Collection: Roberts, John G.: Files
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WITHDRAWAL SHEET

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Collection Name		***Withdrawer***	
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DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	ROBERTS TO FIELDING RE RAILROAD RETIREMENT BOARD (PARTIAL)	1	2/3/1984	B6	677

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

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

E.O. 13233

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

WITHDRAWAL SHEET
Ronald Reagan Library

Collection Name
ROBERTS, JOHN: FILES

Withdrawer
IGP 8/5/2005

File Folder
CHRON FILE (02/01/1984 - 02/06/1984)

FOIA
F05-139/01
COOK

Box Number

441GP

DOC NO	Document Type / Document Description	No of pages	Doc Date	Restrictions	
1	MEMO ROBERTS TO FIELDING RE RAILROAD RETIREMENT BOARD	1	2/3/1984	B6	677

Released in Part 4/21/06

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E.O. 13233

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THE WHITE HOUSE

WASHINGTON

February 1, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Wall Street Journal Interview -- Scheduled for February 2, 1984 With the President

Richard Darman has asked that we send any comments on the attached interview briefing materials directly to Mike Baroody by 3:30 p.m. today. The bulk of the materials concerns the progress of the economic recovery. There is a question and answer on the line-item veto, in which the President states he would welcome even the one-year experiment proposed by some Democrats. He expresses a preference for a Constitutional amendment, to effect permanent structural change, but nothing in the draft answer precludes acceptance of our suggested statutory approach of enhanced Presidential authority not to spend individual items of appropriation.

There is also a question and answer on resistance to protectionist pressures, in which the President reiterates his commitment to free trade but, appropriately, notes that we will enforce the law with respect to subsidization or other unfair trade practices. Nothing in the draft answer compromises the pending applications for protection under § 201 of the Trade Act of 1974, 19 U.S.C. § 2251.

I have no legal objections.

Attachment

THE WHITE HOUSE

WASHINGTON

February 1, 1984

MEMORANDUM FOR MICHAEL E. BAROODY
DEPUTY ASSISTANT TO THE PRESIDENT
DIRECTOR, PUBLIC AFFAIRS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Wall Street Journal Interview -- Scheduled for February 2, 1984 With the President

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

cc: Richard G. Darman

FFF:JGR:aea 2/1/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 1, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Scheduling Request: Meeting With Raoul Wallenberg Legal Defense Committee

Fred Ryan has asked for a recommendation from us as soon as possible on a request from the Raoul Wallenberg Legal Defense Committee to schedule a meeting with the President. You will recall that Wallenberg was the Swedish diplomat whose efforts in Hungary during World War II saved thousands of Jewish lives. He was imprisoned by the Soviets when they "liberated" Hungary, and his fate has been clouded ever since. The Soviets concede that he was in their custody until 1947, but they assert that he died that year. Some who have studied the question believe there is a possibility that Wallenberg is still alive in a Soviet prison.

The Raoul Wallenberg Legal Defense Committee, led by Professor Morris Wolff of Delaware Law School, is planning to file a lawsuit against the Soviet Union on behalf of Wallenberg's half brother and his legal guardian, seeking Wallenberg's release and $39 million in compensatory damages. The names on the draft complaint include prominent attorneys from reputable firms in Philadelphia and New York. The suit is based on international law and various treaties and covenants, as well as 18 U.S.C. §§ 1116(a), (c) and 1201(a)(4), (c). Those provisions establish criminal penalties for the murder or kidnapping of an "internationally protected person" such as Wallenberg. The basic underlying problem with the contemplated suit is that private parties may not bring actions to enforce criminal statutes, international treaties and covenants, or international law in general.

The Committee is scheduled to appear on the Today Show on February 2, with Congressman Lantos, the moving force behind passage of the Wallenberg Honorary Citizenship statute signed by the President on October 5, 1981. In a letter to Deaver dated January 27, the Committee requested a meeting with the President on February 2 or 3 to discuss their activities.

The President should not meet with the Legal Defense Committee. Even if Wallenberg is still alive, the private lawsuit is somewhat quixotic, and legally ill-founded. The question of the Government's reaction should be addressed in the first instance by the State Department Legal Adviser. Deputy Legal Adviser Dan McGovern and, in particular, Assistant Legal Adviser Robert Dalton are very familiar with the Wallenberg case. I recommend referring the Committee to the Legal Adviser's office.

