though three of his codefendants, like petitioner, received three-year sentences from the District Court.

RECOMMENDATIONS

The Director, Federal Bureau of Prisons, concludes that the time petitioner has already served in prison has "met deterrence objectives...." Accordingly, he "see[s] no additional benefit to the public by requiring him to remain in prison." The Director recommends that the sentence "be reduced to time served with release in January [1982]."

The former lead prosecutor for the Government, Barnet D. Skolnik, notes that petitioner realized substantial private gain in return for the sale of a public office. Nevertheless, he recommends favorable clemency consideration because he believes petitioner and his codefendant still incarcerated (Hess) "have been in prison long enough." Mr. Skolnik further states:

> If there was a deterrent effect from the imprisonment of these men, it has long since been achieved. I do not believe that the public interest is served by further prolonging their forced separation from family and community.

The sentencing judge states in response to a request for his comments and recommendation concerning the granting of

clemency to petitioner: "Whatever the Board does in connection with Mandel's application would be satisfactory to the Court." It appears that the judge may have confused the Office of the Pardon Attorney with the Parole Commission. A second letter to the judge from the Pardon Attorney, dated September 21, 1981, soliciting clarifying comments did not elicit a response. The Pardon Attorney construes the sentencing judge's comments as indicating his lack of objection to petitioner's early release. This inference, of course, is buttressed by the fact that the judge imposed sentence under a statute which made petitioner immediately eligible for parole.

The present United States Attorney, J. Frederick Motz, declined to make a recommendation because he was not personally involved in the prosecution. However, in connection with the consideration of applications for parole submitted by petitioner and his codefendants, the former United States Attorney, Russell T. Baker, Jr., wrote the Chairman of the Parole Commission on September 16, 1980 stating that "the government believes that each of these four men should serve a significant portion of his sentence, although to require them to serve the maximum possible amount of time in prison may be unnecessarily severe."

The Pardon Attorney in the Department of Justice, who reviews virtually all applications for Executive clemency,

recommends clemency in this case. Added to the apparent consensus among these federal officials favoring leniency and/or Executive clemency are the voices of many private citizens and prominent members of the community, both of Maryland's United States senators and numerous other federal and Maryland state legislators and judges.

DISCUSSION

In this case, the decisions of the Parole Commission effectively deny petitioner any parole. He is to be released on parole just 17 days before he would be mandatorily released without parole after serving the maximum he legally could be required to serve. In the opinion of every federal official making a recommendation in this case, no purpose would be served by requiring the petitioner to serve virtually the maximum.

The ultimate disposition of a petition for Executive clemency in the form of commutation of sentence turns in part on an evaluation of the degree to which sentencing objectives have been satisfied in the particular case. The three-year prison sentences imposed upon petitioner and three of his codefendants were designed to achieve the same objectives of most prison sentences: first, to impose punishment appropriate in light of all the circumstances known to the sentencing

judge; second, to present the convicted felon as an example to discourage and generally deter others from engaging in similar criminal activity; and third, to preserve the credibility and the appearance of fairness and equality in the administration of the criminal justice system. It is, therefore, appropriate to give considerable weight to the judgment of the prosecutor, the former United States Attorney and the Director of the Federal Bureau of Prisons that the prison time already served by petitioner constitutes a sufficient punishment and that requiring petitioner to serve the maximum sentence would be unduly harsh. It is also appropriate to accord weight to the conclusion of the former prosecutor and the Director of the Federal Bureau of Prisons that petitioner's continued incarceration would achieve no further deterrent effect.

I agree with these conclusions. Petitioner has served a substantial portion of his sentence (one-half) and a substantial amount of time in prison (18 months). The objective of maximizing the deterrent effect of the sentence has been substantially fulfilled and will not be enhanced appreciably by petitioner's further incarceration. Because he has served a major portion of his sentence, his release at this time would not minimize the seriousness of the offense or create the appearance of unfairness or inequality in the administration of criminal justice.

