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DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	ROBERTS TO FIELDING RE MARINE MAMMAL COMMISSION (PARTIAL)	1	3/1/1983	B6	428
2	MEMO	APPOINTMENT PROCESS PERSONAL INTERVIEW RECORD (PARTIAL)	1	3/2/1983	B6	429

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]

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

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 1, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Dingell Correspondence on Marine Mammal Commission

You recently returned this package, submitted on January 7, with the notation that you hoped it was "OBE." No response has been sent to Dingell. According to Presidential Personnel, it is now widely known, including by Dingell, that the nomination of [redacted] -- the source of Dingell's concern -- is not going forward. A new candidate has not yet been selected for the opening. In light of the elapsed time since receipt of Dingell's letter, no response may now be the best response. Dingell asked in his letter only to be advised of actions taken to fill the Marine Mammal Commission opening, and that can be done when any such action is taken.

b6

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 1, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Referral from Senator Stevens of Dayton Child's Effort to Reduce the National Debt

Senator Stevens has inquired concerning the lack of a response to a letter his constituent, Dayton Child, wrote the President. There is no record of the Child letter ever arriving at the White House. The copy provided by Senator Stevens indicates that Child wants to reduce the national debt by establishing "Uncle Sam Christmas Funds" at local savings and loan associations. He apparently enclosed bank signature cards for one such fund in his original letter for the President to sign. A draft advertisement attached to the letter urges that donations to cut the national debt be sent to the fund, "c/o President Ronald Reagan," at a Homer, Alaska savings and loan.

I have drafted a letter advising Child that gifts to reduce the national debt can be made directly by private citizens to the Secretary of the Treasury, and that there is no need nor is it appropriate to use the device of an account in the President's name. See 31 U.S.C. §§ 901-904. I have also attached a brief note advising Senator Stevens of this disposition.

Attachment

THE WHITE HOUSE

WASHINGTON

March 1, 1983

Dear Mr. Child:

Senator Stevens has forwarded to the White House a copy of your January 3, 1983 letter to the President. The original letter inexplicably never arrived. In your letter you described your idea to help reduce the national debt by establishing accounts for this purpose at local savings and loan associations. You also requested that the President sign a signature card for one such account.

In 1961 Congress enacted a law providing that the Secretary of the Treasury may accept, on behalf of the United States, "any gift of money made on the sole condition that it be used to reduce the public debt of the United States." 31 U.S.C. § 901(a). Gifts to reduce the national debt, therefore, need not be and appropriately should not be made through the use of an account in the President's name. Private citizens such as yourself can make the desired gift directly to the Secretary of the Treasury. You are free to establish accounts for the purpose of collecting such gifts, but the accounts should not be in the President's name.

When a gift to reduce the public debt is received by the Secretary of the Treasury, the money is credited to a special account. The money in this account is then periodically used to reduce the public debt of the United States. 31 U.S.C. § 904. For your information, I have enclosed copies of the provisions governing gifts to reduce the national debt, including those cited herein.

If you have any further questions, I am certain that the appropriate officials at the Department of the Treasury, who administer the special account referred to above, would be happy to assist you.

Thank you for making us aware of your ambitious project.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Dayton Child
P.O. Box 1407
Homer, Alaska 99603

FFF:JGR:aw 3/1/83
cc: FFFielding/JGRoberts/Subj./Chron
bcc: KMDuberstein

THE WHITE HOUSE

WASHINGTON

March 1, 1983

Dear Senator Stevens:

You recently submitted an inquiry to the White House from Dayton Child, a constituent interested in private efforts to reduce the national debt. I attach a copy of my response to Mr. Child, which advised him of the appropriate means of making gifts to reduce the national debt.

Thank you for bringing this inquiry to our attention.

Sincerely,

Fred F. Fielding
Counsel to the President

The Honorable Ted Stevens
United States Senate
Washington, D.C. 20510

Attachment

FFF:JGR:aw 3/1/83

cc: FFFielding/JGRoberts/Subj./Chron

bcc: KMDuberstein

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 1, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Testimony of William J. Olivanti, Special Agent in Charge, DEA Chicago Field Office

The Department of Justice has submitted the above-referenced testimony, scheduled to be delivered on March 4 before the Senate Permanent Subcommittee on Investigations. The testimony reviews examples of involvement of the Chicago Syndicate in narcotics trafficking. Olivanti states that the Syndicate is typically not directly involved in narcotics sales, but issues "juice loans" to facilitate large-scale transactions and assesses an "area tax" for the right to deal narcotics in given areas. The testimony also discusses six specific cases of Syndicate involvement. I see no legal objection.

