Collection: Roberts, John G.: Files
Folder Title: Chron File (01/01/1984-01/10/1984)
Box: 62

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name	Roberts, John Chron File (01/01/1984-01/10/1984)	*Withdrawer*	CAS 8/12/2005
File Folder	~~JGR/NAVAL RESERVE PROGRAM~~ believe this is wrong since box 62 is Chron	*FOIA*	F05-139/01
Box Number	62		COOK LOJ1

DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	ROBERTS TO FRED FIELDING ~~(partial)~~ (open)	1	1/4/1984	B6	1252
2	LETTER	FIELDING TO BOB JONES (PARTIAL OF PAGE 1) (open)	2	1/5/1984	B6	1253

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.

THE WHITE HOUSE

WASHINGTON

January 3, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Whittlesey Letter Concerning White House Volunteers

Faith Whittlesey has asked you to review a letter she proposes to send to Richard Gathro. Gathro runs the American Studies Program of the Christian College Coalition, which in the past year placed student interns as volunteers with the Office of Public Liaison. Gathro wrote Whittlesey asking her to accept volunteers under the program for next year, despite what he understood to be a policy of not accepting more volunteers because of the election year. Whittlesey's proposed letter states that she cannot "accept any additional volunteers in 1984 because of the Presidential election."

I discussed this with John Rogers, who advised me that Whittlesey has been allocated four volunteer slots, an amount consistent with her office's use of volunteers in the past. It is my understanding that the policy decision was to avoid an increase in the number of White House volunteers, not to ban them altogether. Whittlesey's proposed letter seeks to shift the burden of explaining why American Studies Program volunteers are not being accepted away from her own decision to otherwise use up her volunteer slots to a supposed election year policy beyond Whittlesey's control. Whittlesey's reply should simply state that there are no openings for volunteers, not that an election year policy prevents her from accepting them. I have drafted a memorandum to Whittlesey advising her not to cite the policy against increasing the number of volunteer slots as the reason for declining to accept any particular volunteers. I recommend copying John Rogers, who has expressed some concern that Whittlesey may be trying to play our respective offices against each other on the volunteer question.

Attachment

THE WHITE HOUSE

WASHINGTON

January 3, 1984

MEMORANDUM FOR FAITH R. WHITTLESEY
ASSISTANT TO THE PRESIDENT
FOR PUBLIC LIAISON

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Letter Concerning White House Volunteers

You have asked for our views on a proposed response to Richard Gathro, Associate Director of the American Studies Program of the Christian College Coalition. Mr. Gathro asked you to accept students in the program as White House volunteers, and your proposed reply declining the offer cites the policy against accepting additional volunteers during a Presidential election year.

In our view, it is not accurate to cite this policy as the reason for not accepting volunteers from the American Studies Program. The policy to which you referred was designed to avoid growth in the number of volunteers. Assistant to the President John F. W. Rogers has advised us that your office has been allocated four volunteer slots. Your inability to accept the American Studies Program volunteers is the result more of a decision to allocate those slots to others than of the policy to avoid growth in the number of White House volunteers in an election year.

The following version of the second paragraph of your letter more accurately represents the facts:

> We are, unfortunately, not able to accept additional volunteers from the American Studies Program for the time periods you indicated. The number of openings for volunteers at the White House is limited, and our allocated openings have already been filled. We cannot increase the number of available volunteer openings at this time.

Thank you for raising this matter with us.

cc: John F. W. Rogers
Assistant to the President
for Management and Administration

FFF:JGR:aea 1/3/84

bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 3, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Another FOIA Request From Lauren R. Januz

Lauren R. Januz, President of a direct marketing consulting firm that bears his name, has filed an FOIA request with the Executive Office of the President. The request seeks a list of mailing lists maintained by the EOP, and the cost of obtaining copies of the lists on a specified type of computer tape. You may recall that Januz filed an earlier FOIA request with "the White House," seeking a listing of agency heads and their addresses. We advised Januz in reply that the White House Office was not subject to the FOIA.

Januz's latest request goes considerably beyond the scope of the FOIA, which grants public access to certain government documents, not information per se. Under the Act, Januz is not entitled to obtain the mailing lists on a particular type of computer tape; indeed, he is probably not entitled to a listing of mailing lists unless such a listing already exists as a separate document. In any event, at this point we should advise Januz that many offices within the EOP are not subject to the FOIA, and that if he is interested in pursuing the matter he should separately address those that are.

Attachment

THE WHITE HOUSE

WASHINGTON

January 3, 1984

Dear Mr. Januz:

This is written in response to your letter of December 22, 1983, addressed to the Executive Office of the President. That letter contained a request under the Freedom of Information Act for certain information concerning mailing lists.

The "Executive Office of the President" is a designation used to describe a group of separate offices or units which, in a number of respects, function independently of each other. Some of the offices or units within the Executive Office of the President are "agencies" within the meaning of the Freedom of Information Act, but others, particularly the White House Office, "whose sole function is to advise and assist the President," are not. Kissinger v. Reporters Committee for Freedom of the Press, 445 U.S. 136, 156 (1980).

