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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

June 20, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: Draft Presidential Remarks: Signing Ceremony for S.J. Res. 42 - Alaska Statehood Anniversary

Richard Darman has requested that comments on the above-referenced draft remarks be sent directly to Aram Bakshian by close of business today. The remarks are to be delivered at a signing ceremony on June 22, at which the President will sign S.J. Res. 42, commemorating the twenty-fifth anniversary of Alaskan statehood. The innocuous remarks review Alaska's contribution to the Union.

The second sentence states that Alaska was admitted to the Union on January 4, 1958. The correct date is January 3, 1959, the date of the signing of Proclamation No. 3269 by President Eisenhower. See 48 U.S.C. prec. § 21. The correct date appears in S.J. Res. 42. I have noted this error in the attached memorandum for Bakshian.

Attachment

THE WHITE HOUSE

WASHINGTON

June 20, 1983

MEMORANDUM FOR ARAM BAKSHIAN, JR.
DEPUTY ASSISTANT TO THE PRESIDENT

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Draft Presidential Remarks: Signing Ceremony for S.J. Res. 42 - Alaska Statehood Anniversary

Counsel's Office has reviewed the above-referenced proposed remarks. The second sentence contains an incorrect date for the admission of Alaska into the Union. Alaska was admitted on January 3, 1959, when Proclamation 3269 was signed by President Eisenhower. We have no other objection.

cc: Richard G. Darman

FFF:JGR:aw 6/20/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 20, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: Presidential Remarks: GOP Fundraiser

Richard Darman has requested that comments on the above-referenced draft remarks be sent directly to Aram Bakshian by 9:00 a.m. today. This is a revised version of remarks previously cleared by our office. The revisions are merely minor stylistic ones, and I see no legal objections.

Attachment

THE WHITE HOUSE

WASHINGTON

June 20, 1983

MEMORANDUM FOR ARAM BAKSHIAN, JR.
DEPUTY ASSISTANT TO THE PRESIDENT

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Remarks: GOP Fundraiser

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

cc: Richard G. Darman

FFF:JGR:aw 6/20/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

June 17, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: S.J. Res. 42 - Alaska Statehood Day

Richard Darman has requested comments by close of business today on the above-referenced enrolled resolution. This resolution reviews the benefits Alaska has contributed to the Union, and requests and authorizes the President to designate January 3, 1984 as "Alaska Statehood Day." A signing ceremony is scheduled for Monday, June 20. OMB recommends approval; Justice has no objection; Interior has no comment.

I have reviewed the memorandum for the President prepared by Assistant Director of OMB for Legislative Reference James M. Frey, and the resolution itself, and have no legal objection.

Attachment

THE WHITE HOUSE

WASHINGTON

June 17, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: S.J. Res. 42 - Alaska Statehood Day

Counsel's Office has reviewed the above-referenced enrolled resolution, and finds no objection to it from a legal perspective.

FFF:JGR:aw 6/17/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

June 21, 1983

APPOINTMENT PROCESS PERSONAL INTERVIEW RECORD

DATE OF INTERVIEW: 4/21/83 (in person; numerous telephone conversations before and since)
CANDIDATE: A. Wayne Roberts
POSITION: Deputy Undersecretary for Intergovernmental and Interagency Affairs, Department of Education
INTERVIEWER: John G. Roberts JGR

Comments

A. Wayne Roberts is to be nominated for Deputy Undersecretary of Education for Intergovernmental and Interagency Affairs.

[redacted]

b6

[redacted] b6

None of Roberts' holdings preclude his contemplated nomination. He has resigned affiliations with two non-profit organizations (Northeast Coalition of Educational Leaders and the Johnson State College Institute Advisory Committee) that may have presented appearance problems. Roberts noted on his PDS that he has indicated a desire to return to Johnson State College upon completing his government service, but he affirmed to me that there were no commitments either from him or the college with regard to future employment.

THE WHITE HOUSE

WASHINGTON

June 21, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS JGR

SUBJECT: Statement of James I. K. Knapp Re: H.R. 7039 "U.S. Marshal's Service and Witness Security Reform Act of 1983"

We have been provided with a copy of the above-referenced testimony, which is to be delivered tomorrow before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice. The proposed statement expresses general support for Title I of H.R. 7039. Title I lists specific services which may be provided under the witness protection program, and specifies that factors other than security may be taken into account in administering the program.

The bulk of the testimony concerns three objectionable provisions. The first describes the program in contractual terms. The testimony objects to this on the ground that it is inadvisable and illegal (18 U.S.C. § 201(h), (i)) to compensate someone for testimony. If the program were viewed as a contract, the contract would have to be considered one for money and services (protection) in exchange for testimony. The testimony also objects to a provision omitting the Director and Associate Director of the Officer of Enforcement Operations, Criminal Division, from the permitted delegation of authority to approve applications to the program. Since these officials are the ones who actually run the program, they should be permitted to approve applications. Finally, the testimony seeks to refine provisions in the bill addressed to the problem of civil suits against protected witnesses.

