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WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name ROBERTS, JOHN: FILES

Withdrawer

RBW 8/2/2005

File Folder CHRON FILE (12/12/1982 - 12/31/1982)

FOIA

F05-139/01

Box Number

COOK

2RW

DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	JOHN ROBERT TO FRED FIELDING RE REMOVAL OF NAVAL OFFICER FROM PROMOTION LIST	2	12/27/1982	B6	418
2	MEMO	FIELDING TO RICHARD DARMAN RE PROMOTION LIST	1	12/27/1982	B6	419
3	LETTER	FIELDING TO ADMIRAL STARING RE PROMOTION LIST	1	12/27/1982	B6	420

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]
B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

E.O. 13233

C. Closed in accordance with restrictions contained in donor's deed of gift.

WITHDRAWAL SHEET

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ROBERTS, JOHN: FILES

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1	MEMO	2	12/27/1982	B6
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418

JOHN ROBERT TO FRED FIELDING RE REMOVAL
OF NAVAL OFFICER FROM PROMOTION LIST

Freedom of Information Act - [5 U.S.C. 552(b)]

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FIELDING TO RICHARD DARMAN RE PROMOTION LIST				

419

Freedom of Information Act - [5 U.S.C. 552(b)]

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FIELDING TO ADMIRAL STARING RE PROMOTION LIST					

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E.O. 13233

C. Closed in accordance with restrictions contained in donor's deed of gift.

THE WHITE HOUSE

WASHINGTON

December 27, 1982

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Inquiry from Ron Mann Concerning Appointment
of SES Official as Acting Deputy Director,
National Science Foundation

Ron Mann, Associate Director of the Office of Presidential Personnel, has inquired if there are any legal impediments that would preclude the Director of the National Science Foundation (NSF) from appointing an official of NSF in the Senior Executive Service to the post of Acting Deputy Director pending nomination and confirmation of a permanent Deputy Director. The post of Deputy Director is a PAS position.

I located in our files a January 27, 1982, Memorandum on "Acting Officers" prepared for you by Ted Olson, Assistant Attorney General, Office of Legal Counsel (Tab A). That memorandum concluded that the Attorney General could designate the Deputy Commissioner of INS as Acting Commissioner, in part because of the authority given the Attorney General in 28 U.S.C. § 510 (1976) to authorize the performance of any function of the Attorney General by any officer of the Justice Department. There is an analogous provision concerning NSF and its Director at 42 U.S.C. § 1864(c) (1976), which provides:

The Director may from time to time make such provisions as he deems appropriate authorizing the performance by any other officer, agency, or employee of the Foundation of any of his functions under this chapter, including functions delegated to him by the Board; except that the Director may not redelegate policymaking functions delegated to him by the Board.

I also located a December 5, 1982 letter to Ed Wilson from Joseph Morris, General Counsel, Office of Personnel Management, on the question of appointing individuals with SES status (Tab B). In pertinent part, Morris concluded:

With respect to your first question, whether a person presently in the SES who is named to hold an "acting" PAS position retains his SES status during and after his service in the PAS position,

the answer is affirmative. Designation as "acting" does not amount to an appointment with Senate confirmation, nor does it amount to a recess appointment without Senate confirmation as provided for in 5 U.S.C. § 3349. Whereas certain statutory procedures must be followed for PAS appointments and recess appointments to PAS positions, and certain changed-status consequences flow from such appointments . . . , Congress has mandated no special changes in underlying status for persons named to hold "acting" PAS positions. I therefore conclude that such persons retain SES status during and after temporary service in PAS positions.

On the basis of these two memoranda, and the provision in 42 U.S.C. § 1864(c) (1976), I am disposed to advise Mann that the Director of NSF may appoint an SES official of NSF Acting Deputy Director, pending the nomination and confirmation of a new Deputy Director. Pursuant to the terms of 42 U.S.C. § 1864(c), the Acting Deputy Director should refrain from exercising policymaking functions delegated to the Director by the NSF Board. I discussed the question with Herman Marcuse at the Office of Legal Counsel, who agreed that the SES official could be appointed Acting Deputy Director, but could not engage in policymaking. Marcuse also pointed out that the Acting Deputy Director could not act as Director in the absence of the Director, as provided in 42 U.S.C. § 1864a (1976), because an official may not be in a position of "acting" twice.

