

## Exchange Mail

DATE-TIME 08/15/2000 4:18:59 PM

FROM Harris, Grant T. (AF)

CLASSIFICATION ~~CONFIDENTIAL~~

CLASSIFICATIONREASON 1.5(d)

DATECLASSIFIEDON 08/12/2000

DECLASSIFYON 08/13/2010

SUBJECT RE: criminalization idea ~~[CONFIDENTIAL]~~

TO Smith, Gayle E. (AF)

CARBON\_COPY Battenfield, Pat A. (AF)  
Byrne, Catherine E. (AF)  
Cooper, Colby J. (MULTILAT)  
Dempsey, Nora B. (AF)  
Harris, Grant T. (AF)  
ODonohue, Peter A. (AF)  
Smith, Gayle E. (AF)  
Tabak, Lauren B. (AF/INTERN)



## TEXT\_BODY

So far, the criminalization issue has not gone anywhere. You wanted a one-pager that would look at the idea so we know exactly what it is (what it would do, potential advantages and disadvantages, etc.). TNT told me they would write it and then backed out. Because State was interested in looking into the idea, we just recently asked INL if they could put together a one-page paper on the idea and what criminalization would look like.

Independently, I talked with @legal. Mary said she could not think of any red flags and would try to find the appropriate person in DOJ to refer us to.

I understand your concerns completely. This is not an NSC-endorsed idea, and I have only raised this in the sense of "the idea has been raised, and we need more information about it." TNT continually raised the idea but never followed through on collecting information or vetting it with legal folks. I just wanted someone to put it on paper so that pros and cons and flesh could be added to the two sentences which TNT has e-mailed around. As of now, we don't know what it implies legislatively and have not raised it in any conversation

CLINTON LIBRARY PHOTOCOPY

about Hill legislation.

-----Original Message-----

From: Smith,  
Gayle E. (AF)  
Sent: Tuesday, August 15, 2000 4:09 PM  
To: Harris,  
Grant T. (AF)  
Cc: @AFRICA - African Affairs  
Subject: FW: criminalization  
idea [~~CONFIDENTIAL~~]

Not sure on tight timing side what is meant.  
But we need to work this through in the building and get a front office sign off before we take it out (other agencies would have to approve). I am all for it but these kinds of actions are serious and I do not want this train out of the NSC station before SRB has agreed (think he will if we make a good case). There are also major issues here regarding whether or not we want to factor the criminalization piece into the legislative process (good and bad) or handle it from executive branch. Please make sure Dan Shapiro is in this loop because we need a legislative opinion and he may argue that we do not want to do this legislatively.

Would also help for me, and I imagine both Nora and Cathy who practically work the diamond issues in their areas and where there are cross cutting issues like Sierra Leone overall, or UNITA sanctions, if you (Grant) could summarize where this is and what it implies (including legislatively). I will then check with Kerrick to see what we need to do procedurally in here.

Thanks

-----Original Message-----

From: Wolosky, Lee S.  
(TNT)  
Sent: Tuesday, August 15, 2000 3:21 PM  
To: DeRosa, Mary  
B. (LEGAL); Harris, Grant T. (AF)  
Cc: @CRIME; @AFRICA - African  
Affairs  
Subject: FW: criminalization idea [~~CONFIDENTIAL~~]

Mary/Grant

-- Given the tight timing, I shot this language over to John Bellinger (DOJ/crim) and Pete Prahar (State/INL) to run through their buildings.

-----Original

Message-----

From: Wolosky, Lee S. (TNT)

Sent: Tuesday, August  
15, 2000 9:27 AM

To: Harris, Grant T. (AF); Smith, Gayle E. (AF)

Cc: Clarke,

Richard A. (TNT); @LEGAL - Legal Advisor; @MULTILAT -  
Multilateral

and Humanitarian Affairs; @LEGISLAT - Legislative Affairs;

@AFRICA

- African Affairs; @CRIME

Subject: RE: criminalization idea {CONFIDENTIAL}

Grant:

I'd prefer for a real lawyer to pick this up from here, but briefly,  
this is how it might look in legislation:

"Whoever knowingly violates,  
attempts to violate or participates in a violation of this Act, or  
any license, rule, or regulation promulgated hereunder, shall be  
fined not more than \$\_\_\_\_\_ or, if a natural person, imprisoned for  
not more than \_\_\_\_ years, or both".

Intent to defraud customs

is not an effective criminal sanction for many reasons -- including  
the intent requirement. To my knowledge, for unknown reasons, no  
one has put this idea in play previously.

-----Original Message-----

From: Harris,

Grant T. (AF)

Sent: Tuesday, August 15, 2000 8:26 AM

To: Wolosky,

Lee S. (TNT); Smith, Gayle E. (AF)

Cc: Clarke, Richard A. (TNT)

Subject: RE:

criminalization idea {CONFIDENTIAL}

Lee-

If we are going

to throw the idea of criminalization into the mix, we need some more  
information. Technically speaking, how would it look in legislation?  
What are the added advantages? How specifically would this give  
the U.S. greater jurisdiction above and beyond current laws that  
make intent to defraud customs illegal? What does DOJ think about  
this? Has criminalization in this context been thought of before?  
How does this compare to the "CARAT" provision of previous Hill  
legislation? If criminalization is going to be seriously considered,

we need to get a clear picture of what it would look like asap. Because we originally heard the idea from you, we asked you to oversee the creation of a one-pager explaining it. Please let me know right away if you do not have time to do this, as this needs to move quickly. Thank you.  
Grant

Also-- the Fowler report does name a lot of names, including Butt (although not in an extremely detailed manner).

-----Original

Message-----

From: Wolosky, Lee S. (TNT)

Sent: Monday, August

14, 2000 9:07 PM

To: Harris, Grant T. (AF); Smith, Gayle E. (AF)

Cc: Clarke,

Richard A. (TNT)

Subject: RE: criminalization idea [~~CONFIDENTIAL~~]

Gayle,  
Grant:

Although IEEPA sanctions can move a lot quicker, assuming new legislation on conflict diamonds becomes desirable or inevitable, we might still consider specifically criminalizing trafficking in banned stones. Without specifically carving out a federal offense, you will be left with a toothless trade bill. Maybe that's ok, but it won't enable us to go after the bad guys who become subject to US jurisdiction (although under IEEPA you will be able to go after their assets).

That's about all there is to say on the subject  
-- DOJ should take it from there. Let me know if it would be helpful for me to talk to the DOJ rep to your IWG (or anyone else).

On

IEEPA, does the Fowler report name names? If so, that might be a starting point for moving forward -- assuming we are moving forward.

Regards,

Lee

-----Original

Message-----

From: Harris, Grant T. (AF)

Sent: Saturday, August

12, 2000 2:17 PM

To: Wolosky, Lee S. (TNT)  
Subject: criminalization  
idea ~~{CONFIDENTIAL}~~

Hi Lee,

Welcome back from vacation; I hope everything went well in NY. I know you will have a lot to go through upon your return, but follow-up on the criminalization idea requires swift action. The train is getting ready to leave the station, and there may be consultations with the Hill on legislation in the very near future (probably this week). Let's talk about this on Monday.  
-Grant