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DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
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2	MEMO	ROBERTS TO FIELDING RE PROMOTION LIST	1	7/15/1983	B6	509
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Freedom of Information Act - [5 U.S.C. 552(b)]

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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 15, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS JGR

SUBJECT: International Longshoreman's Union

I talked with Cass Weiland, staff director of the Permanent Subcommittee on Investigations of the Senate Governmental Affairs Committee. Weiland advised me that in March of 1981 the Subcommittee conducted hearings into the International Longshoreman's Union (ILU), which had been the subject of an intensive FBI investigation the previous year. Chairman Roth permitted Senator Nunn to chair the hearings.

Weiland advised that the Subcommittee's report on corruption at the ILU has been long delayed, but will probably be issued by late September. The report will confirm the Subcommittee's public description of the ILU as one of the most corrupt unions in the country. For example, from 1977 - 1981 some 34 union officials were convicted, typically of extortion against businessmen and demanding payoffs for labor peace. Teddy Gleason, President of the ILU, testified at the hearings that he would clean up the union.

In connection with the President's upcoming speech, Weiland indicated that he had received inquiries from the Wall Street Journal and UPI concerning the ILU. In particular, reporters asked about the conviction statistics. [redacted] b7d

In response to any inquiry on corruption within the ILU, the President should indicate that he is aware of the past cases and the Senate inquiry, and he hopes that they have served to root out corruption at the ILU. He can note that the President of the ILU stated during the hearings that he was going to clean up the union and hopefully that has been done.

Q. Why are you appearing before the International Longshoreman's Union, described by the Senate Permanent Subcommittee on Investigations as one of the most corrupt unions in America?

A. I am aware that there have been court cases and Congressional hearings concerning corruption at the ILU, and I only hope that those cases and hearings have served to root out the corrupt practices that plagued this union in the past. Some time ago, during the Congressional hearings, the ILU President vowed to clean up the union. I hope he has done so.

THE WHITE HOUSE

WASHINGTON

July 15, 1983

MEMORANDUM FOR THE PRESIDENT

FROM: FRED F. FIELDING

SUBJECT: International Longshoremen's Association

In connection with your upcoming address to the International Longshoremen's Association (ILA), you should be aware that the ILA was the subject of intensive FBI investigations during the late 1970's, and of hearings before the Permanent Subcommittee on Investigations of the Senate Governmental Affairs Committee in 1981. Court cases arising from the FBI investigations, and testimony before the Subcommittee, confirm the Subcommittee's characterization of the ILA as one of the most corrupt unions in America. For example, between 1977 and 1981 there were some 34 convictions of ILA officials for offenses such as extortion and demanding payoffs for labor peace. During the Subcommittee hearings, Teddy Gleason, President of the ILA, testified that he would take action to clean up the union.

In response to any inquiry concerning corruption in the ILA, it would be best to note that you are aware of the problems that plagued the union in the past, but you hope that the investigations and hearings have served to root out the corrupt practices. You can also note Teddy Gleason's pledge to clean up the union, and express your hope that this has been done. A suggested "Q & A" is attached.

Attachment

Corruption Within the International Longshoremen's Association

Q. Why are you appearing before the International Longshoremen's Association, described by the Senate Permanent Subcommittee on Investigations as one of the most corrupt unions in America?

A. I am aware that there have been court cases and Congressional hearings concerning corruption at the ILA, and I only hope that those cases and hearings have served to root out the corrupt practices that plagued this union in the past. Some time ago, during the Congressional hearings, ILA President Teddy Gleason vowed to clean up the union. I hope he has done so.

THE WHITE HOUSE

WASHINGTON

July 15, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Proposed Testimony of Edward C. Schmults Concerning Legislative Veto

The effort of the Department of Justice to postpone any testimony on the impact of the legislative veto decisions until after the recess has failed, and Justice is now scheduled to present views before the Administrative Law Subcommittee of the House Judiciary Committee on July 18 and the House Foreign Affairs Committee on July 20. (The State Department will also testify at the latter hearing, but OMB has yet to receive a copy of State's proposed statement.) The Deputy Attorney General will be the witness for Justice at both hearings, and his proposed statements have been submitted for our review.