Further, the decisions of the Parole Commission create an unwarranted disparity between petitioner and his codefendants who received identical three-year prison sentences. The court sentenced petitioner and three of his codefendants to three-year prison terms. Implicitly, the court rejected the proposition that petitioner, because he breached a public trust, deserved a longer sentence than these codefendants. In evaluating comparative culpability, the court obviously found aspects of the codefendants' culpability which justified the same treatment accorded petitioner. Clearly, the court was aware of the varying degrees of culpability among all the defendants. It sentenced one defendant to one year and one day in prison. It sentenced yet another defendant to probation. It imposed $40,000 fines on four of the defendants, but not on petitioner or the sixth defendant. In deciding to give petitioner and three other defendants the same prison sentences, the court evaluated their involvement as roughly equal overall.

The Parole Commission, however, drew the very distinction which the sentencing court rejected. It has characterized petitioner's offense as more serious than that of his codefendants. Accordingly, the Parole Commission has required petitioner to serve more time in prison than the three codefendants who received the same sentence.

The Parole Commission not only ignored the sentencing court's evaluation of comparative culpability, but also disregarded the court's imposition of a sentence providing for immediate eligibility for parole. The general federal sentencing statute (18 U.S.C. 4205(a)) provides that a defendant is not eligible for parole until serving one-third of his sentence. Evaluating petitioner's misconduct, the sentencing court here saw fit to impose sentence not under that usual provision, but rather under one providing for immediate parole eligibility (18 U.S.C. 4205(b)(2)). The anomaly created by the Parole Commission's decision is that petitioner -- who was supposed to be eligible for parole immediately -- will in fact be almost entirely denied parole.

In effect, the Parole Commission has resentenced petitioner with little or no regard for the sentencing court's evaluation of his culpability. This is particularly troublesome because the sentencing judge presided over the trial and was in the best position to make such evaluations. This resentencing works a substantial inequity which can only be remedied through Executive clemency.

The tortuous path of this case through years of mistrial, retrial, multiple split decisions by the Court of Appeals and refusal by the Supreme Court to hear the case, has not served to enhance the public's confidence in the nation's criminal

justice system. The appellate proceedings did not accomplish the final, certain termination of proceedings which a case of this importance deserves. The uncertainty left by this process provides yet another reason favoring Executive clemency.

With regard to the manner in which the appellate court rendered its judgment in petitioner's case, counsel writes that, ironically, "... if this case had been prosecuted in the District of Columbia, and if there had been an equally divided en banc court after a divided panel decision, the effect of the equal division in the District of Columbia would have been to permit the panel decision to remain as the final judgment in the case." See Bulluck v. Washington, 468 F.2d 1096, 1122 (D.C. Cir. 1972). This, of course, would have led to reversal and a new trial, not affirmance of the conviction.

Finally, clemency should not be barred by the pendency of the petition for a writ of habeas corpus recently filed by petitioner. While judicial remedies should normally be exhausted before clemency is sought, the habeas corpus proceeding in this case does not appear to be a practical means

of obtaining substantial relief, and should not bar Executive clemency.*

This petitioner has already served 18 months in prison. This amounts to one-half of his full sentence and constitutes a substantial prison term. To require him to serve additional time without any real benefit of parole, under the peculiar circumstances of this case, is unjust. Early release through commutation of sentence accords with the favorable recommendations of the prosecuting attorney, the former United States Attorney, the Director of the Federal Bureau of Prisons and the Pardon Attorney. They perceive little or no need for further punishment to serve the objectives of general or specific deterrence. Early release also accords with the sentencing court's evaluation of petitioner's comparative culpability and its provision for immediate parole eligibility. The procedural history of the case -- which never yielded a definitive resolution of the appeal -- also provides support for Executive clemency.

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* Petitioner seeks release on the same ground successfully urged by his codefendant Harry Rodgers. In view of the Parole Commission's success in overturning similar court decisions based on this theory, it appears unlikely that the court order issued in the Rodgers case, or any similar order which may be issued in petitioner's case, will be sustained on appeal. Moreover, no assurance can be given that the court will render its judgment prior to his current release date in May 1982. Even if petitioner were successful in the District Court, the running of his sentence would be tolled during the Parole Commission's appeal of any release order. Petitioner would be subject to reincarceration at the discretion of the Parole Commission upon successful prosecution of its appeal.

