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THE WHITE HOUSE

WASHINGTON

November 30, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Civil Aeronautics Board Decision in  
Continental Air Lines, Inc., and  
Texas International Airlines, Inc.

Richard Darman's office requested comments by close of business Friday, December 3, 1982 on the above-referenced CAB order involving international aviation, which was submitted for Presidential review under section 801(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 1461(a). Under this section, the President may disapprove, solely on the basis of foreign relations or national defense considerations, CAB actions involving either foreign air carriers or domestic carriers involved in foreign air transportation. If the President wishes to disapprove such CAB actions, he must do so within sixty days of submission (in this case, by December 24, 1982).

The order here has been reviewed by the appropriate departments and agencies, following the procedures established by Executive Order No. 11920 (1976). OMB recommends that the President not disapprove, and reports that the NSC and the Departments of State, Defense, Justice and Transportation have not identified any foreign relations or national defense reasons for disapproval. Since this order involves domestic carriers, judicial review is theoretically available. Hence, the proposed letter from the President to the CAB Chairman prepared by OMB includes the standard sentence designed to preserve availability of judicial review, as contemplated by the Executive Order for cases involving domestic airlines.

My review of the order and related materials confirms the OMB description of this as a "routine, noncontroversial" matter (particularly from the foreign relations and national defense standpoint). While the Texas International-Continental merger itself was doubtless controversial, this order simply reissues the certificates of the two carriers to reflect their new status resulting from the reorganization, and enables them to provide service on each other's U.S.-Mexico routes. The airlines asserted before the CAB that the modifications of their certificates were so "technical" as not to require Presidential review, but the CAB, correctly in my view, disagreed.

A memorandum for Darman is attached for your review and signature.

Attachment

THE WHITE HOUSE

WASHINGTON

November 30, 1982

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision in  
Continental Air Lines, Inc., and  
Texas International Airlines, Inc.

Our office has reviewed the above-referenced CAB decision and related materials, and has no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(a).

We also have no legal objection to OMB's recommendation that the President not disapprove this order, or to the substance of the letter from the President to the CAB Chairman prepared by OMB.

FFF:JGR:aw 11/30/82

cc: FFFielding  
JGRoberts  
Subject  
Chron.

THE WHITE HOUSE

WASHINGTON

November 30, 1982

MEMORANDUM FOR FRED P. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Department of Justice  
Testimony on H.R. 4940

The Department of Justice has submitted for your review proposed testimony supporting enactment of H.R. 4940, a bill to make it a federal offense to attempt to kill any of the federal law enforcement officials listed in 18 U.S.C. § 1114 (current law only covers actual killing), and to extend the protections of 18 U.S.C. § 1114 to intelligence community officers and employees. While the cover page of the testimony indicates it is to be delivered tomorrow, it has in fact been postponed, reportedly because the CIA -- the lead agency on the bill -- wanted to conduct classified briefings before the bill is publicly considered. I see nothing objectionable in the proposed testimony.

H.R. 4940 would make it a federal offense to attempt to kill, as well as kill, any official listed in 18 U.S.C. § 1114, while that official is engaged in the performance of official duties. The current listing covers federal law enforcement officials, including Federal judges and U.S. attorneys. The bill would also expand the current list in 18 U.S.C. § 1114 to include officers and employees of the intelligence community. In addition, the bill would make it a federal offense to kill, assault, kidnap, or threaten aliens admitted to the U.S. under 50 U.S.C. § 403h (typically defectors or former clandestine operatives with assumed identities) or aliens admitted under "intelligence auspices" (typically friendly foreign agents certified by the Director of the CIA to be here on intelligence business). The testimony simply reviews the provisions of the bill, suggests an insignificant technical clarification, and indicates departmental support for its enactment. Both the testimony and the bill are unobjectionable.