[By way of background, you will recall that Wolff wrote the President earlier, urging him to invoke his power under 22 U.S.C. § 1732 to attempt to secure the release of Wallenberg. After receiving guidance from the State Department I submitted a memorandum and draft response to you on January 25. That response may still be sent.]

A draft reply to Ryan is attached. I have also prepared a memorandum to McGovern, alerting him to the fact that you have recommended that he or someone from his office meet with the Committee.

Attachments

THE WHITE HOUSE

WASHINGTON

February 1, 1984

MEMORANDUM FOR DANIEL W. MCGOVERN
DEPUTY LEGAL ADVISER
U.S. DEPARTMENT OF STATE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Scheduling Request: Meeting With Raoul Wallenberg Legal Defense Committee

The Raoul Wallenberg Legal Defense Committee is planning to file a lawsuit against the Soviet Union, seeking Wallenberg's release and compensatory damages of $39 million. They will be appearing on the Today Show on February 2, and have requested a meeting with the President. I have recommended to Fred Ryan, Director of Scheduling, that the Committee not meet with the President but be referred to your office instead.

FFF:JGR:aea 2/1/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 1, 1984

MEMORANDUM FOR FREDERICK J. RYAN, JR.
SPECIAL ASSISTANT TO THE PRESIDENT
DIRECTOR OF SCHEDULING

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Scheduling Request: Meeting With
Raoul Wallenberg Legal Defense Committee

You have asked for our views on a request by the Raoul Wallenberg Legal Defense Committee ("the Committee") to meet with the President. We recommend that the President not meet with the Committee, but that the Committee be referred to the State Department Legal Adviser's Office. Both Deputy Legal Adviser Dan McGovern and Assistant Legal Adviser Robert Dalton are familiar with the Wallenberg case, and it would be appropriate for them to meet with the Committee. While the Pesident has made it clear on several occasions that he shares the commitment of the Committee to obtain from the Soviets an accounting of Wallenberg's fate, the Committee's contemplated lawsuit raises several questions that are best addressed by the attorneys at the State Department.

FFF:JGR:aea 2/1/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 1, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Potus Remarks: Ceremony Honoring Black History Month -- Thursday, February 2, 1984

Richard Darman has asked that comments on the above-referenced remarks be sent directly to Ben Elliott by 10:00 a.m. today. The remarks cite several examples of blacks who contributed in the areas of commerce, medicine, sports, entertainment, the military, and the struggle for civil rights. The President on page three refers to the signing of the King holiday bill, in a manner that I hope will not be considered disingenuous. I have no legal objections.

Attachment

THE WHITE HOUSE

WASHINGTON

February 1, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Potus Remarks: Ceremony Honoring Black History Month -- Thursday, February 2, 1984

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

cc: Richard G. Darman

FFF:JGR:aea 2/1/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 2, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Connie Marshall Seal Inquiry

On the attached memorandum you asked if your grant of permission to use the Seal would end the controversy. The answer is no. Any use of the Seal of the President must clear two separate hurdles: 18 U.S.C. § 713(b) and § 713(a). The section 713(b) hurdle is cleared if the use falls within one of the specific categories of Executive Order 11649 or if the Counsel to the President gives written permission pursuant to subsection 1(g) of the Executive Order. The grant of permission, however, only goes to compliance with § 713(b). Only § 713(b) refers to regulations promulgated by the President, and the Executive Order expressly is issued by virtue of the authority in § 713(b).

Even if a use of the Seal is permissible under § 713(b), because it falls within one of the permitted categories or has been approved by you in writing, it must still comply with § 713(a). That subsection prohibits any use of the Seal to convey or in a manner reasonably calculated to convey a false impression of Government sponsorship. It makes no reference to regulations promulgated by the President. Thus, theoretically at least, a use of the Seal approved by you in writing could still violate § 713(a) because it conveys a false impression of Government sponsorship or approval of the product on which the Seal appears.

In this case, there is no problem under § 713(b), since the Seal will be used in a book concerning the Presidency. There is a potential problem under § 713(a), however, since use of the Seal on the cover of the book may convey a false impression of Government approval or sponsorship of the book, depending on the actual appearance of the cover.