The only argument against Executive clemency is that it may create the appearance that a person who once held high public office is obtaining some leniency not given to others. However, denial of clemency would work precisely the opposite injustice. Because he was a public official, this petitioner would receive additional punishment beyond that normally accorded to persons receiving his sentence. In giving him the same prison sentence as three of his codefendants, the sentencing court no doubt evaluated petitioner's status as Governor along with many other factors. Further punishment because of his prior status is unwarranted.

For the foregoing reasons, it is my advice that petitioner's sentence be commuted. It is my further advice that the sentence be commuted so as to expire on January 13, 1982, the date on which petitioner's codefendant still incarcerated (Hess) will be paroled and on which another of petitioner's codefendants (Harry Rodgers) would presumptively have been paroled had earlier release not been judicially ordered.

Respectfully,

Rudolph W. Giuliani
Associate Attorney General

U.S. Department of Justice

Pardon Attorney

Washington, D.C. 20530

November 19, 1981

Memorandum for

Honorable Fred F. Fielding
Counsel to the President

Re: Marvin Mandel

You have requested that we prepare sentencing data comparing the prison sentence of former Governor Marvin Mandel in terms of time actually served with the sentences of other important public officeholders convicted in recent years of offenses involving an abuse of their offices. On the basis of the ready availability to us of the relevant information, we have selected for comparison the late Illinois Governor and Federal Judge Otto Kerner, Jr., Congressman Charles Diggs, Jr., two Maryland state officials, namely, Joseph Alton, County Executive for Anne Arundel County, and Dale Anderson, Baltimore County Executive, as well as the following high-ranking Federal office holders or officials of the Committee to Reelect the President (Nixon) who were convicted of Watergate-related offenses: John N. Mitchell, the former Attorney General, H. R. Haldeman, John Erlichman, John W. Dean, III, Charles W. Colson, Egil Krogh, Jeb Stuart Magruder, E. Howard Hunt, Jr. and George Gordon Liddy. Governor Mandel has served exactly 18 months' imprisonment as of this date. Several of the foregoing individuals received longer sentences than Governor Mandel. However, only three of them, E. Howard Hunt, Jr., who served 31 months, George Gordon Liddy, who served almost 56 months, and John N. Mitchell, who served 19 months, served longer prison sentences than Governor Mandel has served to date. It should be noted with respect to Mitchell that he actually was confined for only 14 months since five of the 19 months were spent on medical furloughs. Release in all of the cases compared was achieved by parole, by action of the sentencing court in reducing a sentence to time served, or by Presidential clemency.

Detailed sentencing information concerning each of the above persons follows:

Otto Kerner, Jr.

Otto Kerner, Jr., the former Federal judge and former Governor of Illinois, who is deceased, was convicted of conspiracy, mail fraud and income tax evasion in Federal court in Chicago. He was sentenced on April 20, 1973 to three years' imprisonment. He was committed to prison on July 29, 1974 and released on parole on March 6, 1975, after serving a little more than seven months' imprisonment. As I recall, his rather early release date was influenced by his physical condition.

Governor Kerner's case is remarkably similar to Governor Mandel's. Both Mandel and Kerner committed the offenses in question while serving as Governor and both involved approval of race track legislation by the Governor, the allotment of racing dates and other actions benefiting private individuals who had conferred benefits upon both Governor Mandel and Governor Kerner.

Charles C. Diggs, Jr.

Former Congressman Diggs was convicted in Federal court in the District of Columbia of using the mails to defraud and in making false statements in connection with a "kickback" scheme which netted him $60,000. He began serving a sentence of three years' imprisonment on July 23, 1980. He was paroled on May 25, 1981, after the service of 10 months' imprisonment, seven months of which were spent in prison and the last three of which were in the community as a resident of a halfway house.

Joseph Alton

Former Anne Arundel County Executive Alton was sentenced in Federal court in Baltimore on January 3 1975 to 18 months' imprisonment for conspiracy to obstruct interstate commerce (18 U.S.C. 1951) for taking kickbacks in return for the award of county consulting contracts. He was committed to prison on February 3, 1975 and was released on parole on August 29, 1975. He served almost seven months.