I see no legal objection. The bill is a response to highly-publicized abuses of the witness protection program. The proposed testimony is well-considered and judicious.

Attachment

THE WHITE HOUSE

WASHINGTON

June 21, 1983

MEMORANDUM FOR GREGORY JONES
OFFFICE OF MANAGEMENT AND BUDGET

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Statement of James I. K. Knapp Re: H.R. 7039 "U.S. Marshal's Service and Witness Security Reform Act of 1983"

Counsel's Office has reviewed the above-referenced statement and finds no objection to it from a legal perspective.

FFF:RAH:JGR:aw 6/21/83

cc: FFFielding
RAHauser
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

June 21, 1983

Dear Ms. Cooper:

With regard to your prospective appointment as Assistant Administrator for Congressional and External Affairs at the Environmental Protection Agency, it will be necessary for you to complete the enclosed Personal Data Statement and Financial Disclosure Report. Please return these forms to me at your earliest convenience.

With best wishes,

Sincerely,

John G. Roberts
Associate Counsel
to the President

Ms. Josephine S. Cooper
3723 Gunston Road
Alexandria, Virginia 22302

Enclosures

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 22, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: Proposed Testimony of Deputy Assistant Attorney General Knapp on H.R. 3299, "Comprehensive Drug Penalty Act of 1983"

We have been provided with a copy of the above-referenced proposed testimony, to be delivered tomorrow. H.R. 3299 would strengthen forfeiture provisions and sentences in drug felony cases. The testimony expresses basic agreement with H.R. 3299, and notes the similarities between it and portions of the Administration omnibus crime bill. The proposed statement criticizes H.R. 3299 for (1) applying the forfeiture amendments only to drug felony cases (not RICO cases as well, as in the Administration bill), (2) lacking a substitute asset provision, and (3) not sanctioning forfeiture of real property used to grow marihuana. The testimony also lauds those provisions of H.R. 3299 increasing the ability to use administrative as opposed to judicial procedures in civil forfeiture cases.

Knapp proposes to announce in his testimony a change in Justice Department policy concerning petitions for remission and mitigation from an order of criminal forfeiture. Justice has now decided that third party claims inconsistent with the forfeiture itself -- e.g., a claim by a third party that he, not the criminal, owns the subject property -- should be decided in court. This policy change responds to expressed legislative concerns and necessitates a change in H.R. 3299, which Knapp volunteers to help prepare. Knapp's testimony concludes by discussing the appropriate standard of proof in criminal forfeiture cases in a non-commital way. He notes that a preponderance standard would make cases easier, but that there has really been no difficulty meeting the beyond reasonable doubt standard in the past, and that use of a different standard might confuse jurors.

I see no legal objections to the testimony, but have noted several stylistic errors in the attached draft memorandum to Greg Jones.

Attachment

THE WHITE HOUSE

WASHINGTON

June 22, 1983

MEMORANDUM FOR GREGORY JONES
OFFICE OF MANAGEMENT AND BUDGET

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Testimony of Deputy Assistant Attorney General Knapp on H.R. 3299, "Comprehensive Drug Penalty Act of 1983"

Counsel's Office has reviewed the above-referenced proposed testimony, and finds no objection to it from a legal perspective. On page 2, H.R. 3299 is twice mistyped as H.R. 3922. The same error recurs on page 3. On page 10, line 15, "of" should be deleted, and on page 16, line 23, either "submit" or "prepare" should be deleted.

FFF:RAH:JGR:aw 6/22/83

cc: FFFielding
RAHauser
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

June 23, 1983

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS JGR

SUBJECT: Appointment of Ian Ross, John Doyle Ong, Robert Anderson, George M. Low, Dmitri V. d'Arbeloff, Mark Shepherd, Thomas J. Murrin, Gerald Laubach, and George Keyworth II to the President's Commission on Industrial Competitiveness

The President's Commission on Industrial Competitiveness is a new advisory committee to be established by executive order. The purposes of the Commission are to review means of increasing the competitiveness of United States industry, with particular emphasis on high technology, and provide appropriate advice to the President. The Commission was established in such a fashion that its members would not be considered government employees for purposes of the conflicts laws. Thus, members are not paid for their services and "shall represent elements of industry and commerce most affected by high technology, or academic institutions prominent in the field of high technology." Under the contemplated executive order, members must also "have particular knowledge and expertise concerning the technological factors affecting the ability of United States firms to meet international competition at home and abroad."

The above-referenced individuals, by virtue of both their current positions and past experience, satisfy these various requirements. All of these prospective appointees have numerous affiliations and holdings in high technology firms and firms affected by high technology. Since they will serve on the Commission in a representative capacity (with the exception of Keyworth), the affiliations and holdings are not an impediment to their appointments.