Accordingly, I recommend that you contact directly those offices within the Executive Office of the President which are subject to the Act.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Lauren R. Januz
Lauren R. Januz
and Associates, Inc.
Post Office Box 631
Lake Forest, IL 60045

FFF:JGR:aea 1/3/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 4, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Presidential Tapings -- 12th Annual Martin Luther King Dinner

Richard Darman has asked that comments be sent directly to Ben Elliott by noon today on the above-referenced draft remarks. The remarks praise the contributions of both Martin Luther King, Jr., and the Minority Economic Resources Corporation. The latter is a private-sector organization dedicated to promoting the hiring of minorities.

The first two sentences on page 2 contain three errors. "Earlier this year" should be changed to "late last year." "Beginning in 1985" is inaccurate; Public Law 98-144, creating the King holiday, takes effect "on the first January 1 that occurs after the two-year period following the date of the enactment of this Act," i.e., 1986. Finally, the Nation will celebrate the third Monday in January, not January 15, as Martin Luther King, Jr. day. These corrections are noted in the attached draft memorandum for Elliott.

Attachment

THE WHITE HOUSE

WASHINGTON

January 4, 1984

MEMORANDUM FOR BEN ELLIOTT
DEPUTY ASSISTANT TO THE PRESIDENT
DIRECTOR, PRESIDENTIAL SPEECHWRITING OFFICE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Tapings -- 12th Annual Martin Luther King Dinner

Counsel's Office has reviewed the above-referenced draft remarks. On page 2, line 1, "Earlier this year" should be changed to "late last year." On page 2, line 3, "Beginning in 1985" should be changed to "Beginning in 1986." On page 2, line 4, "every January 15" should be changed to "the third Monday in January."

cc: Richard G. Darman

FFF:JGR:aea 1/4/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 4, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Further Correspondence From Bob Jones III

Last fall Bob Jones III, President of Bob Jones University, wrote Morton Blackwell requesting that the White House intervene on behalf of Dr. Peter Ng, who has an application pending before the Immigration and Naturalization Service. Dr. Ng is a Fundamentalist minister. On December 20, 1983, you wrote Mr. Jones, advising him that established White House policy did not permit such intervention on behalf of private parties with respect to matters those parties have pending before agencies with adjudicative functions, such as INS. You noted that the reason for this policy was to maintain public confidence in the impartial administration of our laws.

Mr. Jones has now replied, stating that the American public lost confidence in the impartial administration of our laws long ago, and that our refusal to intervene on behalf of Dr. Ng was simply another example of our insensitivity to the interests of Fundamental Christians. Mr. Jones suggests in his letter that you would have reacted differently to an alleged civil rights violation, and, in a thinly veiled threat, asserts that the alleged insensitivity of the Administration to Fundamental Christians will not go unnoticed by that sizable voting block.

The audacity of Jones' reply is truly remarkable, given the political costs this Administration has incurred in promoting the interests of Fundamental Christians in general and Bob Jones University in particular. A restrained reply to his petulant paranoia is attached for your review, telling Jones, in essence, to go soak his head. Since Jones copied Senator Thurmond and Congressman Campbell on his incoming, we should do the same on our reply.

Attachment

THE WHITE HOUSE

WASHINGTON

January 5, 1984

Dear Mr. Jones:

I am writing in reply to your letter of December 27, 1983. That letter was written in response to my own of December 20, in which I advised you that White House policy did not permit staff members to intervene on behalf of private parties concerning matters those parties have pending before agencies with adjudicative functions. Pursuant to this policy, I was compelled to decline your request that the White House intervene on behalf of Dr. Peter Ng with respect to his application before the Immigration and Naturalization Service.

In your letter of December 27 you rejected the stated purpose of the White House policy -- to maintain public confidence in the impartial administration of our laws -- on the ground that "the American public has lost that confidence a long time ago." You also suggested that my letter was evidence of alleged Administration insensitivity to the interests of Fundamental Christians.

With respect, I cannot share your view that the American public has lost confidence in the impartial administration of our laws. In any event, even if the public has lost such confidence, it will hardly be restored by White House interference in the adjudicative responsibilities of agencies on behalf of those who are fortunate enough to secure the support of influential individuals such as yourself.

I must also object to your suggestion that my response to Dr. Ng's case reflects insensitivity to the interests of Fundamental Christians. The White House policy prohibiting intervention on behalf of private parties with respect to matters those parties have pending before agencies with adjudicative functions is applied in an even-handed fashion without regard to the beliefs or other characteristics of the individual involved.

Nor do I share your view that this Administration has been insensitive to the interests of Fundamental Christians. In my view, the Administration has done much to advance the interests of Fundamental Bible-believing Christians. That which has been done, incidentally, has not been done to gain political support from that group, but because it was right. By the same token, political considerations will not move us to do that which is not right.