Attachment

THE WHITE HOUSE

WASHINGTON

January 30, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Seal Inquiry

Connie Marshall, of the Juvenile Books division of Random House, Inc., has requested a copy of the Seal of the President for possible use on the cover of the upcoming The Look-It-Up Book of Presidents. Marshall describes the volume as a children's trade book, and suggests the use of the Seal would be an "educational use."

Executive Order 11649, section 1(b), permits use of the Seal "in encyclopedias, dictionaries, books, journals, pamphlets, periodicals, or magazines incident to a description or history of...the Presidency." The contemplated use of the Seal by Random House thus appears to comply with 18 U.S.C. § 713(b), which prohibits use of the Seal except in accordance with regulations issued by the President.

A separate question is raised under 18 U.S.C. § 713(a), however, by the contemplated use of the Seal on the cover of the book. Section 713(a) prohibits knowing display of the Seal for the purpose of conveying or in a manner reasonably calculated to convey the false impression of governmental sponsorship. A use of the Seal can comply with 18 U.S.C. § 713(b) and the regulations issued thereunder and still violate 18 U.S.C. § 713(a). It is quite easy to imagine a use of the Seal on a book cover that runs afoul of § 713(a) by conveying the impression that the book is a government sponsored or approved publication.

I recommend sending Marshall a copy of the pertinent statute and Executive Order along with the Seal, and alerting her to the concern that the book cover not run afoul of § 713(a). I do not, as a general matter, think it advisable for us to seek pre-publication review of the precise nature of planned uses of the Seal that comply with § 713(b) on the ground that they might violate § 713(a). In this case that would involve review of a mock-up of the cover, after which we would be in the position of giving an advisory opinion on compliance with a criminal statute -- something I think we should never do.

Attachment

John – If I grant permission, doesn't that end the controversy? F.

THE WHITE HOUSE

WASHINGTON

February 2, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Seal Inquiry from Dorothy Vannerson on Behalf of the Advisory Committee on the Arts

Your office referred to me a telephone call from Dorothy Vannerson, an appointee of the President to the Kennedy Center Advisory Committee on the Arts. Mrs. Vannerson advised me that on May 3 the Kennedy Center will hold a salute to Roy Acuff, to celebrate his 80th birthday. Several legendary figures associated with country music and the Grand Ole Opry are scheduled to appear and perform. The Advisory Committee, according to Vannerson, is interested in having the Kennedy Center produce and give to Acuff and the performers commemorative belt buckles, with "A Salute to Roy Acuff. Happy 80th Birthday" surrounding either the Presidential Seal or the Great Seal. Vannerson was checking with our office on whether either seal could be used. She indicated no preference between the Presidential Seal or the Great Seal.

I see no legal problem with use of the Great Seal for this purpose. The pertinent statutory provision, 18 U.S.C. § 713(a), prohibits use of the Great Seal to convey a false impression of Government sponsorship or approval. To the extent the contemplated buckle conveys an impression of Government sponsorship or approval, however, it would not be false, if the buckle project is undertaken by the Kennedy Center Board of Trustees.

We should not approve use of the Seal of the President on the belt buckle. Such use does not fall within any of the categories of permitted uses enumerated in Executive Order 11649, and would accordingly violate 18 U.S.C. § 713(b). Mrs. Vannerson suggested the Presidential Seal could be used since the Advisory Committee was a Presidential Committee, but her premise is incorrect: the President appoints the members of the Advisory Committee, but its purpose is to advise the Kennedy Center Board of Trustees, not the President. (In any event, we are trying to restrict use of the Presidential Seal even by purely Presidential Advisory Committees.) Nor may the Kennedy Center be properly considered a Presidential entity: it is rather a part of the constitutionally anomalous Smithsonian Institution.

As is frequently the case, it is the unasked questions that raise the greatest concerns. The Advisory Committee is subject to the Federal Advisory Committee Act and accordingly cannot engage in other than advisory functions. See 5 U.S.C. App. I § 9(b). Minting and distributing a commemorative Roy Acuff 80th Birthday belt buckle would, of course, go beyond offering advice. My understanding was that the Advisory Committee would propose this idea to the Kennedy Center Trustees. To be on the safe side, the attached draft response to Vannerson cautions her that any action must be taken by the Board, not the Advisory Committee.