George Keyworth has not submitted a PDS, but since he was previously cleared and is currently serving as the President's Science Advisor, I do not believe another PDS is necessary.

THE WHITE HOUSE

WASHINGTON

June 23, 1983

Dear Jim:

Thank you for the information concerning your H.R. 10 retirement plan. I have reviewed it with F. Gary Davis, Chief Counsel of the Office of Government Ethics, who confirmed that you need only disclose the identity of the investment company, the amount invested, and any earnings. Since that information (and only that information) is contained on the plan statement you submitted to me, I have taken the liberty of forwarding that statement to Mr. Davis, who is reviewing your SF 278 and will append the statement to it.

Best regards.

Sincerely,

John G. Roberts
Associate Counsel
to the President

James E. Merritt, Esq.
Morrison & Foerster
1920 N Street, NW
Washington, D.C. 20036

THE WHITE HOUSE

WASHINGTON

June 23, 1983

MEMORANDUM FOR F. GARY DAVIS
CHIEF COUNSEL
OFFICE OF GOVERNMENT ETHICS

FROM: JOHN G. ROBERTS, JR.
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: James E. Merritt

As we discussed, I am forwarding the most recent financial statement covering Mr. Merritt's H.R. 10 retirement plan, for your review and attachment to his SF 278. Do not hesitate to let me know if you need any additional information.

Attachment

cc: James E. Merritt

THE WHITE HOUSE

WASHINGTON

June 24, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS JGR

SUBJECT: "Report and Wait" Provisions After Chadha

I have been giving some thought to the question whether "report and wait" provisions are constitutional in the wake of the Chadha decision. We have discussed this question briefly, and I thought it advisable to alert you that my conclusion upon reflection differs from my off-the-cuff reaction.

A "report and wait" provision typically requires an agency to submit its proposed rules to Congress, and provides that the rules will not be effective for a specified period. The theory is that Congress, if it disagrees with the rules, can pass legislation during the "wait" period preventing the rules from going into effect. In the absence of such action, the rules would become effective at the end of the "wait" period.

This procedure is similar to the legislative veto, in that it permits Congress to affect executive action (delay it) without passing a law concerning that specific action and presenting it to the President. This similarity was the basis of my original reaction that "report and wait" provisions may be constitutionally suspect for the same reasons the legislative veto fell in Chadha. At the same time, however, Congress doubtless has the authority to require the submission of proposed agency actions, as well as the power to provide a generally-applicable period of delay for the effectiveness of agency action. Indeed, Congress has done the latter in the Administrative Procedure Act. A "report and wait" provision simply joins the exercise of these two powers. Its operation in any particular case is not the result of impermissible congressional action -- a one-house veto or concurrent resolution -- but rather of the original legislation establishing the report and wait procedure, which legislation satisfied the Chadha requirements.

Footnote 9 in the Chief Justice's Chadha opinion suggests acceptance of the "report and wait" procedure, although of course the issue was not before the Court. Sibbach v. Wilson, 312 U.S. 1 (1941), cited in footnote 9, approved the "report and wait" procedure with respect to the Federal

Rules, but that situation -- rules of procedure promulgated by the Supreme Court -- is somewhat different from the situation of rules promulgated by an executive agency. In short, I still think the question needs thorough review and analysis by the Justice Department, particularly since I suspect Congress may begin enacting "report and wait" provisions with a vengeance. I am now leaning, however, to the conclusion that "report and wait" provisions are valid.

I take refuge from the anticipated charge of vacillation in the words of Baron Bramwell, who wrote "The matter does not appear to me now as it appears to have appeared to me then." Were I less modest I could also quote Lord Westbury, who turned aside a barrister's reliance upon an earlier opinion of his by saying "I can only say that I am amazed that a man of my intelligence should have been guilty of giving such an opinion." See generally McGrath v. Kristensen, 340 U.S. 162, 176-178 (1950) (Jackson, J., explaining his concurrence with a Court opinion disagreeing with a previous Attorney General opinion he had authored).

"Report and wait" provisions would only be valid, however, when Congress could withhold the grant of rulemaking authority in the first place. Different issues would be raised by a congressional attempt to delay the exercise of inherent executive authority.

THE WHITE HOUSE

WASHINGTON

June 24, 1983

APPOINTMENT PROCESS PERSONAL INTERVIEW RECORD

DATE OF INTERVIEW: June 22, 1983 (by telephone)
CANDIDATE: Daniel M. Rathbun
POSITION: Member, Board of Directors
Legal Services Corporation
INTERVIEWER: John G. Roberts JGR

Comments

Daniel M. Rathbun currently holds a recess appointment on the Board of Directors of the Legal Services Corporation, as an "eligible client" representative. At the time of his recess appointment (October 23, 1982), Rathbun was a full-time student at Christendom College and was unemployed. Since he was not a dependent of his parents, Rathbun had no difficulty satisfying the Legal Services Corporation annual income ceiling of $5,850 for a family of one to qualify as an eligible client. See 45 C.F.R. § 1611 (Appendix A).