Dale Anderson

Former Baltimore County Executive Anderson was convicted in Federal court in Maryland of extortion and income tax evasion and was sentenced to five years' imprisonment on May 1, 1974. He commenced the service of his sentence on April 21, 1975. He was released by the court on June 4, 1976 on a Motion for Reduction of Sentence (after service of 410 days) and was placed on probation for the remainder of his five year sentence.

John N. Mitchell

The former Attorney General of the United States was indicted on March 1, 1974, on one count of conspiracy to obstruct justice, one count of obstruction of justice, two counts of making a false statement to a grand jury, one count of perjury and one count of making a false statement to an agent of the FBI. The latter count was dismissed. He pleaded not guilty March 9, 1974, and was found guilty on all counts January 1, 1975. He was sentenced in the District of Columbia on February 21, 1975 to two and one-half to eight years in prison. Judge Sirica reduced this to one to four years in October 1977. Mitchell commenced service of the sentence on June 22, 1977. He was granted parole effective January 19, 1979 after serving 19 months, including five months spent on medical furlough.

H. R. Haldeman

The former Assistant to the President was indicted on March 1, 1974 for conspiracy to obstruct justice, obstruction of justice and perjury. He pled not guilty on March 9, 1974. He was found guilty on all counts January 1, 1975. He was sentenced February 21, 1975 to two and one-half to eight years in prison. Judge Sirica reduced his sentence in October 1977 to one to four years. Haldeman was committed to prison on June 21, 1977. He was paroled on December 20, 1978 after serving 18 months.

John D. Erlichman

The former Assistant to the President was indicted on March 7, 1974 for conspiracy to obstruct justice, obstruction of justice, making false statements to agents of the FBI and making a false statement to a grand jury. He pleaded not guilty on March 9, 1974. He was found guilty on January 1, 1975 of all counts except one count of making a false statement to FBI agents. He was sentenced in the District of Columbia on February 21, 1975 to two and one-half to eight years in prison.

He also was indicted on March 7, 1974 for conspiracy to violate civil rights, making a false statement to agents of the FBI and making false statements to a grand jury. He pleaded not guilty on March 9, 1974. On July 12, 1974 he was found guilty on all charges except one of the counts of making a false statement to a grand jury. On July 22, 1974 Judge Gesell entered an acquittal to the charge of making a false statement to an FBI agent. On July 31, 1974, Erlichman was sentenced in the District of Columbia to a concurrent prison term of 20 months to five years.

Erlichman was committed to prison on October 28, 1976 and released on April 27, 1978, after 18 months' imprisonment. According to contemporary newspaper accounts, he was released after his original term of 20 months to eight years was reduced to a minimum of one year. I cannot find official confirmation that the 20 month to five year sentence was reduced but it must have been since he served only 18 months.

John W. Dean, III

The former Counsel to the President pleaded guilty on October 19, 1973 to conspiracy to obstruct justice. He was sentenced on August 2, 1974 to a prison term of one to four years. He began serving his sentence on September 3, 1974 and was released on January 8, 1975, pursuant to a court order reducing his sentence to time served. He served approximately four months.

Charles W. Colson

The former Presidential Assistant pled guilty on June 3, 1974 to obstruction of justice. He was sentenced on June 21, 1974 to one to three years in prison. His term started July 8, 1974 and he was released on January 31, 1975, pursuant to a court order reducing his sentence to time served. He served approximately seven months.

Egil Krogh

The former Presidential Assistant pled guilty on November 30, 1973 to conspiracy to violate civil rights. He was sentenced on January 24, 1974, to two to six years' imprisonment, with all but six months suspended. He began serving the sentence on February 4, 1974 and was released on June 21, 1974. He served approximately four and one-half months.