THE WHITE HOUSE

WASHINGTON

March 1, 1983

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS JGR

SUBJECT: Presidential Message for a Tribute to Leon Jaworski

I have telephoned Jack Wells and advised him that Counsel's Office has no legal objection to the above-referenced proposed Presidential message.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 1, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Draft Proclamation Designating May 1, 1983, as Loyalty Day

Dodie Livingston has requested comments by close of business March 2, 1983, on the above-referenced proclamation. The proclamation designates May 1 as Loyalty Day, in accordance with a 1958 Joint Resolution, 36 U.S.C. § 162. The proclamation was prepared by the Veterans Administration and approved by the Director of OMB. I have reviewed the proclamation and the Joint Resolution requesting it, and see no legal objection to issuing the proclamation.

THE WHITE HOUSE

WASHINGTON

March 1, 1983

MEMORANDUM FOR DODIE LIVINGSTON

FROM: FRED F. FIELDING

SUBJECT: Draft Proclamation Designating May 1, 1983, as Loyalty Day

Counsel's Office has reviewed the above-referenced draft proclamation, and finds no legal objection to it.

FFF:JGR:aw 3/1/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

March 1, 1983

MEMORANDUM FOR THE HONORABLE JAMES COYNE
SPECIAL ASSISTANT TO THE PRESIDENT
PRIVATE SECTOR INITIATIVES

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Retirement of the Debts of the
James Coyne for Congress Committee

As a Special Assistant to the President for Private Sector Initiatives, you are in a unique position with regard to your efforts to retire the campaign debts of your 1982 Congressional Campaign Committee (the "Committee"). As a Special Assistant to the President, and an SES employee of the Department of Commerce detailed to the White House, you are subject to the Standards of Ethical Conduct for Government Officers and Employees as set forth in Executive Order No. 11222, and, as a matter of policy, the Standards of Conduct for White House Employees, 3 C.F.R. § 100.735. Further, several provisions of the Federal Criminal Code, 18 U.S.C. §§ 201, 203, 209, 210, 211, 602, 603 and 607 are applicable to you as a Federal employee and should be reviewed carefully in the course of retiring the Committee's debts. Since the Committee owes a substantial debt to you as an individual, contributions to the Committee must be considered indirect payments to you.

Outlined below is our analysis of the restrictions of each of the statutory provisions */ and the Executive Order noted above which are or should be considered applicable to your activities in connection with any efforts to retire the debts of the Committee. Additionally, we have attached a summary of the general guidelines which you and your campaign committee should follow in planning the Committee's fundraising activities to retire the Committee's debts.

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*/ All references to statutory requirements contained herein, unless otherwise specifically noted, are paraphrases of the referenced statutes. Accordingly, when in doubt as to the applicability of these statutory provisions to specific facts or circumstances, reference should be made directly to the statute in question.

18 U.S.C. § 201: provides in part that any public official may not solicit, accept, receive or agree to receive anything of value for himself or for any other person or entity, in return for being influenced in his performance of any official act; for being induced to do or omit any act in violation of his official duty; or being influenced in his testimony under oath in any proceeding before any court or Congressional hearing. Violations of this provision are punishable by fine, imprisonment or both, and possible disqualification from holding any office of honor or trust under the United States.

Additionally, 18 U.S.C. § 201 prohibits any public official from soliciting, accepting, receiving or agreeing to receive anything of value for himself or for another person or entity for or because of any official act, including testimony before any court or Congressional committee, to be performed by him. Violations of this provision are punishable by fine, imprisonment or both.

Under certain circumstances these restrictions may preclude you or the Committee from accepting any contributions from individuals or political committees, including political action committees (PAC's), whose specific purpose in making such contribution is to influence your official acts. To avoid any appearance of a violation of this provision, you and the Committee should not solicit or accept contributions from any individual, political committee or organization which has interests or represents individuals or organizations having interests that are now or will be affected by the actions or non-actions of the Office of Private Sector Initiatives.

18 U.S.C. § 203: prohibits Members of Congress, or officers or employees of the Federal government from receiving, soliciting, or seeking any compensation for services rendered by them or any other person on behalf of another person in relation to any proceeding, request for a ruling or other determination, controversy or particular matter in which the United States is a party or has a direct and substantial interest. Violation of this provision is punishable by fine, imprisonment or both. Accordingly, you and the Committee should not accept contributions from any individual, political committee or organization if the acceptance of such contribution could reasonably be perceived as compensation for anticipated services to be rendered by you as a Federal employee on behalf of such individuals or groups represented by such political committees. Hence you should not solicit or accept contributions from

entities which have or will have interests pending before the Office of Private Sector Initiatives or before other Federal government agencies which could reasonably be construed to be subject to significant influence by you.