Rathbun has now been graduated from Christendom, however, and is actively seeking full-time employment which he hopes will provide annual earnings substantially in excess of $5,850. He has not yet found a job. The statute provides that "the membership of the Board shall be appointed so as to include eligible clients . . ." It is unclear what Rathbun's position would be if he were an eligible client when appointed, but ceased to be so at some time thereafter. To avoid difficulties, I recommend that Rathbun's nomination not be considered as one for an eligible client seat on the Board. Rathbun indicated to me that he was being considered for a "regular" seat -- i.e., one representative of the "general public," since he does not fit the other categories of specific representation (organized bar or attorneys providing assistance to eligible clients). I have advised Dennis Patrick that Rathbun should not be nominated for an eligible client position.

[redacted] b6

ADMINISTRATIVELY SENSITIVE - not to be released without authority of the Counsel to the President

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 27, 1983

FOR: RICHARD A. HAUSER

FROM: JOHN G. ROBERTS JGR
SHERRIE M. COOKSEY smc

SUBJECT: Debate Briefing Book

You asked that we examine statutes that may be applicable to the reported receipt by various members of the Reagan Campaign of a briefing book compiled to prepare former President Carter for the debate with then-candidate Reagan. The applicability of federal statutes governing theft of records and receipt of stolen records hinges on whether the records in question were the property of the United States. The leading provision, 18 U.S.C. § 641, provides:

> "Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted -- Shall be fined not more than $10,000 or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both. The word "value" means face, par, or market value, or cost price, either wholesale or retail, whichever is greater."

It is an element of the offense that the record in question be the property of the United States. United States v. Collins, 464 F. 2d 1163, 1165 (9 Cir. 1972); United States v. Farrell, 418 F. Supp. 308 (M.D. Pa. 1976). It is now well-established, however, that the prosecution need not prove that the individual who took the document, or those who received it, knew it to be a record of the United States. See e.g., United States v. Jermendy, 544 F.2d 640, 641 (2 Cir. 1976) (citing cases). The Tenth Circuit adhered to the opposite view for a decade, Findley v. United States, 362 F.2d 921, 922-23 (1966), before reversing itself, United States v. Speir, 564 F.2d 934 (1977) (en banc). All that need be shown is that the record was in fact a government record.

The prosecution must prove that the document in question was stolen or knowingly converted to private use, and that those charged with receipt of the document knew it to have been so stolen or converted. It is apparently not necessary, however, to know who stole the document, or even to allege that the identity of that individual is unknown. Kirby v. United States, 174 U.S. 47, 62-65 (1899). It is accordingly no defense for one charged with receipt of stolen government documents to contend that he did not know who obtained them, so long as he can be shown to have known they were stolen. Since the statute is triggered by conversion of documents to private use as well as theft, it would seem to be immaterial whether the individual who originally obtained the documents had a legitimate right of access to them.

The critical question is whether the briefing book may be considered the property of the United States. If it was compiled solely for purposes of the debate it would not be a government record but the private property of the former President's campaign apparatus. In this regard it is noteworthy that the Presidential Records Act, although not effective at the time of the campaign, Pub. L. 95-591, § 3, considers political documents unrelated to the President's official duties and materials relating to the President's election as "personal records" which are not subject to the ownership of the United States. 44 U.S.C. § 2201, 2202.

It should be noted that if the Carter debate materials are considered government property, questions with respect to the use of appropriated funds for preparation of these materials which were to be used for "political" rather than "official" purposes could be raised. (As you know, the Comptroller General has consistently taken the position that appropriated funds may be used only for the purposes for which they were appropriated, and that official funds may not be used for purely partisan political purposes. See 31 U.S.C. § 628, 52 Comp. Gen. 504 (1972); 50 Comp. Gen. 534 (1971).) Additionally, Hatch Act violations may have occurred as a result of Domestic Policy staff officials preparing this political document. (Domestic Policy staff officials, unless paid out of the White House Office budget, would have been subject to the prohibitions of the Hatch Act against Federal employees participating in political activities. See 5 U.S.C. §7324.)