You will recall that the above-cited OLC memorandum noted that under the Vacancy Act, 5 U.S.C. §§ 3345-3349 (1976), vacancies filled pursuant to that Act may be filled for no more than thirty days. 5 U.S.C. § 3348 (1976). As stated in the memorandum, however, it has been the consistent position of the Department of Justice that vacancies such as the one in question are filled pursuant to the delegation authority -- in this case 42 U.S.C. § 1864(c) -- and not the Vacancy Act, and therefore the limitations of the Vacancy Act are not applicable. This is contrary to the position of the Comptroller General. Out of an excess of caution, Mann should be advised that the Acting Deputy Director, after serving thirty days, should avoid, if possible, taking action which may legally only be taken by the Deputy Director. See OLC memorandum, at 4.

If you agree, I can advise Mann that the Director of NSF may appoint an SES official Acting Deputy Director, provided the Acting Deputy Director (1) avoid exercising policymaking functions, (2) avoid, after serving thirty days, taking action which specifically must be taken by the NSF Deputy Director, and (3) not act as Director in the absence of the Director.

THE WHITE HOUSE

WASHINGTON

December 28, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill S. 1735 - Disposition of
Pembina Chippewa Indians Judgement Funds

Richard Darman has requested comments by close of business today, December 28, on S. 1735, which authorizes distribution of some \$52 million previously awarded and appropriated to the Pembina Chippewa Indians. The award was made in 1980 by the Court of Claims for the 1905 value of a large tract of land in North Dakota. The bill specifies the manner of distribution of the award among the different groups of Pembina descendants. This legislation is necessary under the Indian Judgment Funds Act of 1973 because the Secretary of Interior did not submit a plan for distribution within 180 days of the time Congress appropriated the funds. OMB and Interior recommend approval, and Justice defers to Interior.

I have reviewed the memorandum to the President prepared by James Frey, Assistant Director of OMB for Legislative Reference, the legislative reports, and the bill itself. I see no legal objections, and have prepared a memorandum to Darman to that effect for your signature.

Attachment

THE WHITE HOUSE

WASHINGTON

December 28, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 1735 - Disposition of
Pembina Chippewa Indians Judgment Funds

Counsel's Office finds no objection from a legal perspective
to the above-referenced enrolled bill.

FFF:JGR:aw 12/28/82

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

December 28, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill S. 835 - Private Relief for
Jerry Crow and Ralph and Connie Hubbell

Richard Darman has asked for comments by close of business today on Enrolled Bill S. 835, a private relief bill. The bill would require the Secretary of the Interior to sell 10 acres of Alaskan land at fair market value to Jerry Crow, an Alaskan campground operator, and lease up to 70 additional acres, with an option to purchase. Crow's application to purchase 80 acres for his campground was denied in 1967 because he failed to meet the conditions of the Trade and Manufacturing Act of 1898, which provides for sales of up to 80 acres to Alaskan residents occupying Federal lands for business purposes. A completely unrelated section of the bill directs the Secretary to convey to the Hubbells of Carbondale, Colorado, all interest of the United States in a 1.25 acre tract of land on which their home is situated, at 1964 fair market value. The Hubbells thought they had purchased the land in 1964 from a private party, but their title was defective, due to an inaccurate private survey.

OMB recommends approval, despite the lack of a current fair market value provision in the case of the Hubbells. Interior has no objection. I have reviewed the memorandum to the President from James Frey, Assistant Director of OMB for Legislative Reference, and the bill itself. I see no legal objections, and have prepared a memorandum to that effect to Darman for your signature.

Attachment

THE WHITE HOUSE

WASHINGTON

December 28, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 835 - Private Relief for
Jerry Crow and Ralph and Connie Hubbell

Counsel's Office finds no objection from a legal perspective
to the above-referenced enrolled bill.

FFF:JGR:aw 12/28/82

cc: FFFielding
JGRoberts
Subj.
Chron

- .