I am sorry that you do not agree with us concerning the desirability of a policy that precludes White House interference in private matters pending before agencies with adjudicative responsibilities. I hope and trust, however, that you will view this disagreement for what it is, and not as evidence of broad insensitivity on the part of this Administration to the interests of Fundamental Christians.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Bob Jones III
President, Bob Jones University
Greenville, SC 29614

cc: The Honorable Strom Thurmond
The Honorable Carroll Campbell

bcc: Morton C. Blackwell

FFF:JGR:aea 1/5/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 5, 1984

Dear Mr. Vaka:

Thank you for your letter of December 12. That letter raised a question concerning Presidential succession:

> Who becomes President if the President elect dies on Inauguration Day, before taking the oath of office?

The Twentieth Amendment to the Constitution provides a ready answer to the question. Section 3 of that amendment provides, in part, that "[if], at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President." U.S. CONST. amend. XX, § 3. In the hypothetical you posed, the Vice President elect would be sworn in as President, to serve a full term. I hope this information is helpful.

For your further information, which I hope might also be helpful to you in the future, "Capitol Hill" (as you addressed your letter) is the phrase reserved for the Legislative Branch; upon reflection you will recall that the President is the head of the Executive Branch (the Supreme Court represents the third branch of our wonderful system of Constitutional Government). Thus, the delay in my response to your letter.

Best of luck with your studies.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Scott F. Vaka
American Politics Class
Middletown High School South
501 Nut Swamp Road
Middletown, NJ 07748

FFF:JGR:aea 1/5/84
cc: FFFielding/JGRoberts/Subject/Chron.

THE WHITE HOUSE

WASHINGTON

January 6, 1984

MEMORANDUM FOR FRED F. FIELDING

THRU: RICHARD A. HAUSER

FROM: JOHN G. ROBERTS JGR

SUBJECT: Letter to the President from Walter Annenberg and William Simon on Nixon Presidential Library

Walter Annenberg and William Simon, Directors of The Richard Nixon Presidential Archives Foundation, have written the President to ask him to intercede with the Archivist and compel the Archivist to proceed with plans for the Nixon Library. Under 44 U.S.C. § 2108, the Administrator of GSA may accept land, buildings, and equipment offered to the United States for the purpose of creating a Presidential Archival depository. Before accepting such an offer, however, the Administrator must submit a report on it to the President of the Senate and the Speaker of the House, which report must lie before Congress for 60 days.

The Richard Nixon Presidential Archives Foundation has completed substantially all of the work preliminary to offering what would become the Nixon Library to the United States. The Archivist was ready to prepare the statutorily-required report to Congress and accept the Foundation offer, but decided in essence to hold the library hostage in an attempt to resolve the Nixon files dispute. Basically the Archivist advised the Foundation directors and Nixon's attorneys that he would not proceed with the Nixon library unless Nixon agreed to waive any objections to the public disclosure of his files. That disclosure has, of course, been the subject of extended litigation. Based on my discussion last fall with those on the Archivist staff involved in the Nixon files dispute, I can confirm Annenberg's and Simon's representations: the Archivist made a conscious decision to use the library as leverage in resolving the files dispute.

The issues of public access to the files and the processing of the library proposal are, of course, not unrelated. Jim Hastings, Director of the Nixon Project at Archives, explained to me last fall that he could not approve the library plans without knowing what files could be deposited in the library for public review. On the other hand, it is clear and Nixon's attorneys are prepared to stipulate that Nixon will have no objection to release of most of his Presidential files for use in the library. The Archivist, however, has insisted that Nixon must agree to disclosure of all that the Archivist believes is subject to disclosure under the Nixon Records Act.

The question of having the President direct the Administrator of GSA to proceed with processing of the Nixon library is complicated by the pendency of legislation to make the Archivist independent of Executive branch controls. H.R. 3987 and S. 905, both styled the "National Archives and Records Administration Act of 1983," would create the "National Archives and Records Administration" as an "independent establishment in the Executive branch," headed by the Archivist. Both bills provide that the responsibilities of the Administrator of GSA under 44 U.S.C. § 2108 would be transferred to the independent Archivist. S. 905 has been favorably reported by the Senate Committee on Governmental Affairs; H.R. 3987 has been referred to the Subcommittee on Legislation and National Security of the House Committee on Government Operations. The question is, of course, further complicated by the change in GSA Administrators and the future confirmation hearings for both Mr. Sawyer and Mr. Carmen.

We should discuss.

THE WHITE HOUSE

WASHINGTON

January 6, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Draft DOJ Report on S. 1324 and Draft CIA Report on S. 1324 and H.R. 4431 (Companion Bill); Bills to Regulate Disclosure of Information Held by the CIA

OMB has asked for our views by close of business today on proposed Justice and CIA reports on pending legislation to relieve the CIA from certain burdens associated with the processing of FOIA requests. The legislation, S. 1324 and H.R. 4431, would permit the Director of Central Intelligence to designate certain CIA operational files as exempt from the search, review, and disclosure requirements of the FOIA. The theory is that since the vast majority of such CIA files are not ultimately subject to disclosure under FOIA in any event, the Agency should not be required to go through the costly and time-consuming drill of reviewing the files for records responsive to the request. The bill has passed the Senate and is awaiting action in the House.