18 U.S.C. § 209: prohibits supplementation of the salary of a Federal official as compensation for his services as a Federal official. No payments to the Committee may be solicited or accepted as additional compensation for your services as a Special Assistant to the President. Contributions may only be solicited and accepted to retire the Committee's preexisting debt. As a general matter, you and the Committee should not accept any contributions which you have reason to believe would not have been made but for your current Federal employment.

18 U.S.C. § 210: prohibits the payment of money or anything of value to any person, firm or corporation in consideration of the use or promise to use any influence to procure any appointive office in the United States.

18 U.S.C. § 211: prohibits the solicitation or receipt, either as a political contribution or personal emolument, of any money or thing of value in consideration for the promise of support or use of influence in obtaining for any person any appointive office in the United States.

Out of an abundance of caution, these prohibitions should be viewed by you and the Committee as prohibiting the acceptance of any contributions from individuals whom you may wish to appoint to positions within your office, or who are seeking appointments to positions within your office or any other position within the Federal government.

18 U.S.C. § 602: prohibits any candidate for the Congress, any Senator or Congressman, or any officer or employee of the United States or any department or agency thereof, from knowingly soliciting political contributions from any other such officer or employee.

Thus, you and the Committee should take the steps necessary to ensure that no Senators or Congressmen, or officers or employees of the Federal government, are knowingly solicited for contributions to the Committee.

18 U.S.C. § 603: prohibits an officer or employee of the Federal government from making political contributions to their supervising officers in the Federal government. For purposes of this provision, a contribution to a political committee authorized by an officer of the Federal government is considered a contribution to such officer.

The Committee, therefore, should not accept any contributions from individuals presently employed by your office.

18 U.S.C. § 607: prohibits the solicitation or acceptance of a political contribution in a Federal building. There is an exception to this prohibition for the receipt of contributions in Federal buildings by persons on the staff of a Senator or Congressman under specific circumstances, but such exception would no longer be applicable to you or the Committee.

This provision would preclude all solicitation of contributions at the Office of Private Sector Initiatives. Further, in the event that any political contributions to the Committee are received at your office, such contributions should be returned directly to the donor with instructions as to the appropriate mailing address for the Committee.

Section 201(c) of Executive Order No. 11222 provides in part:

> It is the intent of this section that employees avoid any action . . . which might result in, or create the appearance of:
>
> (1) using public office for private gain;
> (2) giving preferential treatment to any organization or person;
> (3) impeding government efficiency or economy;
> (4) losing complete independence or impartiality of action;
> (5) making a government decision outside official channels; or
> (6) affecting adversely the confidence of the public in the integrity of the Government.

You and the Committee should, therefore, avoid soliciting or accepting unsolicited contributions whose receipt will create the appearance of precluding your exercise of independent judgment or impartial action with regard to the issues coming before you. Accordingly, you and the Committee should not accept contributions from individuals or political committees who have not previously contributed to your political committees and whose contributions, in light of your current position, could be viewed as efforts to affect your independence and impartiality in issues coming before you. Additionally, you and the Committee should not solicit contributions in any manner that suggests that you are using your appointment to Federal office for personal gain. Solicitations by the Committee referring to your current position could create such an appearance, and should, therefore, be avoided.

Finally, the issues raised by settlement of the debts of the Committee for less than their full amount are governed by the provisions of the Federal Election Campaign Act of 1971, as amended, and its regulations. Although a full discussion of those provisions is beyond the scope of this memorandum, you should be aware that all of the above considerations which apply to contributions would also apply to the forgiveness of all or part of an existing debt.

Attachment

FFF:JGR:aw 3/1/83

cc: FFFielding
JGRoberts
Subj.
Chron

SUMMARY OF GENERAL GUIDELINES FOR
ACCEPTANCE OF POLITICAL CONTRIBUTIONS

I. GENERAL RULE:

The Committee should not solicit or accept contributions from any individual, political committee, or organization (a) if the individual or entities represented by the Committee or organization has interests in matters which are or may be pending before your office or is affected or regulated by any policies, decisions or regulations of your office, or (b) if such solicitation or acceptance would create the appearance of precluding your exercise of independent judgment or impartial action with regard to the issues coming before you, or otherwise affect adversely the confidence of the public in the integrity of the government.

II. SPECIFIC PROHIBITIONS:

Do not accept any contributions from individuals whom you may wish to appoint to positions within the Office of Private Sector Initiatives.