THE WHITE HOUSE

WASHINGTON

December 28, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill S. 3103 - Collection and
Use of Participation Fees for Private
Sector Participants in the President's
Executive Exchange Program

Richard Darman has asked for comments by close of business today on Enrolled Bill S. 3103. This bill would authorize the President's Commission on Executive Exchange (PCEE) to collect fees for the participation of private sector exchange executives, and use those fees for education and travel expenses of those exchange executives. In the past agencies have accepted from the firms of private sector exchange executives fees for participation of their employees, and used those fees for expenses of the exchange executives. The fees were deposited in a Treasury fund, which was recently determined to lack authority to spend the funds for earmarked purposes. S. 3103 authorizes collection and expenditure of participation fees, for one year only. PCEE will seek permanent authority over the course of the next year.

I have reviewed the memorandum to the President from James Frey, Assistant Director of OMB, and the bill itself. OMB, OPM and the PCEE all recommend approval of the bill. I see no legal objections, and have prepared a memorandum to that effect to Darman for your signature.

Attachment

THE WHITE HOUSE

WASHINGTON

December 28, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 3103 - Collection and
Use of Participation Fees for Private
Sector Participants in the President's
Executive Exchange Program

Counsel's Office finds no objection from a legal perspective
to the above-referenced enrolled bill.

FFF:JGR:aw 12/28/82

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

December 28, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill H.R. 6946 - False
Identification Crime Control Act

Richard Darman has asked for comments by 2:00 p.m. today on Enrolled Bill H.R. 6946, which establishes criminal penalties for various acts involving false identification cards. This bill is the result of recommendations by the Federal Advisory Committee on False Identification. It would provide criminal penalties for knowing production of a false identifier, possession of five or more false identifiers, possession of false identifiers with intent to defraud the United States, production or transfer of falsifying implements, and possession of false United States identifiers. The bill also requires "i.d. companies" to stamp "not a government document" on their products. Fines and prison terms ranging to \$25,000 and five years are set for violations. There is an interstate commerce provision satisfying any Constitutional objections on that score.

I have reviewed the memorandum to the President from James Frey, Assistant Director of OMB, and the bill itself. OMB and the Department of Justice approve of the bill, and I see no legal objections.

I have attached a proposed memorandum to Darman.

Attachment

THE WHITE HOUSE

WASHINGTON

December 28, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 6946 - False
Identification Crime Control Act

Counsel's Office finds no objection from a legal perspective
to the above-referenced enrolled bill.

FFF:JGR:aw 12/28/82

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

December 28, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill S. 1501 - Educational Mining Act of 1982

Richard Darman has requested comments by noon tomorrow, December 29, on Enrolled Bill S. 1501. This bill authorizes and directs the Secretary of Interior to convey to the University of Alaska all interest of the United States in a 57-acre tract of land known as the Silver Fox Mine. The land had been worked by an individual as an unpatented mining claim, and the individual donated the land to the University's School of Mines. OMB recommends approval. Interior has no objection, but notes that while the bill refers to a 76-acre tract the physical description is of a 57-acre tract. The bill as introduced conveyed a 76-acre tract, but corrections during the legislative process deleted some lands that had already left Federal ownership. I agree with OMB that this technical error will cause no major problems. The physical description of a 57-acre tract will control, and even if it does not all the bill does is convey the interest of the United States in the land. If the United States has no interest in the extra 19 acres, that is what is conveyed.

I have reviewed the memorandum to the President prepared by James Frey, Assistant Director of OMB for Legislative Reference, the legislative report, and the bill itself. I see no legal objections, and have prepared a memorandum to Darman to that effect for your signature.

Attachment

THE WHITE HOUSE

WASHINGTON

December 28, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 1501 - Educational
Mining Act of 1982

Counsel's Office finds no objection from a legal perspective
to the above-referenced enrolled bill.

FFF:JGR:aw 12/28/82

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

December 29, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill H.R. 5447 - Commodity
Futures Trading Commission Reauthorization

Richard Darman has requested comments by close of business today on Enrolled Bill H.R. 5447, concerning commodity futures trading. The bill authorizes funds for the Commodity Futures Trading Commission (CFTC) for fiscal years 1983-1986, enacts into law the CFTC's side of its jurisdictional agreement with the SEC, establishes a new self-regulatory body for commodity futures trading (the National Futures Association), permits the CFTC to impose limited service fees, and otherwise expands and clarifies regulation of commodity futures markets and CFTC regulatory authority. Two additional provisions of the bill are problematic: Section 238 would prohibit the President -- in the absence of a declared national emergency or declared war -- from imposing an export embargo on commodities already under contract for delivery at the time of the announced embargo and to be actually delivered within 270 days of the announcement. Section 221 provides that nothing in the Act prohibits States from proceeding in State court against certain persons registered under the Act for a violation of the antifraud provisions of the Act.