If the individual who obtained the briefing book copied an existing book and provided the copy to the Reagan Campaign, an argument can be advanced that no property was taken. This argument could be made even if the original book were to be considered government property. In United States v. Hubbard, 474 F. Supp. 64 (D.D.C. 1979), the court ruled that a violation

of 18 U.S.C. § 641 may be established where the defendant copied government documents by means of government resources. The court expressly declined to rule that a violation could be based simply on the theory that the defendant stole information. In the court's view, copying the documents was not enough, but copying by means of government resources was. As the court noted, "If section 641 reaches the theft of government information, as the government contends, serious first amendment questions would be raised, and there is ample legal authority to avoid those constitutional questions by interpreting the statute to not include information as a thing of value." The court cited Pearson v. Dodd, 410 F.2d 701 (D.C. Cir.), cert denied, 395 U.S. 947 (1969), which ruled that no tortious conversion occurred when documents were temporarily removed for copying purposes. That case involved a suit by Senator Dodd against reporters Drew Pearson and Jack Anderson. It may be useful to remind questioning reporters of the broader significance of a theory that would treat as theft the obtaining of government information, and treat as receipt of stolen goods the receipt of such information. For example, the front page of today's Post, with an article on the briefing book, also contains an article on the Baby Doe regulations based on the Post's receipt of a copy of the draft regulations. As the Hubbard court remarked, "if there were a crime for converting unspecified government information, it would not be limited to photocopying. If a person came across completely unclassified information during his employment within the federal government, and discussed it outside the scope of his employment, an argument could be made that he had converted government information in violation of section 641." The court rejected such a theory on First Amendment grounds.

The Second Circuit, however, has held that information is covered by 18 U.S.C. § 641, see United States v. Girard, 601 F.2d 69, 71 (2 Cir. 1979) cert. denied, 444 U.S. 871 (1980) ("the Government has a property interest in certain of its private records which it may protect by statute as a thing of value. It has done this by the enactment of section 641"). The Ninth Circuit has applied § 641 to a transcript of grand jury proceedings, United States v. Friedman, 445 F.2d 1076, 1087, cert. denied, 404 U.S. 958 (1971). On the other hand, Judge Winter opined that he would not apply § 641 to classified information, United States v. Truong Dink Hung, 629 F.2d 906 (4 Cir. 1980), and noted that its application to any type of information must be carefully considered on a case-by-case basis. The applicability of § 641 to this case must, accordingly, be considered very uncertain, even if the briefing book were considered government property.

A separate provision, 18 U.S.C. § 654, may apply to the individual who actually took the briefing book. Section 654 provides:

> "Whoever, being an officer or employee of the United States or of any department or agency thereof, embezzles or wrongfully converts to his own use the money or property of another which comes into his possession or under his control in the execution of such office or employment, or under color or claim of authority as such officer or employee, shall be fined not more than the value of the money and property thus embezzled or converted, or imprisoned not more than ten years, or both; but if the sum embezzled is $100 or less, he shall be fined not more than $1,000 or imprisoned not more than one year, or both."

This could apply if the individual in question were a federal employee and the briefing book came into his possession by virtue of his employment.

While the federal statutes depend upon the involvement of government documents, there are of course local D.C. provisions of general applicability which are not so limited. D.C. Code § 22-2205 establishes criminal penalties for receipt of stolen goods with intent to defraud. The elements of an offense under 22-2205 are receipt of the property, the fact that the property was stolen at time of receipt, knowledge that the property was stolen, and fraudulent intent in receiving the property. Tucker v. United States, 421 A.2d 32 (App. D.C. 1980). Of interest with respect to the individual who took the book, D.C. Code § 22-2201 prohibits grand larceny (value $100 or over) and § 22-2202 prohibits petit larceny. The discussion above covering whether "property" is taken when information is copied would apply to these local provision as well as the federal statutes.

Another possible violation of Federal law that could be raised with respect to the legality of the Reagan campaign obtaining a Carter briefing book would be a violation of the prohibitions against fraudulent misrepresentation of campaign authority found in the Federal Election Campaign Act, 2 U.S.C. § 441h. That provision states that:

> "No person who is a candidate for Federal office or an employee or agent of such candidate shall--
>
> (1) fraudulently misrepresent himself ... as speaking or writing or otherwise acting for or on behalf of any other candidate ... on a matter which is damaging to such other candidate ...; or

(2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1) above.

Violation of this provision is a civil offense and would be investigated by the FEC; although the FEC may refer possible violations of the Federal election laws to the Attorney General. See 2 U.S.C. § 437g.

THE WHITE HOUSE

WASHINGTON

June 27, 1983

FOR: FRED F. FIELDING

FROM: JOHN G. ROBERTS, JR.

SUBJECT: Fact Sheet re: President's Commission on Industrial Competitiveness

Richard Darman has asked for comments by close of business on the above-referenced fact sheet, to accompany the signing of the executive order creating the President's Commission on Industrial Competitiveness. That signing is to take place tomorrow. The fact sheet differs from the last version of the executive order I saw (and cleared) in two respects:

- the fact sheet states that the Commission shall consist of not more than 25 members, while the executive order sets a ceiling of 15 members;

- the fact sheet indicates labor representatives will serve on the Commission, while the executive order states: "Members appointed from the private sector shall represent elements of industry and commerce most affected by high technology, or academic institutions prominent in the field of high technology."