Jeb Stuart Magruder

The former Presidential Assistant pled guilty on August 16, 1973 to conspiracy to unlawfully intercept wire and oral communications, to obstruct justice and to defraud the United States. He was sentenced on May 21, 1974 to 10 months to four years in prison. He began his term on June 4, 1974. He was released January 8, 1975, pursuant to court order reducing the sentence to time served. He served approximately seven months.

Everette Howard Hunt, Jr.

E. Howard Hunt, Jr., formerly associated with the Committee to Reelect the President, pled guilty in the District of Columbia to conspiracy, burglary and interception of wire communications. He was sentenced to 50 years' imprisonment on March 23, 1973 and he commenced service of the sentence. His sentence was later reduced to 30 months to eight years' imprisonment. On January 2, 1974 he was released pending appeal. After his conviction was upheld he reentered prison on April 25, 1975. He was paroled February 23, 1977, after having served about 31 months imprisonment.

George Gordon Liddy

George Gordon Liddy, formerly associated with the Committee to Reelect the President, was convicted in the District of Columbia in 1973 and 1974 of multiple offenses, including conspiracy, burglary, attempted interception of oral and wire communications, and conspiracy against the rights of citizens, and was sentenced to terms of imprisonment totalling twenty-one and one-half years. He began service of his sentence on January 30, 1973. In April 1977 President Carter reduced his sentence to eight years' imprisonment. Liddy was paroled in September 1977 after nearly four and one-half years imprisonment.

David C. Stephenson
Acting Pardon Attorney

Executive Grant of Clemency

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS Marvin Mandel was convicted in the United States District Court for the District of Maryland on an indictment (Doc. No. 75-0822) charging violation of Sections 2, 1341 and 1961 et seq., Title 18, United States Code, and on October tenth, 1977, as reduced on May first, 1980, was sentenced to three years' imprisonment; and

WHEREAS the said Marvin Mandel commenced service of his sentence on May nineteenth, 1980 and presently is incarcerated at the Federal Prison Camp, Eglin Air Force Base, Florida; and

WHEREAS the said Marvin Mandel has served more than eighteen months of his sentence and has received a presumptive parole date of May fourteenth, 1982, after the service of 24 months' imprisonment; and

WHEREAS it has been made to appear that the ends of justice do not require that the said Marvin Mandel serve his sentence in its entirety or remain incarcerated until his presumptive parole date:

NOW, THEREFORE, BE IT KNOWN, THAT I, Ronald Reagan, President of the United States of America, in consideration of the premises, divers other good and sufficient reasons, me thereunto moving, do hereby commute the aforesaid prison sentence of the said Marvin Mandel to expire on December twentieth, 1981.

IN TESTIMONY WHEREOF I have signed my name and caused the seal of the Department of Justice to be affixed.

DONE at the City of Washington this

day of

in the year of our Lord One Thousand Nine Hundred and Eighty-one and of the Independence of the United States The Two-hundred and sixth.

By the President:

Executive Grant of Clemency

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS W. Dale Hess was convicted in the United States District Court for the District of Maryland on an indictment (Doc. No. 75-0822) charging violation of Sections 2, 1341 and 1961 et seq., Title 18, United States Code, and on October seventh, 1977, as reduced on May first, 1980, was sentenced to three years' imprisonment and ordered to pay a fine of forty thousand dollars ($40,000); and

WHEREAS the said W. Dale Hess commenced service of his sentence on May fifteenth, 1980, and presently is assigned to a pre-release center in Baltimore, Maryland; and

WHEREAS the said W. Dale Hess has served more than eighteen months of his sentence and has received a presumptive parole date of January thirteenth, 1982, after the service of 20 months' imprisonment; and

WHEREAS it has been made to appear that the ends of justice do not require that the said W. Dale Hess serve his sentence in its entirety or remain incarcerated until his presumptive parole date:

NOW THEREFORE, BE IT KNOWN, that I, Ronald Reagan, President of the United States of America, in consideration of the premises, divers other good and sufficient reasons, me thereunto moving, do hereby commute the aforesaid prison sentence of the said W. Dale Hess to expire on December twentieth, 1981, without remitting any unpaid portion of the fine.

IN TESTIMONY WHEREOF I have signed my name and caused the seal of the Department of Justice to be affixed.