State, Commerce, and NSC recommended disapproval because of the limits on Presidential power contained in section 238. State has submitted a memorandum of disapproval. OMB, Agriculture, the CFTC and the SEC recommend approval despite section 238. OMB argues that the "contract sanctity" provision of section 238 -- a floor amendment sponsored by Senator Durenberger -- does not impose any serious limits beyond the already announced intention of the President not to impose an embargo on agricultural products except as part of a broad package of trade restrictions.

A serious argument can be developed that section 238 is unconstitutional. It is an attempt by Congress to circumscribe the President's authority over the conduct of foreign

affairs. While an effort by an Executive to take action prohibited by section 238 would fall within the third, most suspect category of the classic tripartite division of executive power in Justice Jackson's concurring opinion in Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 637-638 (1952) -- action in contravention of the will of Congress -- cases covered by section 238 would also have the most direct foreign relations link, unlike the situation in the Sawyer case itself. In any event, section 238 purports to circumscribe the legal authority of the President, and this office has a responsibility to ensure that the President retain as much legal flexibility as possible. I therefore recommend that we concur in the objections of State, Commerce, and NSC to the bill on the ground that it would, perhaps unconstitutionally, restrict the legal authority of the President to act in the area of foreign affairs. The memorandum prepared by the State Department adequately makes this point, although it does not raise the constitutionality concerns. I do not think those concerns need be expressed in the memorandum, primarily because there is no precise answer on the constitutionality question. (The Supreme Court itself noted last year that "the decisions of the Court in this area have been rare, episodic, and afford little precedential value for subsequent cases." Dames & Moore v. Regan, 453 U.S. 654, 661 (1981)).

I have another unrelated objection to the bill. Section 221 provides that nothing in the Act shall prohibit a state from proceeding in State court against certain persons registered under the Act for violations of the federal antifraud provisions. The very clear negative implication in this section essentially makes the States federal prosecutors under the Act. While the CFTC is given rights of notice and intervention, the fact remains that a State could prosecute violations of federal law under this provision, even if federal prosecutors, in the exercise of their discretion, determined that such prosecution was unwarranted. Federal prosecutions could be commenced under authority of prosecutors appointed not by the President with the advise and consent of the Senate, but appointed by some state governor, or elected by citizens of some state.

Current law does provide that States may bring parens patriae actions on behalf of aggrieved residents, 7 U.S.C. § 13a-2 (1978). Such a parens patriae action, however, "on behalf of" injured citizens, is simply a class action type device, and really no more objectionable than the existence of implied private rights of action under the Act. Section 221 is quite different, since States are, by negative implication, authorized to institute proceedings not on behalf of aggrieved residents but as States.

The evolution of section 221 leads me to conclude that little attention has been paid to its bizarre provisions. The Senate added an amendment to the House bill providing that nothing in the Act prohibited States from instituting proceedings in State court for violations of State commodities antifraud statutes -- a classic non-preemption provision. The Conference changed this to cover violations of the antifraud provisions of the federal Act, apparently to avoid subjecting traders to separate State regulations. See Conference Report, at 42-43.

I recommend noting an objection to section 221 in the memorandum to Darman. I have prepared a suggested memorandum to Darman for your signature.

Attachment

THE WHITE HOUSE

WASHINGTON

December 28, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 5447 - Commodity
Futures Trading Commission Reauthorization

Counsel's Office has reviewed the above-referenced Enrolled Bill. I agree with the view of the Departments of State and Commerce and the National Security Council that section 238 of the bill is objectionable because it would limit the options available to the President to respond to international crises. As an intrusion on the powers of the Executive over the conduct of foreign affairs section 238 is constitutionally suspect, although more than that cannot be said because of the absence of clear rules governing such cases. Section 238 does purport to limit the legal authority of the President -- authority the Executive has exercised in the past, and could well desire to exercise in the future -- and is thus of serious concern to this office. I have no legal objection to the memorandum of disapproval discussing these concerns prepared by the Department of State.