Do not accept any contributions from individuals who are seeking appointments within the Office of Private Sector Initiatives or any other position within the Federal government.

Do not solicit any Senators, Congressmen or officers or employees of the Federal government for contributions to the Committee.

Do not accept any contributions from individuals presently employed by the Office of Private Sector Initiatives.

Do not solicit or accept any contributions in your Federal offices. If any contributions are received at these offices, such contributions should be returned directly to donors with instructions as to the appropriate mailing address of the Committee.

Do not solicit contributions in any manner which suggests that you or the Committee are using your appointment to Federal office for your personal gain. Solicitations should not include reference to the fact of your current Federal employment.

THE WHITE HOUSE

WASHINGTON

APPOINTMENT PROCESS PERSONAL INTERVIEW RECORD

DATE OF INTERVIEW: February 16 & 17, 1983 (by telephone)
CANDIDATE: George J. Adams
POSITION: Member, National Institute of Building Sciences
INTERVIEWER: John G. Roberts JGR

Comments

George Adams is the President and owner of a small business which produces automotive and airplane parts. He is being appointed to the Institute "as representative of the public interest," 12 U.S.C. § 1701j-2(c)(4). Under id. § 1701j-2(c)(3), representatives of the public interest "shall include . . . professional engineers . . . [and] shall hold no financial interest or membership in, nor be employed by, or receive other compensation from, any company, association, or other group associated with the manufacture, distribution, installation, or maintenance of specialized building products, equipment, systems, subsystems, or other construction materials and techniques for which there are available substitutes." Mr. Adams is a professional engineer and advises that he holds no interests and has no connections proscribed by the above-quoted provision.

According to Mr. Adams, his business is not engaged in construction activities that would present a conflict with his contemplated duties, but rather machine and parts production. His other financial holdings present no difficulty.

[redacted]

b6

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 2, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Correspondence from Rumiko Joseph

Rumiko Joseph has written asking if there are any legal problems with the plan described in an attached copy of a letter to the President from Rodney Randy Joseph. Under the plan Rodney Randy Joseph would approach various Cabinet officers for their help in organizing a charitable effort. The Office of Private Sector Initiatives advises that Joseph is an indefatigable and frequent correspondent whom they no longer take seriously. They recommend no response, and I agree.

Attachment

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 3, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Lyn Nofziger Correspondence on OMB's Proposed Revision of Circular A-122

Lyn Nofziger has written objecting to OMB's proposed limits on political advocacy by government grantees and contractors. This proposal has become known, through shorthand designation, as the "A-122 proposal." Although A-122 itself only concerns the activities of non-profit organizations receiving government grants, the proposed revisions of A-122 announced by OMB are linked to corresponding proposals issued by Defense, GSA, and NASA concerning government contractors.

Nofziger states that the proposal is vague, would require detailed records of the political activities of employees of government contractors, and will prevent business from helping obtain passage of legislation, an activity traditionally requested by White Houses. He encloses a two-page analysis of the A-122 proposal.

I have drafted a brief reply for your signature, stating that OMB will soon publish a revised proposal and attaching a copy of the OMB press release announcing this fact.

Attachments

THE WHITE HOUSE

WASHINGTON

March 3, 1983

Dear Lyn:

Thank you for your recent memorandum on OMB's proposed revision of Circular A-122 and the related revisions affecting government contractors. As you doubtless know by now, OMB has announced its intention to publish a revised proposal, which will start a new 45-day comment period. I attach for your information a copy of the OMB press release announcing this fact.

The questions which have been raised concerning these proposals are being carefully reviewed within the White House, and you may be assured that your views will be given every appropriate consideration. Thank you for making us aware of your concerns and for sharing your analysis of the proposals with us.

With best personal regards,

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Lyn Nofziger
1605 New Hampshire Avenue, NW
Washington, D.C. 20009

FFF:JGR:aw 3/3/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

March 3, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: National Maximum Speed Limit

The national 55 m.p.h. speed limit has been imposed by denying Federal highway aid to states that do not adopt it. 23 U.S.C. § 154. Under the statutory scheme, the Secretary of Transportation "shall not approve" any Federal-State highway project in a state that does not have a maximum speed limit of 55 m.p.h. Id. § 154(a). Congress was also concerned about State non-enforcement of the 55 m.p.h. limit once it was on the books, and included a provision directing that the Secretary "shall reduce the state's apportionment of Federal-aid highway funds" by up to 10 percent if data required to be submitted indicates that the percentage of vehicles exceeding 55 m.p.h. on that State's roads is greater than 50 percent. Id. § 154(e), (f).