Both proposed reports support passage of the legislation. The CIA report reviews the major aspects of the bill, including the exceptions from exemption for (1) information on a special activity when the fact of the activity's existence is no longer classified, (2) information reviewed in the course of an investigation into possible improprieties or violations of law, and (3) information on a citizen in response to a FOIA request filed by that citizen. These are only exceptions to the possible exemption of files from review; documents in these categories would not lose any exemption from disclosure they otherwise enjoy. The CIA accepts these exceptions.

The Justice report discusses the unique problems of defending the CIA in FOIA suits, including the need to use only attorneys and staff with the appropriate clearances and the need for frequent *in camera* reviews by courts. The Justice report notes that the elaborate and costly procedures necessitated by the sensitive classified material almost always yield the same result: no disclosure of records.

Both the CIA and Justice proposed reports are based on previously cleared testimony delivered when the bill was considered by the Senate. I have no objections.

THE WHITE HOUSE

WASHINGTON

January 6, 1983

MEMORANDUM FOR JAMES C. MURR
CHIEF, ECONOMICS - SCIENCE - GENERAL
GOVERNMENT BRANCH, OMB

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft DOJ Report on S. 1324 and Draft CIA Report on S. 1324 and H.R. 4431 (Companion Bill); Bills to Regulate Disclosure of Information Held by the CIA

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

FFF:JGR:aea 1/6/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 6, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Remarks: Reception for Participants in Executive Exchange Program

Richard Darman has asked that comments on the above-referenced remarks be send directly to Ben Elliott by noon today. The remarks praise June Walker and Jim Burke for turning around the Executive Exchange program, and generally laud the contributions of exchange participants, both from the Government and from the private sector.

In the last sentence of the third full paragraph on page 3, the President expresses support for the proposal to permit corporations to pay the salaries of their exchange executives while those executives are serving in the Government. The President notes this proposal is in legislative form, as it must be to avoid augmentation of appropriations problems and difficulties with 18 U.S.C. § 209. It is another step along the road started with passage last year of the bill permitting corporations to pay the travel expenses of their exchange executives serving in Government. The legislative proposal has not yet reached our office, but I have no objection to the President expressing his support for the concept. Exchange executives already have a financial interest in their corporations, so no new conflicts questions would arise if the proposal were enacted.

Attachment

THE WHITE HOUSE

WASHINGTON

January 6, 1984

MEMORANDUM FOR FRED F. FIELDING

THRU: RICHARD A. HAUSER

FROM: JOHN G. ROBERTS JGR

SUBJECT: D.C. Chadha Bill

The Justice Department Office of Legislative Affairs has asked for our views on a compromise D.C. Chadha proposal submitted by the District. You will recall that the District of Columbia Self-Government and Governmental Reorganization Act contains several unconstitutional legislative vetoes, including a two-house veto of most D.C. Council legislation and a one-house veto of D.C. Council legislation affecting the Criminal Code. Last fall the House passed a bill that would solve the legislative veto problem by requiring Congress to pass a joint resolution signed by the President within 35 working days to block any D.C. Council legislation. The Justice Department objected to this approach in a letter signed by Assistant Attorney General McConnell, proposing instead that while a joint resolution of disapproval would be adequate in most areas, a joint resolution of approval should be required before D.C. Council legislation affecting the Criminal Code is permitted to go into effect.

The District has now proposed that the House-passed bill be modified so that a joint resolution of approval would be required if the President formally objected to proposed D.C. Council legislation. If the President did not object, Congress would have to pass a joint resolution of disapproval to block the Council action.

My preliminary review and preliminary soundings with the Office of Legal Counsel indicate that a bill along these lines would be constitutional. Although at first blush the Presidential objection procedure appears to share many features of the legislative veto, the fact that the President is in the Executive branch makes all the difference in a constitutional sense, particularly since D.C. Council proposals are basically Executive branch proposals. Indeed, historic forms of government of the District of Columbia featured just such an Executive objection mechanism, as did territorial government in the west.

On policy grounds the latest proposal is a significant improvement over the House-passed bill. The compromise would, however, put the President in a difficult position, requiring him to be clearly out front if the Administration wanted to block a D.C. Council proposal. I discussed this with Mr. Hauser and we agreed that the compromise was desirable only if the alternative were the House-passed bill, and even then Justice should consider if the compromise could be revised to substitute the Attorney General for the President. We think Justice should continue to press for its original proposal if that remains a realistic possibility.

If you agree, I will communicate these views to Justice's Office of Legislative Affairs. I recommend against a formal memorandum conveying our thoughts on the ground that we should continue to keep some distance between the White House and this issue.