Section 221 of the bill is also a source of concern to this office. That section, by clear negative implication, contemplates that State officials may institute proceedings in State court for violations of Federal law. This unusual arrangement would remove control over the institution of Federal prosecutions from Federal prosecutors, a highly undesirable development. It is true that under current law States may institute so-called parens patriae actions on behalf of residents aggrieved by violations of the Act, 7 U.S.C. § 13a-2, but this is a far cry from simply permitting States to institute proceedings for violations of provisions of the Act. I do not believe that we should sanction the transfer of Federal prosecutorial authority to State officials, even assuming this can be done. Section 221, though far from clear and apparently lacking definitive legislative history, raises this danger.

FFF:JGR:aw 12/28/82
cc: FFFielding/JGRoberts/Subj./Chron

THE WHITE HOUSE

WASHINGTON

December 29, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: H.R. 7356 - Department of the
Interior Appropriation Bill

Richard Darman's office delivered the above-referenced enrolled bill to this office at 2:40 p.m. today, requesting comments by 3:30 p.m. The bill is the appropriations measure for Interior, Energy, Agriculture, and several other agencies. The bulk of the bill, of course, concerns funding levels for various activities and does not raise any issues of concern to this office.

Legal issues are raised by the Administrative Provisions of the Indian Affairs section, at pages 11-12 of the bill. These provisions substitute a claims processing procedure for the existing statute of limitations on pre-1966 Indian claims in 28 U.S.C. 2415. That provision bars pre-1966 Indian claims not filed before December 31, 1982. The Secretary of Interior has been sued on the ground that several claims which he had a fiduciary obligation to prosecute were due to expire. The suit was successful to the extent that the Secretary will be held in contempt if action of some sort is not taken to preserve asserted claims by Friday. The bill takes such action by removing the imminent statute of limitations bar. This is also the reason the bill is on such a "fast track." Hank Habicht, Deputy Assistant Attorney General, Lands Division, has advised me that the Justice Department approves of the procedure established in the bill. Based on a necessarily quick review, I see no objections.

The bill also contains restrictions on the Secretary's leasing authority with respect to the Outer Continental Shelf off California and wilderness lands generally. This is a compromise provision negotiated with the Hill by Interior. Finally, section 311 of the bill exempts employment funded by the Act from any personnel ceilings. As noted in OMB's legislative reference letter, this is a highly objectionable restriction on Executive power. It was, however, included in the continuing resolution, so it is not feasible to object at this stage.

I have reviewed the bill, in a somewhat rushed fashion, and see no legal objections. Because of the quick turnaround time, I talked with the Solicitor's Office at Interior (William Satterfield), the Legislative Office (Dave Brown), and the Budget Office (Joseph Gorell). I also talked with the Lands Division at the Justice Department (Hank Habicht). All of these individuals advised that the bill contained no unusual legal provisions other than those discussed above. All affected agencies recommended approval. Based on this review, I recommend that you sign the attached memorandum to Darman.

Attachment

THE WHITE HOUSE

WASHINGTON

December 29, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: H.R. 7356 - Department of the
Interior Appropriation Bill

Counsel's Office finds no objection from a legal perspective
to the above-referenced enrolled bill.

FFF:JGR:aw 12/29/82

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

December 29, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Enrolled Bill S. 1364 - Relief of
Jose Ramon Beltron Aiveda Ostler

Richard Darman has requested comments by close of business today, December 29, on Enrolled Bill S. 1364, a private relief bill sponsored by Senator Hatch. S. 1364 would deem Jose Ostler to be a child within the meaning of § 101(b)(1)(E) of the Immigration and Nationality Act, in effect granting him permanent residence status. He was adopted at age 15 in 1978 by the Osters, but the Act sets a maximum adoption age of 14 for purposes of being classified as an immediate relative for immigration purposes. The bill also specifies that no natural relatives of Jose can derive "piggyback" benefits from his special legislation. OMB recommends approval; INS and State interpose no objection.

I have reviewed the memorandum to the President from James Frey, Assistant Director of OMB for Legislative Reference, and the bill itself. I see no legal objection, and have prepared a memorandum to Darman to that effect for your signature.

Attachment

THE WHITE HOUSE

WASHINGTON

December 29, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 1364 - Relief of
Jose Ramon Beltron Aiveda Ostler

Counsel's Office finds no objection from a legal perspective to the above-referenced enrolled bill.