Each statement begins with identical introductory language, stressing that the Supreme Court has introduced elements of certainty into a long standing debate between Congress and th Executive. Each statement also draws a distinction between the problems addressed by legislative vetoes in the domestic area and the foreign affairs area. In the former the issue is the "political accountability" of unelected bureaucrats, while that issue is not present in the latter area, in which the actions implicate the President's inherent powers and are typically taken by the President himself or high-ranking officials. Finally, each statement contains the same 7-page legal analysis of Chadha, Consumer Energy Council v. FERC, and Consumers Union v. FTC. This analysis includes a discussion of severability, noting the trend to finding legislative veto provisions severable from the accompanying grants of authority.

The Foreign Affairs Committee testimony contains little in addition to the foregoing beyond a statement that Justice is typically not involved in the policy aspects of the foreign affairs questions. The Administrative Law Subcommittee testimony, at pages 4-6, discusses how to ensure political accountability in the absence of the legislative veto. With respect to executive branch agencies, the testimony cites the new OMB review process (mandated by Executive Order

12291), which makes the President accountable for executive agency rules. With respect to independent agencies, the testimony suggests in a general way that the time may be ripe to reconsider the existence of such entities, and take action to bring them back within the executive branch.

Only this last point has generated controversy among those reviewing the testimony. I agree that the time is ripe to reconsider the Constitutional anomaly of independent agencies, and the testimony does no more than suggest such a fresh look in the broadest terms. More timid souls may, however, desire to see this deleted as provocative.

Justice would like to clear the testimony this afternoon. If you agree, I can call Jim Murr to advise him that we have no objections. I think, in view of the monumental nature of the Chadha decision, that it may be more appropriate for the Attorney General to deliver the first testimony on it, but I leave it to you whether to raise that question with Schmults.

cc: H.P. Goldfield
Peter J. Rusthoven

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 15, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Request for Photograph of the President Reading the Washington Times

James Gavin, Public Relations Manager of The Washington Times, has written Mr. Deaver, asking for a photograph of the President reading The Washington Times. According to Gavin, the photograph would be used in connection with a multi-media presentation to be shown to groups touring the Times plant. Several Washington luminaries have already agreed to participate in the display.

Providing the photograph would constitute implicit endorsement of a commercial enterprise, and the Times has indicated it intends to use the photograph in a commercial fashion. I have drafted a letter declining the request, for your signature. Since Deaver asked for our views, we should clear the reply with him, and an appropriate memorandum for that purpose is also attached.

Attachments

THE WHITE HOUSE

WASHINGTON

July 15, 1983

Dear Mr. Gavin:

This is written in response to your letter of July 12 to Michael K. Deaver, Deputy Chief of Staff and Assistant to the President. In that letter you requested a photograph of the President reading The Washington Times, and indicated that the photograph would be used in connection with a multi-media presentation for those visiting The Times.

The White House adheres strictly to a policy of not permitting use of the President's name, likeness, or photograph in any manner that suggests or could be construed as an endorsement by the President of a commercial product or enterprise. Accordingly, we cannot comply with your request for a photograph of the President reading your publication. I trust you will understand the need for us to adhere to this policy and that our adherence to it in this instance is in no sense a reflection on The Washington Times.

Thank you for writing. I am sorry our response could not be a favorable one.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. James M. Gavin
Public Relations Manager
The Washington Times
3600 New York Avenue, NE
Washington, D.C. 20002

FFF:JGR:aw 7/15/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

July 15, 1983

MEMORANDUM FOR MICHAEL K. DEAVER
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Request for Photograph of the President Reading the Washington Times

You have asked for our views on a request by James Gavin of The Washington Times for a photograph of the President reading that newspaper. The photograph would be used in connection with a multi-media presentation for visitors to The Times.

Consistent with our policy of not permitting any use of the name, likeness, or photograph of the President in a manner that could be construed as endorsement of a commercial enterprise or product, I must advise against providing such a photograph to Mr. Gavin. If you agree, I will send the attached proposed reply to Mr. Gavin.

Attachment

FFF:JGR:aw 7/15/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

July 15, 1983

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS

SUBJECT: Appointment of Sybil C. Mobley, Michael E. Porter, B. Kipling Hagopian, Stephen I. Schlossberg, Frederick B. Dent, Robert A. Hanson, Edwin D. Dodd, Rimmer de Vries, Ed Harper, and Bruno J. Mauer to the President's Commission on Industrial Competitiveness

The President's Commission on Industrial Competitiveness is a new advisory committee established by Executive Order 12428 (June 28, 1983). 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 from the private sector 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, commerce, and labor most affected by high technology, or academic institutions prominent in the field of high technology." Under the 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."