DONE at the City of Washington this

day of

in the year of our Lord One Thousand Nine Hundred and Eighty-one and of the Independence of the United States the Two-hundred and sixth.

By the President:

THE WHITE HOUSE

WASHINGTON

October 19, 1981

SENSITIVE

MEMORANDUM FOR EDWIN MEESE III
JAMES A. BAKER III
MICHAEL K. DEAVER

FROM: FRED F. FIELDING

SUBJECT: Executive Clemency - Marvin Mandel

As you may be aware, there is a growing campaign to have the President grant executive clemency, by way of a commutation of sentence, for former Governor Marvin Mandel. An extensive petition is currently being circulated on the Hill, which we can expect to receive soon. In addition, we have received numerous letters supporting such an action, and Mandel has filed (August 26, 1981) a formal Petition for Commutation of Sentence which is now in the Pardon Attorney's office.

Briefly stated, Mandel and three others were convicted of mail fraud and racketeering. After four years of trials and appeals, he was sentenced to four years, which was then reduced to three years with eligibility for parole at any time, at the discretion of the Parole Board. At Mandel's last hearing before the Board, it took the position that he must serve at least twenty-four (24) months, of which he has already served approximately nineteen (19) months. Mandel's anticipated release is May 1982.

Other factors:

-- Major complaint of Mandel supporters is that he is receiving unusually harsh, disparate treatment at the hands of the Parole Board. It is rumored that the cause of this is a long-standing feud between former Governors Mandel and Carter.

-- Precedents cited in Mandel's defense include Representative Charles Diggs (paroled after serving seven (7) months of a three-year sentence for taking $60,000 in kickbacks from his staff);

John Ehrlichman and H.R. Haldeman, who each served only eighteen (18) months; they also claim that if not released until May of 1982, Mandel will have served longer than anyone convicted of Watergate-related offenses.

-- There is strong Maryland support for this action.

-- No further purpose of confinement, citing age, disbarment, debt, etc.

On the other hand:

-- If Mandel is released early by Presidential action, other co-defendants should be treated the same.

-- Mandel is neither repentant nor "born again;" he also feels that Court of Appeals split on his case.

-- Public response to a Presidential act of clemency may be adverse.

Among those who have expressed interest in this, although not strongly urging yet, are Paul Laxalt, Mac Mathias, and Jack Kemp. I am sure this list will grow when the Petition is received.

The issue could be resolved, of course, if the reconstituted Parole Board were to review the case.

At this point, I am only inquiring as to whether there is any possible interest in the President taking action to grant commutation. If so, I can prepare a more complete option paper.

Perceive no interest _____

Possible interest _____

Positive interest ✓ _____

Comment _____

Sensitive

21 July 1981

THE WHITE HOUSE
WASHINGTON

TO: FRED FIELDING

FROM: ED THOMAS

Bob Garrick reported to me that you are holding the file on this subject, therefore, I am forwarding you the attached.

F: Pres. Pardons

THE WHITE HOUSE

WASHINGTON

June 10, 1981

PERSONAL

MEMORANDUM FOR EDWIN MEESE III

FROM: ROBERT GARRICK

SUBJECT: Pardon for Governor Mandel

I met with Mr. D.D. Pomerleau, Police Commissioner of the City of Baltimore. He gave me the attached memoranda regarding the matter of a pardon for Governor Mandel. My posture was to offer him no encouragement, but to bring the matter to your attention for action as you deem appropriate.

THE POLICE COMMISSIONER
CITY OF BALTIMORE

June 8, 1981

To Whom It May Concern

This is a plea for clemency in the case of former Governor Marvin Mandel, State of Maryland, currently incarcerated at Eglin Air Force Base, Eglin, Florida.

Governor Mandel, when Speaker of the House, was elected as Governor by a majority vote of the joint session of the Maryland General Assembly to replace Spiro Agnew who had resigned his office to become President Nixon's Vice Presidential candidate. Governor Mandel received 70% of the votes registered.

Governor Mandel ran for Governor first in 1970, receiving 65.2% of votes cast. He was elected for a second term in November, 1974, receiving 63.5% of votes cast.