FFF:JGR:aw 12/29/82

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

December 29, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *grr*

SUBJECT: Enrolled Bill S. 1986 - Disposition
of Indian Judgment Funds

Richard Darman has requested comments by 3:00 p.m. tomorrow, December 30, on Enrolled Bill S. 1986, which authorizes the distribution of funds previously awarded and appropriated to the Blackfeet, Gros Ventre, Assiniboine and Papago Indians. The bill specifies the manner of distribution of some \$37 million awarded the first three tribes by the Court of Claims and awarded the Papagos by the Indian Claims Commission. This legislation is necessary under the Indian Judgment Funds Act of 1973 because the Secretary of Interior did not submit a plan for distribution of the funds within the statutorily prescribed period after Congress appropriated the funds. OMB and Interior recommend approval, and Justice defers to Interior.

I have reviewed the memorandum to the President prepared by James Frey, Assistant Director of OMB for Legislative Reference, the legislative reports, and the bill itself. I see no legal objections, and have prepared a memorandum to Darman to that effect for your signature.

Attachment

THE WHITE HOUSE

WASHINGTON

December 29, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 1986 - Disposition
of Indian Judgment Funds

Counsel's Office finds no objection from a legal perspective
to the above-referenced enrolled bill.

FFF:JGR:aw 12/29/82

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

December 30, 1982

MEMORANDUM FOR RON MANN
ASSOCIATE DIRECTOR
PRESIDENTIAL PERSONNEL

FROM: JOHN G. ROBERTS *JGR*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Appointment of SES Official as Acting
Deputy Director by Director, National
Science Foundation

This will confirm our conversation of this morning. The Director of the National Science Foundation (NSF) may designate an SES official of NSF Acting Deputy Director, pending nomination and confirmation of a permanent Deputy Director. The Acting Deputy Director (1) may not exercise policymaking functions, (2) should avoid, after serving thirty days, taking any legal action which specifically must be taken by the Deputy Director, and (3) may not serve as Acting Director in the absence of the Director.

Please do not hesitate to call if you have any questions.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 30, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Request to Include Bronze Portrait
of the President in Proposed
Los Angeles Airport Monument

Michael Deaver has referred to you for action a packet of materials submitted by Brett-Livingstone Strong of Pacific Palisades, California. Strong, apparently something of a self-starter in the world of sculpture, has proposed the erection of a sixty-five foot monument at the Los Angeles International Airport, to commemorate the upcoming Olympics. Strong has constructed a seven-foot model, and reports that the project "is currently being approved," although he also notes that "a letter from President Reagan would aid the progress of the remaining approvals." He specifically requests approval of his proposal to include a bronze portrait of the President on the dedication plaque at the base of the proposed monument.

It is unclear from Strong's materials whether his enterprise is a commercial enterprise, or if he is planning to donate his skills. I recommend that the letter to Strong note that the President as a matter of policy does not approve such requests, both to avoid endorsing commercial enterprises and to avoid showing favoritism. The latter point should be made in light of Strong's effort to secure Presidential support for what is apparently only a proposal on his part.

Strong's materials are rife with violations of the law governing use of the Great Seal and the Presidential Seal. 18 U.S.C. § 713; E.O. 11649. The Great Seal is printed on the background of his stationery, and on the cover and interior flap of his pamphlet. The Presidential Seal is glued to a sash surrounding the pamphlet. The letter to Strong should alert him to the law in this area, and advise him to discontinue use of the seals.

I have attached a proposed memorandum to Deaver and letter to Strong for your signature.

Attachments

THE WHITE HOUSE

WASHINGTON

December 30, 1982

Dear Mr. Strong:

Your request that the President approve the use of his likeness at the base of your proposed monument at the Los Angeles International Airport has been referred to this office. While we admire the enthusiasm, dedication, and patriotism which you obviously bring to the ambitious project to design and erect the monument, we cannot approve or endorse the use of the President's likeness.

As you might imagine, the President receives countless requests for the use of his name or likeness during the course of a year. Frankly, many of the requests originate with individuals or organizations with which he would be pleased to be identified. In response to the large number, however, the White House has been obliged to adhere to a general policy of denying requests of this kind to use the signature, name, photograph or likeness of President Reagan when to do so would either suggest favoritism by the President toward particular individuals or organizations, or associate him with a commercial product or enterprise in a way that does or might suggest his endorsement of that product or enterprise.