Craig Fuller is following up on the President's request to determine what can be done to relieve states of the 55 m.p.h. speed limit. He recognizes that under 23 U.S.C. § 154(a) sanctions must be imposed if a state does not have a 55 m.p.h. speed limit, but asks if the Secretary of Transportation may impose only de minimis fund reductions under 23 U.S.C. § 154(f) for non-enforcement of an existing 55 m.p.h. speed limit. Fuller notes that legislative action to repeal 23 U.S.C. § 154 would be difficult if not impossible.

It is true that while the statute sets a maximum it does not set any minimum amount of fund reductions for state non-enforcement, nor have I identified any set by regulation. At the same time, however, the course of action proposed in Fuller's inquiry would clearly flout Congress' intent in enacting 23 U.S.C. § 154. Congress enacted 23 U.S.C. § 154(e) and (f) precisely because it was concerned about non-enforcement of 55 m.p.h. speed limits; to administer the law in a fashion calculated to permit such non-enforcement would render these provisions meaningless and provoke hostile reaction on the Hill and, very likely, court action as well. Assuming a plaintiff can be found with the

requisite standing, I would not be at all surprised to see a court order the Secretary to withhold greater amounts to comply with the clear intent of Congress.

At the very least, the Administration would be perceived, correctly, as using a technical "loophole" to violate Congress' intent. Not only that, use of the loophole would reward states that impose a 55 m.p.h. limit (still required by § 154(a)) and then ignore it. The Administration would not only be violating the substance of a law, but doing so to permit States to blink their own 55 m.p.h. laws. I do not think our office can countenance consideration of such an option, and have drafted a memorandum to Fuller noting our strong objection to it.

Attachment

THE WHITE HOUSE

WASHINGTON

March 4, 1983

MEMORANDUM FOR CRAIG L. FULLER
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: National Maximum Speed Limit

In the course of exploring possible means of relieving the states of the 55 m.p.h. speed limit, you have inquired whether the Secretary of Transportation may impose only de minimis fund reductions pursuant to 23 U.S.C. § 154(f) on those states which do not meet the statutory guidelines for enforcing the 55 m.p.h. speed limit. Counsel's Office advises strongly against such a course of action.

Congress enacted 23 U.S.C. § 154(e) and (f) precisely because it thought that some states might impose a 55 m.p.h. speed limit, to avoid the fund cut-off of 23 U.S.C. § 154(a), but then decline to enforce that limit. While 23 U.S.C. § 154(f) does not establish a minimum fund reduction amount for state and non-enforcement, some reduction is mandatory ("the Secretary shall reduce"), and imposing only a de minimis reduction would contravene the clear intent of Congress that the provisions safeguard against non-enforcement of state 55 m.p.h. speed limits.

It is even possible that court action could compel the Secretary to impose greater reductions, were she to impose only de minimis reductions in the face of a non-enforcement finding.

In any event, circumventing 23 U.S.C. § 154(f) through de minimis reductions would cast the Administration in the posture of flouting the clear intent of the law, thereby permitting states to flout their own laws establishing 55 m.p.h. speed limits. Such a posture would hardly be well received by the Congress, the media, or the public in general.

FFF:JGR:aw 3/4/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

March 3, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Testimony of William E. Hall on the U.S. Marshals Service

The Department of Justice has submitted the above-referenced testimony, to be delivered before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House Judiciary Committee. The testimony reviews the work of the Marshals Service, discussing increased professionalization through greater training, provision of court security, the "Operation FIST" successes in apprehending fugitives, prisoner transportation and detention during trial, benefits from Public Law 97-462 (relieving Marshals Service of many civil process duties), and improvements in the witness security program. I see no legal objections to the proposed testimony.

MEMORANDUM

THE WHITE HOUSE

March 3, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Draft Presidential Statement for Transmittal of Omnibus Department of Justice Criminal Reform Legislative Proposal

Richard Darman has requested comments by noon today on a Presidential statement for transmittal of the Comprehensive Crime Control Act of 1983. The draft was prepared at OMB. The Department of Justice has been asked to review the draft, and I suspect DOJ will suggest substantial changes. I have the following comments on the OMB draft:

Page 1, second paragraph, line 5: The direction of the President actually had a special emphasis on violent crime as well as drug-related crime. This direction led, for example, to the creation of the Attorney General's Task Force on Violent Crime. I would change "with special emphasis on drug-related crime" to "with special emphasis on violent and drug-related crime."

Page 2, last paragraph, lines 5-12: I would delete this negative reference to the crime bill vetoed by the President earlier this year. There is no need to raise old wounds in the course of transmitting a new package. I suggest: "It is unfortunate that S. 2572 was not enacted during the last Congress, but I look forward to working with the 98th Congress to secure, at long last, passage of critically needed substantive criminal law reform."