I should also point out that the actual language proposed by the District is deficient in several respects. For example, the bill provides that if the President objects to a D.C. Council act "both Houses of Congress shall pass a joint resolution approving said act." What the drafters meant of course was that Congress must pass such a resolution if it wants the act to go into effect. Justice is already aware of this and other technical defects in the compromise proposal.

THE WHITE HOUSE

WASHINGTON

January 6, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Presidential Radio Talk: Violence in Schools -- Saturday, January 7, 1984

Richard Darman has asked that comments on the above-referenced draft remarks be sent directly to Ben Elliott by 10:00 a.m. today. The remarks focus on classroom violence, citing statistics from a 1978 National Institute of Education report. The remarks announce several federal initiatives, including establishment of a National School Safety Center at the Department of Justice that will publish handbooks informing teachers of their legal rights in dealing with disruptive students. In the remarks the President announces that he has "directed the Justice Department to file court briefs to help shcool administrators enforce discipline." I have no objection to such a general direction, but recommend that the phrase "when appropriate" be added not only to help forestall criticism of Presidential "interference" with litigation decisions but also to give the Department some flexibility in responding to what I suspect will be many requests for intervention.

Attachment

THE WHITE HOUSE

WASHINGTON

January 5, 1984

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS JGR

SUBJECT: Allen v. Carmen: Nixon Files Case

The factors to consider in deciding whether to appeal Judge Hogan's decision in the Nixon files case may be broken down into three categories: those factors pertaining to the broader legal significance of the issues decided in the case, those concerning executive privilege issues (not discussed in the case), and those concerning the public perception of whatever decision is made.

The Legal Issues Decided by Judge Hogan

1. No new law was created on most of the issues briefed by the Government -- laches, standing, exhaustion, etc. -- and accordingly there is no reason beyond this case to appeal the rulings on those issues.

2. New law was created on the question of the retroactive application of INS v. Chadha, but this is a uniquely unsuitable case to appeal on that issue:

   a. The vast majority of legislative veto provisions were never exercised. It makes no sense to use as the vehicle for deciding the retroactivity issue in the important D.C. Circuit a case in which the legislative veto was repeatedly exercised and in which the Government has been compelled to concede that the legislative veto affected the final regulations.

   b. Judge Hogan's decision has little precedential value on the broader retroactivity issues, as the opinion itself recognizes: "The repeated exercise of the one-house veto provision...distinguishes this case from EEOC v. Allstate Ins. Co....In that case, the District Court invalidated a statute which reorganized Executive Branch responsibilities because it contained a one-house veto provision, even though the one-house veto was never exercised.

This case involves a continued and deliberate exercise of the power to redraft regulations in much the same way that legislation would be molded." Allen v. Carmen, slip op. at 38-39. Accordingly, there is no need for an appeal to "correct" this decision, since it is so narrow that it will have little if any applicability beyond this case.

c. Despite their status as former Nixon White House staff members, the plaintiffs are able to present compelling fairness arguments that might cloud resolution of the retroactivity issue.

Executive Privilege Issues

1. If successful on appeal, we would be stuck with the present public access regulations, which make no provision for safeguarding executive privilege interests. A successful appeal would leave us once more navigating between the Scylla and Charybdis of defending executive privilege and appearing to be shielding Nixon sensitive files or avoiding political costs by releasing the files and thereby compromising our commitment to executive privilege.

2. Not appealing provides the opportunity of addressing executive privilege concerns in the course of drafting new access regulations.

Perception Issues

1. Appealing should not be perceived as promoting the goal of public access, since an appeal will likely delay access more than would issuing new regulations.

a. Even if we prevail on appeal, plaintiffs will doubtless seek Supreme Court review, further delaying public access.

b. We can credibly maintain that issuing new regulations will result in quicker ultimate public access than an appeal. Litigation is what has delayed access in the past. By foregoing two layers of litigation (Court of Appeals and Supreme Court review on this issue), we are expediting the process, particularly since -- as Judge Hogan made clear -- his decision does not in any way go to the merits on the question of public access. See slip op. at 46 ("Its decision is aimed at the process of providing for access not at the result of access itself.") Any problems of public perception caused by a decision not to appeal can be dissipated by explaining that appealing a decision that did not speak to ultimate access would simply further delay the opening of the files.

THE WHITE HOUSE

WASHINGTON

January 4, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS /s/

SUBJECT: Florida Law on Recording Telephone Conversations

The story in today's New York Times suggests that Florida law governing recording of telephone conversations may be of interest. Until October 1, 1974, Florida law was identical to Federal law on this subject, excepting from the general prohibition against interception of wire communications any interception by or with the consent of one party to the conversation. In 1974, however, the Florida legislature repealed this exception and substituted an exception reading: "It is lawful under this chapter for a person to intercept a wire or oral communication when all of the parties to the communication have given prior consent to such interception." Fla. Stat. Ann. § 934.03(2)(d).