In addition, I am certain you will understand that in this case modesty precludes the President from endorsing your gracious proposal to include his likeness on the monument.

The materials you forwarded to the White House in connection with your proposal raise another concern. Your folder and stationery contain reproductions of the Great Seal of the United States and the Seal of the President of the United States. In light of your evident good faith, I assume you are unaware that the permitted uses of these seals are restricted by law.

Title 18 of the United States Code, Section 713, is the principal federal law governing use of the Great Seal of the United States and the Seal of the President of the United States. Section 713(a) proscribes use of these seals in a manner reasonably calculated to convey a false impression of sponsorship or approval by the United States Government, and section 713(b) proscribes use of the Presidential seal, except in a manner consistent with regulations promulgated by the President. The regulations to which reference is

-2-

made are embodied in Executive Orders 11649 and 11916. I enclose for your information copies of 18 U.S.C., Section 713, the notes to which include the Executive Orders mentioned. You will note that use of the seals on personal stationery and the like is not among the uses sanctioned by the Executive Order. Accordingly, I must advise you to cease such use of the seals.

I am sorry that I cannot be more accommodating. Thank you for your cooperation, and best of luck with your ambitious undertaking.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Brett-Livingstone Strong
1157 Las Pulgas Place
Pacific Palisades, California 90272

Enclosure

FFF:JGR:aw 1/3/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

December 30, 1982

MEMORANDUM FOR MICHAEL K. DEEVER
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Request of Brett-Livingstone Strong to
Include Bronze Portrait of the President
in Proposed Los Angeles Airport Monument

On December 13 you transmitted for my review and action a packet of materials from Brett-Livingstone Strong. Mr. Strong seeks endorsement of his plan to include a bronze portrait of the President at the base of his proposed sixty-five foot monument to the Los Angeles Olympics, to be erected (if approved by local authorities) at the Los Angeles Airport. While the President could endorse this project, the White House adheres to a policy of not approving use of the President's likeness when doing so might suggest endorsement of a commercial enterprise or favoritism to any particular individual or group. It is unclear if Mr. Strong's project is a commercial one, but, in any event, the President should not endorse a proposal of this sort which has not been finally approved by the relevant authorities in Los Angeles. Mr. Strong explicitly notes Presidential endorsement would help him gain the remaining approvals, indicating that he seeks precisely the sort of Presidential sponsorship for his project which we strive to avoid.

I have written to Mr. Strong advising him that we cannot endorse his proposal. I have also alerted him to the law governing use of the Great Seal and Presidential Seal, because the presence of both seals on his materials is contrary to that law.

FFF:JGR:aw 12/30/82

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

December 30, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: FOI/PA Request from Jane Glazer
on Behalf of Helen Gordon

James K. Hall, Chief of the FBI FOI/PA Section, has referred two FBI documents, which contain information furnished by the White House, to you for review prior to response to the FOI/PA request of Jane Glazer on behalf of the invalid Helen Gordon. The first document, a March 10, 1967 letter from the Bureau to Marvin Watson, responded to a name check requested by Mildred Stegall on 108 individuals. The second, a November 10, 1969, letter from the Bureau to John Ehrlichman, responded to a name check requested on 227 individuals. Each document notes that a separate memorandum is attached on Mrs. Gordon, as well as several other cited individuals. This separate memorandum has not been submitted to us in response to the FOI/PA request.

I believe that the names of all the individuals (other than Mrs. Gordon) who were subject to the name checks may be excised from the copies to be released pursuant to Exemption 6. This exemption provides that the disclosure requirements of the FOIA do not apply to "personal and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). In its recent decision in United States Department of State v. The Washington Post Co., 102 S. Ct. 1957 (1982), the Court interpreted this provision quite broadly as applicable to any records identifiable as applying to a particular individual. I recommend noting the desirability of deletion of the names in your memorandum to the Bureau.

Attachment

THE WHITE HOUSE

WASHINGTON

December 30, 1982

MEMORANDUM FOR JAMES K. HALL
CHIEF, FOI/PA SECTION
FEDERAL BUREAU OF INVESTIGATION

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: FOI/PA Request from Jane Glazer on
Behalf of Helen Gordon: FBI #221,872

This is in response to your memorandum of December 13, 1982 in which you referred to me for review two FBI documents responsive to the above-referenced FOI/PA request. The documents contain information furnished by the White House.