I reviewed these discrepancies with Wendell Gunn. He advised that the number in the executive order had been changed. He noted that the decision to add labor representatives had been made after approval of the executive order, and advised that they planned to appoint a former general counsel of the UAW and the current President of the Communications Workers Union. I think the executive order should be revised to provide for members representing labor, consistent with our objective of ensuring that the private members not be considered government employees. I reviewed this proposed change with Ralph Tarr, who cleared the original executive order for Justice, and obtained his approval.

THE WHITE HOUSE

WASHINGTON

June 27, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT AND
DEPUTY TO THE CHIEF OF STAFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Fact Sheet re: President's Commission on Industrial Competitiveness

Counsel's Office has reviewed the above-referenced fact sheet. In light of the decision, reflected in the fact sheet, to appoint labor representatives to this Commission, it is necessary to revise the proposed executive order.

The last sentence of section 1(a) of the executive order currently reads: "Members appointed from the private sector shall represent elements of industry and commerce most affected by high technology, or academic institutions prominent in the field of high technology." This should be changed to read: "Members appointed from the private sector shall represent elements of industry, commerce, and labor most affected by high technology, or academic institutions prominent in the field of high technology." This proposed change has been approved by the Department of Justice.

I would also note that the last version of the executive order cleared by Counsel's Office specified a membership of no more than 15 people, while the fact sheet lists a membership ceiling of 25.

THE WHITE HOUSE

WASHINGTON

June 27, 1983

FOR: FRED F. FIELDING

THRU: RICHARD A. HAUSER

FROM: JOHN G. ROBERTS, JR.

SUBJECT: Response to INS v. Chadha

I attended a meeting at the Department of Justice this morning concerning what actions the Government should take in the wake of the Supreme Court's decision in INS v. Chadha. The meeting was chaired by Ted Olson and attended by Paul McGrath, Bob McConnell, Will Taft, Dan McGovern, Mike Horowitz, Bob Cable, Randy Davis, and others. The group agreed that severability would be the critical issue in the future, and Olson noted that our general position has been that legislative veto provisions are typically severable. Any departure from this rule in a particular case would have to be carefully weighed in light of potential consequences on executive power in other areas. It was agreed that we should comply with "report and wait" provisions, which were also viewed as severable.

There was general consensus that we should try to calm the fears of legislators, and attempt to forestall any precipitous action on their part, such as enactment of an omnibus report and wait law. Cable and Davis were reluctant to commit Legislative Affairs to the task of meeting with chairmen and ranking members to convey our low-key approach. After the meeting, they suggested to me that you convene a meeting of the Legislative Strategy Group to address the question of how to work with Congress on abiding by the Supreme Court's decision. They did not think it was something Duberstein should do on his own. Olson and the others are awaiting leadership from the White House on dealing with the Hill and explaining what we will be doing with existing legislative veto provisions.

The other conclusion from the meeting was that the various departments should keep OMB apprised of any controversial submissions to Congress under report and wait provisions containing presumptively invalid and severable legislative vetoes. The effort is to provide the West Wing with advance warning before a battle on the consequences of Chadha is joined.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 27, 1983

FOR: RICHARD A. HAUSER

FROM: JOHN G. ROBERTS JGR

SUBJECT: Draft Presidential Taping:
U.S. Philippine Friendship Day

Richard Darman has asked that comments on the above-referenced draft remarks be sent directly to Aram Bakshian by 11:00 a.m. today. The draft has already been forwarded to the President. The remarks review the friendship between the Philippines and the United States, and note the recent renewal of the Military Base Agreement as evidence of that friendship. I see no legal objections.

Attachment

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 27, 1983

FOR: ARAM BAKSHIAN, JR.
DEPUTY ASSISTANT TO THE PRESIDENT
AND DIRECTOR OF SPEECHWRITING

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Draft Presidential Taping:
U.S. Philippine Friendship Day

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

cc: Richard G. Darman

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 28, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS JGR

SUBJECT: Proposed Testimony of Deputy Assistant Attorney General Keeney on the Issuance of Union Memberships and Work Placement

The above-referenced testimony is scheduled to be delivered tomorrow before the Senate Committee on Labor and Human Resources. It responds to a request from the committee for comments concerning allegations of unlawful activity by a specific union, the Boilermakers. The testimony begins by noting that the allegations are being investigated and that specific information therefore cannot be provided. The bulk of the testimony reviews bases for prosecution of cases of corrupt payments for union membership, and urges legislative consideration of previously-cleared proposals to make such prosecutions easier. I see no legal objections.

Attachment

THE WHITE HOUSE

WASHINGTON

June 28, 1983

MEMORANDUM FOR GREGORY JONES
OFFICE OF MANAGEMENT AND BUDGET

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Testimony of Deputy Assistant Attorney General Keeney on the Issuance of Union Memberships and Work Placement

Counsel's Office has reviewed the above-referenced proposed testimony, and finds no objection to it from a legal perspective.