Page 3, bullet on exclusionary rule: The last few words should be changed from "acted in good faith" to "acted in reasonable good faith." The proposal has been most often criticized as rewarding police ignorance, when in fact it contains an objective reasonableness test as well as a good faith test. Leaving out the reasonableness element in descriptions of the proposal plays into its opponents' hands.

I have prepared a memorandum to Darman incorporating these suggestions.

Attachment

THE WHITE HOUSE

WASHINGTON

March 3, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Presidential Statement for Transmittal of Omnibus Department of Justice Criminal Reform Legislative Proposal

Counsel's Office has reviewed the OMB draft Presidential statement for transmittal of the Comprehensive Crime Control Act of 1983, and we offer the following suggested revisions:

1. Page 1, second paragraph, line 5: The President's direction was focused on violent crime at least as much as on drug-related crime. Many of the Administration's initiatives, for example, derived from the work of the Attorney General's Task Force on Violent Crime. We suggest changing "with special emphasis on drug-related crime" to "with special emphasis on violent and drug-related crime."

2. Page 2, last paragraph: We suggest deleting the negative reference to H.R. 3963 as unnecessarily confrontational. Suggested substitute for the last three sentences of this paragraph: "It is unfortunate that S. 2572 was not enacted during the last Congress, but I look forward to working with the 98th Congress to secure, at long last, passage of critically needed substantive criminal law reform."

3. Page 3, bullet on exclusionary rule: Our proposal is incorrectly stated. The concluding words "acted in good faith" should be changed to "acted in reasonable good faith." The proposal is often criticized as rewarding police ignorance, which it would not in fact do because of the reasonableness requirement. It is therefore important to include that requirement in even short-hand descriptions of the proposal.

FFF:JGR:aw 3/3/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

March 3, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Crime Package

Richard Darman has requested comments by close of business March 3 on the proposed Comprehensive Crime Control Act of 1983. This bill is composed primarily of legislative initiatives previously supported by the Administration, with some new elements. It includes:

- o Bail Reform (previously supported by the Administration and passed by the Senate)
- o Sentencing Reform (previously supported by the Administration and passed by the Senate)
- o Exclusionary Rule Reform (the "good faith" exception previously supported by the Administration)
- o Forfeiture Reform (previously supported by the Administration and passed by the Senate)
- o Insanity Defense Reform (departure from previous Administration proposal)
- o Habeas Corpus Reform (previously supported by the Administration)
- o Narcotics Enforcement Amendments (increased penalties previously supported by the Administration and passed by the Senate; new expansion of DEA regulatory powers)
- o Justice Assistance Act (new reorganization of DOJ research offices)
- o Surplus Property Amendments (previously supported by the Administration and passed by the Senate)
- o Capital Punishment (endorsed by DOJ in last Congress)

- o Labor Racketeering and Extortion (various provisions endorsed by DOJ in last Congress)
- o Foreign Currency Amendments (previously supported by the Administration and passed by the Senate)
- o Federal Tort Claims Act (previously supported by the Administration)
- o Miscellaneous Violent Crime Amendments (some new)
- o Miscellaneous Non-Violent Crime Amendments (some new)
- o Procedural Amendments (some new)

Discussed below are all new elements in the package and those previously-approved elements likely to involve fresh controversy:

1. The exclusionary rule proposal is the "good faith" exception supported before the Supreme Court in arguments in the Gates case just yesterday. While the Court decision could well moot the legislative proposal, one way or the other, the Court ruling may not be determinative and the legislative proposal should continue to go forward. I suspect, however, that many legislators will be persuaded by the argument that it is best to wait and see what the Court does with the issue.

2. The insanity defense proposal is different than the one previously supported by the Administration. The Administration originally supported a proposal to recognize an insanity defense only when the defendant, because of mental disease or defect, lacked the state of mind that was an element of the offense charged (e.g., "the defendant thought he was shooting at a tree"). The new proposal, which has the support of Chairman Thurmond, would limit the insanity defense to those cases in which the defendant could not appreciate the nature or wrongfulness of his acts. In such cases, the jury could return a verdict of not guilty only by reason of insanity. The defendant could then be presumed dangerous, and committed to a mental hospital until he is determined no longer to constitute a threat to society because of his mental condition. I do not consider this proposal a significant reform, since it does not effectively limit psychiatric testimony as would have the original Administration proposal, and the inability of jurors to digest conflicting psychiatric testimony lies at the heart of problems with the insanity defense. Senator Thurmond has apparently latched on to this approach, however, and it is better than nothing.