Since no exception covers one-party consent taping of telephone conversations, we are thrown back to the general prohibition. That general prohibition makes it a third degree felony in Florida for anyone willfully to "intercept" a wire or oral communication. Fla. Stat. Ann. § 934.03(1)(a). "Intercept" is defined as "the aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical, or other device." Id. § 934.02(3). This is an awkward way of prohibiting the recording of one's own telephone conversations, and it is clear that the statute was primarily directed at the more common notion of third-party "bugging." Nonetheless, the language of the prohibition can be considered to embrace taping conversations to which one is a party, a conclusion fortified by the negative pregnant flowing from the explicit exception for taping conversations with the consent of all parties.

The question whether the Florida statute prohibits recording of one's own telephone conversations without the consent of the other party was decided in the affirmative in 1981 by the narrowest of margins, 4-3. State v. Tsavaris, 394 So. 2d 418 (Fla. 1981).

As correctly noted in the Times story, a third degree felony is punishable by imprisonment not to exceed five years and/ or a fine not to exceed $5,000.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 9, 1984

FOR: FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Disaster Declaration for Texas -- December, 1983 Severe Freezing Temperature Damage

James Jenkins' office asked us Saturday afternoon to review as soon as possible a request from Governor Mark White of Texas for Presidential declaration of a "major disaster," within the meaning of the Disaster Relief Act of 1974, Pub. L. No. 93-288, principally codified at 42 U.S.C. §§ 5122 *et seq*. The request relates to damage caused by severe freezing temperatures in December of last year.

White's original request dated December 30, 1983 was legally deficient and White was so advised by the Federal Emergency Management Agency. An appropriately revised request was received on January 5, 1984. Based on a review of the revised request and the related materials forwarded by FEMA, which recommends that the request be granted, the request appears to comply with the statutory requirements. "Severe freezing temperature" is not specifically mentioned as being within the meaning of "major disaster" in 42 U.S.C. § 5122(2) (unless considered encompassed by the word "storm"), but it is covered by the catch-all "other catastrophe." The request letter complies with § 301(b) of the Act, 42 U.S.C. § 5141(b), since it was sent by the Governor; includes a finding that effective response to the disaster is beyond the capabilities of the State and affected local governments; states that the State emergency plan has been implemented; and includes information on the extent and nature of State resources that will be committed to alleviate the disaster.

After reviewing this matter with Mr. Hauser, I advised Jenkins' office that we had no legal objection to proceeding with the disaster declaration. A memorandum for Darman memorializing this advice is attached for your review and signature.

Attachment

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 9, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Disaster Declaration for Texas --
December, 1983 Severe Freezing Temperature Damage

James Jenkins' office asked us on January 7, 1984 to review as soon as possible a request from Governor Mark White of Texas for Presidential declaration of a "major disaster," within the meaning of the Disaster Relief Act of 1974, Pub. L. No. 93-288.

Based on a review of the request and the related materials supplied by the Federal Emergency Management Agency, we concluded that the request complied with the statutory requirements for a major disaster declaration. We also noted no legal objection to the implementation materials prepared by FEMA in connection with this request. We orally advised Mr. Jenkins' office of our views on January 7.

cc: James E. Jenkins

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 9, 1984

FOR: FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: H.R. 4017

OMB has asked for our views on a proposed GSA report on H.R. 4017, a bill that would terminate the authority of the Administrator of GSA to accept land, buildings, and equipment donated for use as a Presidential library. That authority is currently codified at 44 U.S.C. § 2108. The ostensible purpose of the bill is to eliminate the escalating costs associated with the maintenance and operation of Presidential libraries.

The proposed GSA letter correctly notes that H.R. 4017 would increase, not decrease government expenses. The Presidential Records Act of 1978 requires the Archivist to maintain Presidential records in an archivial facility, 44 U.S.C. § 2203(f), so H.R. 4017 would simply add the cost of acquiring such a facility to existing expenses. I have reviewed the proposed GSA report and have no objections. The objective description of the terms of the Presidential Records Act of 1978 in the report is accurate.

Attachment

THE WHITE HOUSE

WASHINGTON

January 9, 1984

MEMORANDUM FOR GREG JONES
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: GSA Report on H.R. 4017

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

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 9, 1984

FOR: H.P. GOLDFIELD

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

SUBJECT: Photo Request

As you requested. Anything to keep your future constituents happy.

U.S. DEPARTMENT OF COMMERCE

December 14, 1983

To : John G. Roberts, Jr.

From: H.P. Goldfield

I believe this is Counsel's Office business. . .

HO HO HO!

TRANSMITTAL FORM CD-82A (10-67)
PRESCRIBED BY DAO 214-2

USCOMM-DC 1252-P67
GPO : 1976 O - 216-489

Naugatuck, Conn
Nov. 8, 1983

Dear Mr. Goldfield:

Recently I had seen a beaftiful portrait of President Reagan that you had mailed to a friend of mine here in Naugatuck.

Since I am a staunch Republican I would be greatly honored to receive a portrait signed to me <u>Jean Yacek</u> and autographed by president Reagan.