RAH:JGR:aw 6/28/83

cc: RAHauser
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 28, 1983

MEMORANDUM FOR FRED F. FIELDING

THROUGH: RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: INS v. Chadha

I have prepared the attached proposed memorandum for your signature to implement the course of action recommended in my memorandum of yesterday. Since I believe time to be of the essence (see, e.g., Senator Percy's comments on the War Powers Act in today's Post), the proposed memorandum avoids any formal reference to the Legislative Strategy Group. The Office of Legislative Affairs wanted guidance from a higher authority before undertaking to calm Congress concerning Chadha; the draft memorandum seeks to provide that guidance.

Attachment

THE WHITE HOUSE

WASHINGTON

June 28, 1983

Not sent see June 29th

MEMORANDUM FOR EDWIN MEESE III
JAMES A. BAKER III
KENNETH M. DUBERSTEIN

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Congressional Reaction to INS v. Chadha

There is a very real danger that Congress may overreact to the Supreme Court's legislative veto decision and take precipitous action to circumscribe executive power or take legal stands that will inevitably create confrontation with the Administration. It is my understanding that legislative proposals to curb executive and agency authority are already circulating, and various legislators have been issuing statements expressing their own views on the effect of the decision on particular statutes. Both I and the Department of Justice consider it imperative for the White House to begin immediately to explain to the Congressional leadership and the various committees our views on the consequences of the Supreme Court's action. Such consultations should take place immediately in order to forestall rash legislative reactions.

All that need be done at this point is for the Office of Legislative Affairs to meet with appropriate legislators and perform a calming function, assuring them that we will comply with the "report and wait" provisions of existing legislative vetoes and that we will work closely with Congress to assess the effect of the Chadha decision. Establishment of such a low-key approach and cooperative tone will do much to dissipate Congressional fears and prevent Congressional overreaction.

It is important that the White House provide leadership in establishing this tone. The various departments and agencies have parochial interests at stake in any dealings with their respective committees, and are not in the best position, at least in the first instance, to conduct discussions at which broader principles of executive power are at stake.

FFF:RAH:JGR:aw 6/28/83
cc: FFFielding/RAHauser/JGRoberts/Subj./Chron
bcc: Theodore B. Olson

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 28, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Administration Position on H.R. 2053 -- "Air Travelers Security Act" (Anderson) [Senate Version: S. 746 (Warner)]

Richard Darman has asked for comments by 5:00 p.m. today on a proposed letter from David Stockman expressing the Administration's opposition to H.R. 2053. This bill would overturn the CAB's recent decision withdrawing antitrust immunity from the exclusivity clause in the airline-ticket agent conference agreements. Those agreements establish the various means for ticketing by travel agents, transfer of funds to the airlines, and so on. The agreements require the airlines to sell tickets only through travel agents "accredited" by the conference. Last December the CAB upheld the bulk of the conference agreements, but did not approve the exclusivity clause, thereby subjecting it to antitrust challenge. The American Society of Travel Agents has succeeded in having a bill to overturn the decision introduced, and the Administration has been asked for its views.

The draft letter from Stockman opposes the bill and the exclusivity clause it would protect as anti-competitive. The letter notes that the asserted benefits of the other provisions in the conference agreements may be preserved without the anti-competitive exclusivity clause. I see no legal objections. The proposed position is fully consistent with the Administration de-regulation drive.

Attachment

THE WHITE HOUSE

WASHINGTON

June 28, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Administration Position on H.R. 2053 --
"Air Travelers Security Act" (Anderson)
[Senate Version: S. 746 (Warner)]

Counsel's Office has reviewed the proposed Administration position on H.R. 2053, and finds no objection to it from a legal perspective.

FFF:JGR:aw 6/28/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 28, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Draft Presidential Remarks: California GOP Fundraiser

Richard Darman has requested that comments on the above-referenced draft remarks be submitted directly to Aram Bakshian by noon today. The remarks review the fortunes of the GOP in California, economic progress nationwide, and the situation in Central America. On page 3 the draft repeats a line from the NRA speech that caused some concern, in which the President advises locking up career criminals and "throwing away the key." As penological policy this is probably objectionable; as rhetorical flourish it is not. I have no legal objections, and have noted two typographical errors in the proposed memorandum to Bakshian.