3. A new element of the narcotics control amendments expands the authority of the Attorney General to prevent diversion of legitimate controlled substances into illegitimate channels. This strikes me as unobjectionable. Such diversion is an increasing problem as the price of the standard illegal drugs rises, and low-income users resort to substitutes.

4. Title VIII of the bill reorganizes the DOJ research offices under a new Assistant Attorney General, and creates a new Bureau of Justice Programs to administer the "mini-LEAA" program. Section 101 of Title VIII, on page 214, states that the new Assistant Attorney General is appointed by the President "by and with the consent of the Senate." This should, consistent with the Appointments Clause, be changed to "by and with the advice and consent of the Senate." Section 103(a), on page 216, creates a new Presidential advisory board, to replace the current separate advisory boards for the different research offices. The bill provides that "[a]ppointments from current boards under this title as on the date of enactment shall constitute no less than one-half of the initial appointees." I find this a highly objectionable restriction on the President's appointment powers, particularly inappropriate in an Administration proposal. The provision may have been inserted to placate current board members, but if that is necessary it can be accomplished with less violence to the President's powers by providing that the President "shall consider" current board members in making appointments to the new board.

5. Title XI of the bill contains the always-controversial proposal to nullify United States v. Enmons, 410 U.S. 396 (1973), and make the Hobbs Act applicable in the context of labor disputes. I understand that Mike Uhlmann thinks this provision should be deleted as unnecessarily provocative. It is, however, unobjectionable on the merits: labor violence and extortion should not have been considered a sanctioned exception to the Hobbs Act any more than violence or extortion in any other area.

6. Title XIII of the bill is the Administration's proposed amendments to the Federal Tort Claims Act. An immediate question is why these are included in the crime package at all, since they concern civil suits. The theory is presumably that the threat of civil liability "chills" the exercise of law enforcement responsibilities. This logic is not, however, developed in the analysis accompanying the bill, and should be. It can also be argued that focusing on the law enforcement context plays into the hands of

opponents of our proposals, since alleged torts in that area can be particularly egregious and politically sensitive. The debate may be more favorably framed in the context of suits by dismissed employees and the like, far removed from the law enforcement context.

7. Title XIV, Part L, is a new provision which fills a gap in the law by making it an offense to escape from judicially ordered civil commitment -- for example, the commitment which would follow acquittal by reason of insanity under proposed Title V.

8. Title XV, Part C, creates a new federal offense for "tipping off" the subject of a search. The wording of this provision is flawed, in that the title indicates it is limited to searches conducted by a warrant, when it should include (as the language of the provision includes) valid warrantless searches (e.g., those conducted under the exigent circumstances exception to the warrant requirement).

9. Title V, Part J, applies state anti-gambling laws to Indian reservations, to prevent them from becoming gambling havens.

10. Title XVI, Part E, authorizes Government appeal of orders granting a new trial; Part G resolves an inter-circuit conflict on change of venue in tax cases.

I have drafted a memorandum to Darman with the above-noted comments on the DOJ reorganization, the Tort Claims Act, and the search "tip off" provisions.

Attachment

THE WHITE HOUSE

WASHINGTON

March 3, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Crime Package

Counsel's Office has reviewed the proposed Comprehensive Crime Control Act of 1983. We offer the following suggestions:

1. Title VIII, section 101 (page 214) currently provides for the appointment of an Assistant Attorney General by the President "by and with the consent of the Senate." Consistent with the language of the Appointments Clause, Art. 2, § 2, cl. 2, and typical usage, this should read "by and with the advice and consent of the Senate."

2. Title VIII, section 103(a) (page 216), establishes a Justice Assistance Board of not more than thirty-one members appointed by the President, and provides that "[a]ppointments from current boards under this title as on the date of enactment shall constitute no less than one-half of the initial appointees." This is an objectionable restriction on the President's appointment powers. If not deleted altogether it should be changed to provide that the President "shall consider" members of the current boards in making appointments to the new board.

3. It is not immediately apparent why Title XIII, the Federal Tort Claims Act Amendments, is included as part of the crime package. Presumably this is because many of the civil suits against federal employees derive from law enforcement activities, but this is not explicated in the analysis section, and should be.

4. Title XV, Part C (page 343), creates a new offense of warning the subject of a search. The title of this section is "Warning the Subject of a Search Warrant." The word "warrant" should be deleted, since valid searches may be conducted without a warrant -- for example, if the exigent circumstances exception applies. The language of the provision is not limited to searches conducted by warrant, and it makes no sense to punish those who warn subjects of searches by warrant and not those who warn subjects of valid warrantless searches.