Thank you kindly.

Patriotically
Jean Yacek
489 Cherry St
Naugatuck Conn
06770

THE WHITE HOUSE

WASHINGTON

January 9, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Inquiry From Legal Services Corporation on the Constitutionality of Restrictions in Legal Services Corporation Appropriations Bill

Steve Galebach, who works for Mike Uhlmann, contacted me concerning an inquiry he had received from Dan Bogárd, President of the Legal Services Corporation (LSC). (Bogard contacted Galebach because they know each other.) Bogard was interested in determining what support, if any, he could expect from the White House and the Justice Department if LSC were to challenge the so-called "Weicker Amendment" to its appropriations bill. This provision requires LSC to fund grantees in fiscal year 1984 at the same proportionate level as they were funded in fiscal year 1983, "unless action is taken by directors of the Corporation prior to January 1, 1984, who have been confirmed in accordance with section 1004(a) of the Legal Services Corporation Act." Department of Justice and Related Agencies Appropriation Act, 1984; Public Law 98-166, Title II (see attachment).

When he signed this law the President stated:

> To the extent that this provision may be intended to disable persons appointed under the Constitution's provision governing Presidential appointments during congressional recesses from performing functions that directors who have been confirmed by the Senate are authorized to perform, it raises troubling constitutional issues with respect to my recess appointments power. The Attorney General has been looking into this matter at my request and will advise me on how to interpret this potentially restrictive condition. 19 Weekly Compilation of Presidential Documents 1619 (November 28, 1983).

LSC attorneys are examining whether LSC is bound by the Weicker Amendment or if it may be ignored as unconstitutional, and Bogard is interested in obtaining the Administration's views.

Ted Olson advised me that his office had been examining the question for over a year on a "back burner" basis. He indicated that there was a sharp difference of views within his office and that he personally found the issues very difficult. Olson stated that he would respond to a request for an opinion from Bogard, but that he would prefer the request to come from our office, primarily because such a course afforded more flexibility in deciding what to do with the opinion once we find out what it will say.

On the merits, I do not share Olson's view that the issues are particularly difficult, at least with respect to the position we should take. As guardian of the legal prerogatives of the Presidency, we should resist any Congressional effort to demean the recess appointment power by distinguishing between the powers of confirmed and recess-appointed nominees. Olson views the difficulty as arising from the fact that Congress in this instance exercised authority in an appropriations bill, but Congress cannot accomplish through the budgetary process that which it is constitutionally prohibited from doing directly. Congress can decide not to fund LSC, and thereby deprive our recess-appointed directors of authority, but if LSC is funded at all, Congress cannot condition decisions with respect to those funds on whether the directors are confirmed or recess-appointed. This position is consistent with the fact that we have never conceded the constitutionality of the Pay Act -- also an exercise of Congress' budget authority -- which purports to limit the circumstances under which recess appointees may be paid.

Since Bogard wants to know what LSC may do, and since the issue directly affects the constitutional authority of the President, I recommend requesting a formal opinion from Olson. We can decide what to do with it once we see what it says.

Attachment

THE WHITE HOUSE

WASHINGTON

January 9, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Swafford Correspondence Concerning Jesse Jackson

Attorney Carl Swafford of Chattanooga has written the President, complaining that the Departments of Education, Labor, HHS, and Commerce have failed to institute litigation against Jesse Jackson for alleged misuse of funds obtained by him for Operation Push and Push for Excellence. I recommend a referral to Justice for whatever action may be appropriate. Swafford did not mention Justice as one of the delinquent departments, but any litigation would be handled there. I do not think the White House should become directly involved in reviewing or responding to these allegations.

Attachment

THE WHITE HOUSE

WASHINGTON

January 9, 1984

MEMORANDUM FOR EDWARD C. SCHMULTS
DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Swafford Correspondence Concerning Jesse Jackson

The attached correspondence from Carl Swafford to the President, together with a copy of my interim reply, is submitted for your review and whatever action you deem appropriate.

Many thanks.

Attachments

FFF:JGR:aea 1/9/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 9, 1984

Dear Mr. Swafford:

Thank you for your letter of November 21, 1983 to the President, inquiring why the Departments of Education, Labor, Health and Human Services, and Commerce have not initiated litigation against the Reverend Jesse Jackson for alleged misuse of funds secured by him for Operation Push, Inc. and Push for Excellence, Inc. I have referred your letter to the Department of Justice, the Department responsible for federal litigation, for review and whatever action that Department considers appropriate.

Sincerely,

Fred F. Fielding
Counsel to the President

Carl A. Swafford, Esquire
Swafford & Mitchell
Ninth Floor, Maclellan Building
Chattanooga, TN 37402

FFF:JGR:aea 1/9/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 10, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Proposed Executive Order Entitled "Delegation to the Secretary of State Concerning Foreign Assistance"

Richard Darman has asked for comments by close of business January 12 on the above-referenced proposed Executive Order. The Executive Order would add to the list of Presidential functions delegated to the Secretary of State in Executive Order 12163 certain certification and reporting responsibilities imposed on the President by the Continuing Resolution. The proposed order was submitted by the State Department and has been approved by OMB and, as to form and legality, by the Office of Legal Counsel. I have reviewed the proposed order and related materials, and have no objection.