Upon review of this information, we believe that the exemption of 5 U.S.C. § 552(b)(6) should result in the deletion of the names of all the individuals other than Mrs. Gordon listed in the documents. The Supreme Court has ruled that Exemption 6 is to be interpreted broadly, United States Department of State v. The Washington Post Co., 102 S. Ct. 1957 (1982), and disclosure of the names would be an unwarranted invasion of the privacy of the individuals.

We have no legal objection to the release of these two documents, ~~provided the names of individuals other than Mrs. Gordon listed in the documents are deleted.~~

FFF:JGR:aw 12/30/82

cc: FFFielding
JGRoberts
Subj.
Chron

DRAFT

THE WHITE HOUSE

WASHINGTON

January 5, 1983

MEMORANDUM FOR JAMES K. HALL
CHIEF, FOI/PA SECTION
FEDERAL BUREAU OF INVESTIGATION

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: FOI/PA Request from Jane Glazer on
Behalf of Helen Gordon: FBI #221,872

This is in response to your memorandum of December 13, 1982 in which you referred to me for review two FBI documents responsive to the above-referenced FOI/PA request. The documents contain information furnished by the White House.

Upon review of this information, we believe that the exemption of 5 U.S.C. § 552(b)(6) should result in the deletion of the names of all the individuals other than Mrs. Gordon listed in the documents. The Supreme Court has ruled that Exemption 6 is to be interpreted broadly, United States Department of State v. The Washington Post Co., 102 S. Ct. 1957 (1982), and disclosure of the names would be an unwarranted invasion of the privacy of the individuals.

We have no legal objection to the release of these two documents.

FFF:JGR:aw 1/5/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

December 30, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill H.R. 6254 - Protection
of Certain Foreign Diplomatic Missions

Richard Darman has requested comments by close of business Monday, January 3, on Enrolled Bill H.R. 6254, which would increase appropriations to reimburse New York City for protective services it provides for foreign diplomats, and permit reimbursement for the cost of motorcades for foreign diplomats. The Administration opposed H.R. 6254, on the grounds that motorcades are ceremonial and not protective, and that New York City is already being adequately reimbursed. OMB and Treasury recommend approval, noting that the Continuing Resolution already authorizes increased funds for reimbursement to New York City, and covers motorcades. Reimbursement is much less costly than replacing local security with Federal officers, which Mayor Koch has threatened will be necessary if the bill fails. State recommends disapproval, essentially for the reasons the Administration initially opposed the bill. Signing and disapproval statements have been prepared by Treasury and State, respectively.

I have reviewed the memorandum to the President from David Stockman, the bill itself, and the draft statements. I see no legal objections to the bill, nor do I think the policy dispute between Treasury and State holds any particular significance for this office. I therefore recommend a simple "no legal objection" memorandum to Darman. I also have no legal objection to either the signing or disapproval statement.

THE WHITE HOUSE

WASHINGTON

December 30, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 6254 - Protection
of Certain Foreign Diplomatic Missions

Counsel's Office finds no objection from a legal perspective to the above-referenced enrolled bill. We also have no legal objection to either the proposed signing statement or the memorandum of disapproval.

FFF:HPG:aw 12/30/82

cc: FFFielding
HPGoldfield
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

December 30, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill S.J. Res. 264 - National
Children and Television Week

Richard Darman has requested comments by close of business Tuesday, January 4, on Enrolled Bill S.J. Res. 264, which would designate the week of March 13-19, 1983, as "National Children and Television Week." The resolution authorizes and requests the President to issue an appropriate proclamation calling for appropriate observances of the week. OMB recommends approval.

I have reviewed the memorandum for the President from James Frey, Assistant Director of OMB for Legislative Reference, and the resolution itself. I see no legal objections, and recommend that you sign the attached memorandum to Darman.

Attachment

THE WHITE HOUSE

WASHINGTON

December 30, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S.J. Res. 264 - National
Children and Television Week

Counsel's Office finds no objection from a legal perspective to the above-referenced enrolled bill.

FFF:JGR:aw 12/30/82

cc: FFFielding
JGRoberts
Subj.
Chron