Messrs. Hanson, Dodd, Mauer, and Dent represent the industrial sector, and their industries can readily be considered deeply affected by high technology. Mr. Hagopian is from a venture capital firm and Mr. de Vries from Morgan Guaranty Bank, elements of commerce affected by high technology. Mr. Porter is from the Harvard Business School and Mrs. Mobley from the Florida A&M School of Business and Industry, prominent academic institutions. Mr. Schlossberg is an attorney, former General Counsel for the United Auto Workers. I think he can be considered to represent labor's interests, not only by virtue of his former affiliation but also because of several labor-related board memberships he currently holds. 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, the affiliations and holdings are not an impediment to their appointments.

Ed Harper has not submitted a PDS, but he was of course cleared for his current government position, and I have reviewed his recently-filed SF 278. Since his resignation from government service will be effective July 31, 1983, his appointment to this Commission should not be effective until after that date, so that he will be a member "appointed from the private sector" and accordingly not subject to the conflict of interest laws.

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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 15, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Check for $3.3 Billion

Alan Rose of Chicago has written the President to express his disappointment that the proposed defense budget was turned down, "coming up some $3.3 billion short." Rose opined that America needed a strong defense to keep from becoming vulnerable, and enclosed a check -- made out to the United States -- as his way of saying "keep up the good spirits."

It is unclear if Mr. Rose considered the check to be a symbolic gesture of support, was being sarcastic, or is simply a loon. I think we should send the check back with a note thanking him for his expressions of support.

Attachment

THE WHITE HOUSE

WASHINGTON

July 15, 1983

Dear Mr. Rose:

Thank you for your letter to the President expressing your disappointment at Congressional reductions in the President's proposed defense budget. Along with that letter you enclosed a personal check dated April 20, 1983 (#742), for $3.3 billion, payable to the United States of America.

We appreciate your support for the President's program, and assume that the check was intended as a symbolic gesture of that support rather than a negotiable financial instrument. We could not, in any event, cash the check and use the proceeds in the defense effort, consistent with the requirements of the appropriations process. Accordingly, we are returning the check to you.

Thank you again for your expressions of support.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Alan Rose
1540 West Victoria
Apt. 1W
Chicago, Illinois 60660

Enclosure

FFF:JGR:aw 7/15/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 18, 1983

FOR: FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: NLRB Dispute

On July 14, Donald Dotson sent Mr. Hauser a note advising that Dotson and NLRB member Robert Hunter wanted to meet with him to "discuss alternatives" in connection with the dispute at NLRB concerning the respective powers of the Solicitor and the General Counsel. Dotson enclosed a legal analysis of the dispute and noted that it was urgent that the matter be resolved. Hauser asked that I review the question and determine (1) whether the Board had the authority to act as it did in transferring authority from the General Counsel to the Solicitor, (2) whether the General Counsel may be removed by the President, (3) if the General Counsel's defiance of the Board directive constitutes "cause" for removal of the General Counsel, and (4) how Mr. Meese's office is involved in the dispute.

I first reported on this dispute in a memorandum of May 18, 1983 (attached). You will recall that on May 4, 1983, the Board required the General Counsel to submit "all pleadings and briefs in proceedings involving enforcement, review, Supreme Court litigation, contempt, and miscellaneous litigation" to the Solicitor for his review, and directed that such pleadings and briefs may be filed only after approval of the Solicitor, acting for the Board. The Board also assumed authority to "transfer, promote, discipline, discharge" and take other appropriate personnel action with respect to NLRB attorneys engaged in the activities to be reviewed by the Solicitor. The General Counsel, however, was directed to exercise "general supervisory responsibility" over those attorneys.

The legal memorandum submitted by Dotson defends the Board's action by noting the statutory authority of the Board to "appoint... attorneys...necessary for the proper performance of its duties... Attorneys appointed under this section may, at the discretion of the Board, appear for and represent the Board in any case in court." 29 U.S.C. § 154(a). The Board recognizes that the General Counsel, under 29 U.S.C. § 153(d), has independent authority to investigate charges and issue unfair labor practice complaints. The Board's action does not affect attorneys employed in these areas. The Board maintained, however, that the General Counsel's

authority to represent the Board in court is based not on any similar statutory grant of authority but rather on a revocable delegation of authority from the Board. The Board's legal memorandum notes that a similar dispute between the Board and its General Counsel arose in 1950, and was resolved when the President requested and obtained the General Counsel's resignation.