Attachment

THE WHITE HOUSE

WASHINGTON

June 28, 1983

MEMORANDUM FOR ARAM BAKSHIAN, JR.
DEPUTY ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Presidential Remarks:
California GOP Fundraiser

Counsel's Office has reviewed the above-referenced draft remarks, and finds no objection to them from a legal perspective. On page 6, line 5, there should be a dash between "them" and "Democrats." There is also an obvious typographical error in the quotation on page 9.

cc: Richard G. Darman

FFF:JGR:aw 6/8/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

June 29, 1983

MEMORANDUM FOR EDWIN MEESE III
JAMES A. BAKER III
KENNETH M. DUBERSTEIN

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Congressional Reaction to INS v. Chadha

As you know, the Department of Justice has set up a working group to review the impact of the recent Chadha decision on legislative veto, to devise a recommendation for the Administration position. In the interim it would seem to me that there is a very real danger that Congress may overreact to the Supreme Court's decision and take precipitous action to circumscribe executive power or take legal stands that will inevitably create confrontation with the Administration. It is my understanding that legislative proposals to curb executive and agency authority are already circulating, and various legislators have been issuing statements expressing their own views on the effect of the decision on particular statutes. Therefore, at this point it would appear important for the Office of Legislative Affairs to meet with appropriate legislators and perform a calming function. It would be my recommendation that we adopt a position that for the time being we will comply with the "report" aspect of existing legislative veto provisions and that we will work closely with Congress to assess the effect of the Chadha decision. Establishment of such a low-key approach and cooperative tone will do much to dissipate Congressional fears and prevent Congressional overreaction.

It is important that the White House provide leadership in establishing this tone. The various departments and agencies have parochial interests at stake in any dealings with their respective committees, and are not in the best position, at least in the first instance, to conduct discussions at which broader principles of executive power are at stake.

FFF:JGR:aw 6/29/83
cc: FFFielding/JGRoberts/Subj./Chron

bcc: Theodore B. Olson

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3	MEMO RICHARD HAUSER TO JOHN HERRINGTON RE UNDER SECRETARY OF COMMERCE	2	6/29/1983	B6	1285

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.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 29, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Draft Presidential Remarks:
California GOP Fundraiser
(June 28, 1983/6:00 p.m. Draft)

Richard Darman has asked that minor edits on the above-referenced revised draft be sent directly to Aram Bakshian by 11:00 a.m. today. The draft has already gone to the President. I saw no legal objections to the original circulated draft. The only major change is the addition of a paragraph on page 2, ascribing the loss of Republican seats in California to Democratic gerrymandering and expressing support for an alternative reapportionment proposal. The language comes from Ed Rollins, and reflects the position of the Republican Party in California. Since this is a political party event, I have no objection to the President expressing support for a Republican-sponsored reapportionment proposal.

Attachment

THE WHITE HOUSE

WASHINGTON

June 29, 1983

MEMORANDUM FOR ARAM BAKSHIAN, JR.
DEPUTY ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Presidential Remarks:
California GOP Fundraiser
(June 28, 1983/6:00 p.m. Draft)

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

cc: Richard G. Darman

FFF:JGR:aw 6/29/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

June 30, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: Message to Congress Under the Impoundment Control Act of 1974

Attached is the proposed ninth special message for 1983 under the Impoundment Control Act of 1974, 2 U.S.C. §§ 683, 684 (copies attached). The message advises Congress of a proposed rescission and four deferrals of budget authority. Our office normally does not review such messages, but is reviewing this one since it is the first one after Chadha.

Under 2 U.S.C. § 683, the President may propose rescissions of budget authority, but such rescissions are ineffective unless Congress passes a bill agreeing to the proposal within 45 days. This is not a legislative veto, since the required Congressional action is passage of a bill through both Houses, which bill would then be presented to the President. The President has no independent authority to rescind budget items. The language in the message, referring to a proposed rescission, is thus consistent with Chadha. The Office of Legal Counsel ("OLC") advises that it concurs in this assessment.

Deferrals are subject to a one-house legislative veto under 2 U.S.C. § 684. OLC advises that the legislative veto provision, § 684(b), is severable from the deferral authority. The message refers to deferrals, not proposed deferrals, consistent with the view that the legislative veto provision is invalid and severable. OLC has no objection to the message.

I recommend approving the message as written. It was obviously drafted with sensitivity to the legislative veto issue.

Attachment

THE WHITE HOUSE

WASHINGTON

June 30, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Message to Congress Under the Impoundment Control Act of 1974

Counsel's Office has reviewed the proposed message, and finds no objection to it from a legal perspective. The message is consistent with the Supreme Court's decision in INS v. Chadha, and has been approved by the Department of Justice.

RAH:JGR:aw 6/30/83

cc: RAHauser
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

June 30, 1983

MEMORANDUM FOR THE FILES

FROM: JOHN G. ROBERTS JGR

SUBJECT: [redacted] b6

On June 29 I provided Senator McClure with a copy of the summary memorandum containing the results of the FBI investigation concerning [redacted] b6

THE WHITE HOUSE

WASHINGTON

June 30, 1983

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS

SUBJECT: Statement of Lawrence Lippe and Herbert Hoffman Re: Government's Investigation and Prosecution in United States v. Hitachi, Ltd., et al. (June 27, 1983)

This matter was handled by telephone, and RAH was so advised at the time.