FFF:JGR:aw 3/3/83
cc: FFFielding/JGRoberts/Subj./Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 2, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Draft Presidential Remarks: Weyerhauser East Oregon Headquarters

Richard Darman has asked for comments by close of business today on the above-referenced draft Presidential remarks, to be delivered on Saturday, March 5. The remarks detail the improvement in the economy and in the lumber industry in particular over the past two years. No legal issues are discussed, and I see no legal objection to the remarks.

Attachment

THE WHITE HOUSE

WASHINGTON

March 2, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Presidential Remarks: Weyerhauser East Oregon Headquarters

Counsel's Office has reviewed the above-referenced draft Presidential remarks, and finds no legal objection to them.

FFF:JGR:aw 3/2/83

cc: FFFielding
JGRoberts
Subj.
Chron

March 4, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Referral from Senator Stevens of Dayton Child's Effort to Reduce the National Debt

Senator Stevens has inquired concerning the lack of a response to a letter his constituent, Dayton Child, wrote the President. Child's original letter, dated January 3, arrived in this office on March 2. Child wants to reduce the national debt by establishing "Uncle Sam Christmas Funds" at local savings and loan associations. He has enclosed bank signature cards for one such fund for the President to sign. A draft advertisement attached to the letter urges that donations to cut the national debt be sent to the fund, "c/o President Ronald Reagan," at a Homer, Alaska savings and loan.

I have drafted a letter advising Child that gifts to reduce the national debt can be made directly by private citizens to the Secretary of the Treasury, and that there is no need nor is it appropriate to use the device of an account in the President's name. See 31 U.S.C. §§ 901-904. The signature cards, unsigned, should be returned with this letter. I have also attached a brief note advising Senator Stevens of this disposition.

Attachment

THE WHITE HOUSE

WASHINGTON

March 4, 1983

Dear Mr. Child:

Senator Stevens has forwarded to the White House a copy of your January 3, 1983 letter to the President. Your original letter inexplicably did not arrive in this office until March 2. Please accept our apologies for the delay in responding. In your letter you described your idea to help reduce the national debt by establishing accounts for this purpose at local savings and loan associations. You also enclosed and requested that the President sign signature cards for one such account.

In 1961 Congress enacted a law providing that the Secretary of the Treasury may accept, on behalf of the United States, "any gift of money made on the sole condition that it be used to reduce the public debt of the United States." 31 U.S.C. § 901(a). Gifts to reduce the national debt, therefore, need not be and appropriately should not be made through the use of an account in the President's name. Private citizens such as yourself can make the desired gift directly to the Secretary of the Treasury. You are free to establish accounts for the purpose of collecting such gifts, but the accounts should not be in the President's name. Accordingly, I am returning the signature cards, unsigned, to you for appropriate disposition.

When a gift to reduce the public debt is received by the Secretary of the Treasury, the money is credited to a special account. The money in this account is then periodically used to reduce the public debt of the United States. 31 U.S.C. § 904. For your information, I have enclosed copies of the provisions governing gifts to reduce the national debt, including those cited herein.

If you have any further questions, I am certain that the appropriate officials at the Department of the Treasury, who administer the special account referred to above, would be happy to assist you.

Thank you for making us aware of your ambitious project.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Dayton Child
P.O. Box 1407
Homer, Alaska 99603

Enclosures

FFF:JGR:aw 3/4/83

cc: FFFielding/JGRoberts/Subj./Chron

bcc: KMDuberstein

THE WHITE HOUSE

WASHINGTON

March 4, 1983

Dear Senator Stevens:

You recently submitted an inquiry to the White House from Dayton Child, a constituent interested in private efforts to reduce the national debt. I attach a copy of my response to Mr. Child, which advised him of the appropriate means of making gifts to reduce the national debt.

Thank you for bringing this inquiry to our attention.

Sincerely,

Fred F. Fielding
Counsel to the President

The Honorable Ted Stevens
United States Senate
Washington, D.C. 20510

Attachment

FFF:JGR:aw 3/4/83

cc: FFFielding/JGRoberts/Subj./Chron

bcc: KMDuberstein

THE WHITE HOUSE

WASHINGTON

March 4, 1983

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS

SUBJECT: Inquiry from Sheryl Eberly

I have been waiting to prepare a response to the attached inquiry pending the receipt of additional information I requested from Eberly. Eberly now advises that her proposed trip has been postponed, and will not take place until late summer, if at all. Accordingly, she has "withdrawn" her inquiry and will renew it later this year if necessary.

Attachment