My interest in this case is both professional and personal. I worked directly for the Governor during the years he served in that capacity and in that process we became friends. During those years, there was a great deal of trauma in the urban areas of this country and Governor Mandel stood tall during these times. Additionally, as Speaker of the House, prior to ascending to the Governorship, he was most supportive of this department and its Police Commissioner.

A word of explanation is in order, i.e., the Police Department of Baltimore City is an agency and instrumentality of the State of Maryland and the Police Commissioner is appointed by the Governor to serve a six-year term. Having been appointed by Governor Millard Tawes in 1966 and again by Governor Mandel in 1972, there has been a close working relationship with the State House. This is especially true with Governor Mandel as he first became Governor in January, 1969.

Marvin Mandel is considered by all of those with whom I come into contact, along with many others, as having been the finest Governor the State of Maryland has ever had. He is loved by a majority of the people, and we all feel that it is time for his release. We are aware of early releases in other cases, as well as the philosophy of first-offender treatment. Two prominent examples: 1) Congressman Diggs -- convicted of mail fraud and kickbacks, sentenced to three years, released after serving seven months; and 2) Abbie Hoffman, who raised hell around this country and tried to tear it up -- convicted of bartering in cocaine, given three years within the last several months, is already on a work release program; and, according to published reports, goes home each evening.

In essence, the indictment charged Governor Mandel and others to have devised a scheme to defraud the citizens and the State of Maryland by bribing the Governor to assist in passage of legislation which would be financially beneficial to the owners of two racetracks, the identities of such owners being deliberately concealed from the public,

the legislature and the Racing Commission by all of the defendants. Additionally, there were a number of mail fraud charges which came about because his public statements at official press conferences regarding the subject matter were placed in the United States Mails, more specifically, to the library of the University of Maryland, College Park, Maryland.

On August 23, 1977, the Governor was convicted of fifteen counts of mail fraud and one count of racketeering. He was sentenced to serve four years, which was later reduced to three. In January, 1979, the 4th Circuit Court of Appeals overturned the lower court by a 2-1 vote. The prosecutors requested a re-hearing, and the same court subsequently reinstated the conviction by a 3-3 vote. The Governor began serving his three year sentence in May, 1980. His attempts to gain parole on several occasions have failed, and the federal parole authority has said the Governor must serve two full years.

To summarize a point of view about our justice system a basic tenet is that the defendant must be found guilty beyond a reasonable doubt. When a case goes through an appeal process which first results in a reversal of the lower court and, upon a second hearing before the appellate bench (except one judge) ends in a 3-3 split, this clearly shows the existence of a reasonable doubt which should operate to reverse the court below and void the conviction. If the rules of appellate practice say otherwise, then the least the defendant is entitled to is to have the benefit granted to him in the sentencing procedure in the form of a reduction of sentence or a shortening of the time he is required to serve under incarceration.

It is my understanding that direct appeals were made to President Carter to no avail. The creditable grapevine has it that there was a significant problem existing between these two gentlemen which began while both were active with the National Governor's Conference. That sort of problem should not prevail -- enough is enough.

The Governor has now served thirteen months of a three year sentence. I respectfully reiterate my opening plea for clemency in his case. He has paid and paid dearly for his transgressions. All he has remaining are his friends and his family, and we would all like to see him on the road to recovery.

Would you please consider releasing him in time for the Jewish High Holy Days, "Rosh Hashanah" and "Yom Kippur," which begin on September 29, 1981. He will have served seventeen months at that time. At the very least, please have him released for "Hanukkah," which begins at sundown on Saturday, December 20, 1981, for certainly he will have served enough time to satisfy federal authorities by then.

There are many who join me in this endeavor -- Mayor Schaefer of Baltimore, Mayor Kelley of Ocean City, and Robert Pascal, County Executive of Anne Arundel County, to name a few. Let him come home to his family, friends, and the Jewish community by September, 1981. This would, I believe, appear to be a reasonable balance between immediate release and serving the full two years as currently mandated.