Attachment

THE WHITE HOUSE

WASHINGTON

January 10, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Executive Order Entitled "Delegation to the Secretary of State Concerning Foreign Assistance"

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

FFF:JGR:aea 1/10/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 10, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Alfred J. Schweppe Correspondence

Your occasional correspondent Alfred J. Schweppe of Seattle has written, this time to praise the President for saying "If the Soviets want peace, there will be no war." I have drafted a brief reply, sending along a copy of the interview with the exact wording of the statement.

Attachment

THE WHITE HOUSE

WASHINGTON

January 10, 1984

Dear Mr. Schweppe:

Thank you for your letter of January 5, 1984, concerning the President's reported statement that "If the Soviets want peace, there will be no war." The exact words of the President, in the course of an interview with representatives of the wire services, were:

> I am prepared to say if the Soviet Government wants ~~peace,~~ peace there will be no war, because I know for a fact that no other country wants war with the Soviet Union. The ball is really in their court. If they want peace, they can have it.

I have enclosed, for your information, a copy of the full interview.

Thank you for sharing your views on this subject with us. We appreciate your supportive comments.

Sincerely,

Fred F. Fielding
Counsel to the President

Alfred J. Schweppe, Esquire
1600 Peoples National Bank
  Building
1415 Fifth Avenue
Seattle, WA 98171

FFF:JGR:aea 1/10/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 10, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Proposed GSA Reports on H.R. 3138 and H.R. 2446

OMB has asked for our views by January 13 on proposed GSA letters to House Government Operations Committee Chairman Jack Brooks on H.R. 3138 and H.R. 2446. The former bill would amend the Presidential Libraries Act to permit GSA to accept land, buildings, and equipment for a Presidential library only if there were also donated funds sufficient to establish an endowment to cover in full the anticipated costs of operating the facility. The latter bill would mandate a central depository for records of future former Presidents, and contains other miscellaneous provisions concerning former Presidents.

GSA proposes to object to both bills. It notes that the private endowment requirement of H.R. 3138 is inappropriate, not only because the papers in question become Government property, but also because the costs of operating and maintaining a Presidential Archival facility are not stable, precluding any reasonable determination if the amount of an initial endowment is adequate. GSA also objects to the provision making the bill effective as of May 25, 1983, since it would then cover the Nixon and Carter libraries, which are in various stages of development under different rules. GSA recommends that the bill, if passed, be effective only for libraries for Presidents first taking office on or after January 20, 1985.

GSA objects to the central depository notion of H.R. 2446, contending that the current system of dispersed, donated facilities is less expensive. The proposed GSA report also criticizes the "phased construction formula" for the central depository in H.R. 2446 as based on unrealistic assumptions concerning the volume of Presidential papers and the needs of those who will be using the facility. With respect to the miscellaneous provisions concerning former Presidents, GSA recommends that a proposed 4000 square foot office limit only be applied prospectively (two of the three former Presidents exceed the limit), and that a former President be provided a temporary office in the Washington area for the period immediately after he leaves office.

H.R. 2446 would appropriate $750,000 for a former President and Vice President for transition purposes. GSA recommends setting the figure at $1 million and adding a provision requiring that the President include in his budget "for each fiscal year in which his regular term of office will expire" a proposed appropriation for carrying out this section of the Act. This suggestion would impose an odd obligation on an incumbent planning to run for a second term. Thus, if GSA's recommendation were in effect, the budget President Reagan will submit next month would have to include an appropriation for his transition out of office next year. I recommend deleting this effort to legislate pessimism. I have raised the matter with OMB, and officials there assure me they will delete the GSA proposal for reasons independent of those outlined above. OMB always objects to any effort to legislate the content of the President's budget, which is precisely what the GSA proposal would do.

The flurry of reports on Presidential libraries is, incidentally, occasioned by the imminence of hearings before Brooks' committee on this subject.

Attachment

THE WHITE HOUSE

WASHINGTON

January 10, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed GSA Reports on H.R. 3138 and H.R. 2446

Counsel's Office has reviewed the proposed GSA report on H.R. 3138, and finds no objection to it from a legal perspective. We have also reviewed the proposed GSA report on H.R. 2446. On page 3 of that proposed report, we recommend deleting the last sentence of the fourth paragraph. As a general matter we should resist, and certainly not gratuitously recommend, restrictions on the President's discretion concerning what to include in his budget. In this case there is the additional objection that the provision proposed by GSA would impose on an incumbent planning to run for a second term the uncomfortable burden of proposing an appropriation for his transition out of office.

FFF:JGR:aea 1/10/84
cc: FFFielding/JGRoberts/Subj/Chron