We have not been provided with a copy of the General Counsel's legal analysis, but I understand that it focuses on the language of 29 U.S.C. § 153(d): "The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board..." This clear statutory language, according to the General Counsel, flatly prohibits any effort by the Board to place control over enforcement and appellate attorneys in the hands of the Solicitor. Simply stating, as the Board did, that the General Counsel will continue to exercise "general supervisory responsibility" over such attorneys is a meaningless assertion in the face of the Board's requirement that the Solicitor review and approve briefs and pleadings and the Board's assertion of authority over attorney promotions, disciplining, transfers, and terminations.

As I pointed out in my earlier memorandum, the Board's position is not illogical, nor does it contravene the intent of the Taft-Hartley Act, which established the office of NLRB General Counsel. It was the purpose of that Act to insulate the General Counsel from the Board with respect to the presentation of complaints before the Board. Such insulation with respect to enforcement of orders issued by the Board was not necessary (no problem of commingling adjudicative and prosecutive roles being present once the Board had issued an order), and accordingly this question was not specifically addressed by the Taft-Hartley amendments. In addition, there is a great deal of common sense appeal to the proposition that the Board should be able to control the legal arguments presented on its behalf before the courts.

On the other hand, the plain language of 29 U.S.C. § 153(d) presents a major hurdle to the Board's legal analysis. Even if the intent of Congress was only to insulate NLRB attorneys from the Board with respect to the filing of complaints, the language chosen -- giving the General Counsel "general supervision over all attorneys employed by the Board" (emphasis supplied) -- is not so limited. In sum, it is not apparent which side in this dispute would prevail if the matter were put to the proof, which in this case would presumably entail an Attorney General opinion rather than a court test.

There is a clear answer to the second query posed by Mr. Hauser. In an opinion dated March 11, 1959, Malcolm Wilkey, then Assistant Attorney General for the Office of Legal Counsel, concluded that "the General Counsel of the Board is a purely Executive Officer and that the President has inherent constitutional power to remove him from office at pleasure under the rule of Myers v. United States, 272 U.S. 52." We were advised in April of this year that the Department of Justice still adhered to the Wilkey opinion. Since the General Counsel serves at the pleasure of the President, it is unnecessary to consider Mr. Hauser's third question, viz., whether the General Counsel's conduct constitutes "cause" justifying Presidential dismissal for cause.

With respect to the fourth question, Ken Cribb advised me on July 15 that it was his understanding that Craig Fuller would be meeting with Dotson to discuss the matter, at Mr. Meese's direction. Hauser called Fuller, who seemed unaware of any such arrangement. In any event, Hauser advised Fuller that our office was looking into the matter and should be kept appraised of any developments.

In light of the NLRB's status as an independent agency, we should keep some distance from the legal dispute. Dotson may want a meeting to discuss firing the General Counsel, the step taken over thirty years ago when the NLRB was similarly deadlocked. Since such a move can only come from the President, we are inevitably involved if Dotson seeks that solution. I would, however, recommend against taking sides in the legal dispute. Dotson took this action without consulting us or, more appropriately, the Justice Department, and we should not be anxious to sleep in a bed not of our own making.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 18, 1983

FOR: FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: H.R. 3497 -- Proposed Amendments to the Federal Rules of Criminal Procedure

OMB has asked for our views as soon as possible on a proposed letter from Robert McConnell opposing H.R. 3497. H.R. 3497 would prevent the proposed amendments to the Federal Rules of Criminal Procedure currently lying before Congress from going into effect until specifically provided by Act of Congress. Under 18 U.S.C. § 3771 the Supreme Court may propose such rules or amendments, which go into effect ninety days after reported to Congress, in the absence of contrary legislation. H.R. 3497 is just such contrary legislation.

Justice opposes H.R. 3497 because Justice generally supports the proposed amendments to the rules, specifically amendments authorizing conditional guilty pleas, verdicts by 11-member juries when a twelfth juror becomes incapacitated, and extension of the life of a regular grand jury. I see no reason to question Justice's conclusion that the amendments are a net plus.

No legislative veto problems are presented by the procedure established pursuant to 18 U.S.C. § 3771. This is a classic "report and wait" provision. Its counterpart with respect to the Civil Rules was approved in Sibbach v. Wilson, 312 U.S. 1 (1941). The Chief Justice's opinion in INS v. Chadha specifically cited the Civil Rules provision, indicating that it did not present the problems associated with the legislative veto. Slip op. at 14 n. 9.

If you agree, I will telephone Greg Jones to advise that we interpose no legal objections.

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