Respectfully,

D. D. Pomerleau
Commissioner

The White House
Washington, D.C. 20500

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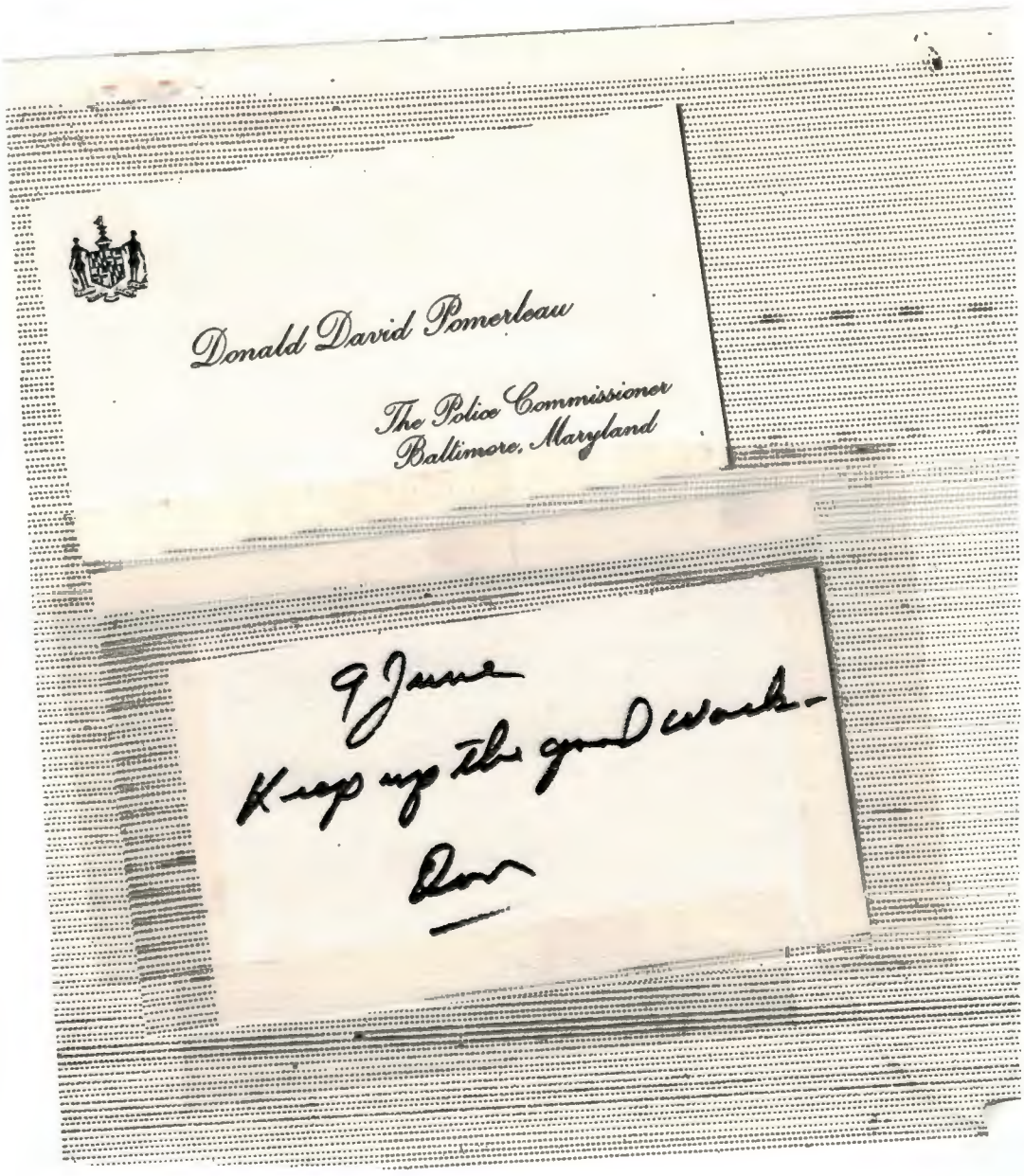

Donald David Pomerleau

The Police Commissioner
Baltimore, Maryland

9 June
Keep up the good work-
Don

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