Attachment

THE WHITE HOUSE

WASHINGTON

February 2, 1984

Dear Mrs. Vannerson:

You have inquired of this office whether it would be permissible for either the Great Seal of the United States or the Seal of the President to appear on a belt buckle issued by the Kennedy Center to commemorate the scheduled May 3 salute to Roy Acuff.

The permitted uses of these official seals are governed by 18 U.S.C. § 713. Section 713(a) prohibits use of either seal to convey or in a manner reasonably calculated to convey a false impression of Government sponsorship or approval. In this case any impression of Government sponsorship or approval would not be false, since the buckles would be issued by the Kennedy Center Board of Trustees. Accordingly, section 713(a) presents no difficulties.

Section 713(b) imposes additional limits on the use of the Seal of the President, prohibiting any use that does not comply with regulations promulgated by the President. Those regulations are embodied in Executive Order 11649. A copy of the regulations, as well as the pertinent statutory provisions, is enclosed for your information. You will notice that the contemplated use of the Presidential Seal on the commemorative belt buckle does not fall within any of the permitted uses of the Seal. Accordingly, we must advise against use of the Seal of the President for this purpose. As noted above, however, the Great Seal may be used on the commemorative belt buckle.

I would point out that any decision to produce and issue the commemorative belt buckle must be made by the appropriate officials of the Kennedy Center. Such a project would be beyond the authority of the Advisory Committee on the Arts itself, which is limited by law to advisory functions.

Thank you for raising this matter with us. I hope this response is helpful, and please do not hesitate to contact this office again if you have further questions.

Sincerely,

Fred F. Fielding
Counsel to the President

Mrs. Dorothy Vannerson
607 Houston Avenue
Houston, TX 77007

FFF:JGR:aea 2/2/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 2, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Determination Under Section 301 Regarding Brazilian Subsidies on Soybean Exports

Richard Darman has asked for our views by close of business February 3 on a Presidential decision memorandum from William E. Brock concerning a § 301 case involving Brazilian soybeans. Section 301 of the Trade Act of 1974, 19 U.S.C. § 2411, authorizes the President to take "appropriate and feasible action" to enforce the rights of the United States under an international trade agreement or to respond to an unfair trade practice. In early 1983 the National Soybean Processors Association filed a petition with USTR pursuant to 19 U.S.C. § 2412, requesting Presidential action in response to various alleged Brazilian subsidies of the production and export of soybean oil and meal. On May 23, 1983, USTR initiated an investigation into the complaint, 19 U.S.C. § 2412(b)(2), and simultaneously initiated consultations with Brazil under the Subsidies Agreement of the General Agreement on Tariffs and Trade, as required by 19 U.S.C. § 2413. USTR has now submitted a recommendation to the President, as required by 19 U.S.C. § 2414. Pursuant to 19 U.S.C. § 2411(c), the President has twenty-one days to determine what action, if any, he proposes to take, and to publish his determination, and the reasons for it, in the Federal Register. The twenty-one days expires on February 14.

USTR recommends that the President direct USTR to pursue the matter through the Subsidies Agreement process, deferring any decision on what further action, if any, is necessary. The consultations initiated in May resulted in some progress, and our country and Brazil have agreed to exchange additional information as a prelude to possible resolution of all the outstanding issues. The recommendation has the unanimous support of the Trade Policy Committee (USTR, Agriculture, Commerce, State, Treasury, and Justice). USTR has also submitted a draft Memorandum of Determination implementing the recommendation.

I have reviewed the decision memorandum submitted by USTR, and the proposed Memorandum of Determination, and have no legal objections. The pertinent procedures of the § 301 process have been followed.

Attachment

THE WHITE HOUSE

WASHINGTON

February 2, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Determination Under Section 301 Regarding Brazilian Subsidies on Soybean Exports

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

FFF:JGR:aea 2/2/84
cc: FFFielding/JGRoberts/Subj/Chron

February 3, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: AFSCME v. Washington: Comparable Worth Case

I have reviewed Judge Tanner's opinion in AFSCME v. Washington, C82-465T (W.D. Wash 1983), the so-called "equal pay for work of comparable worth" case. The opinion granted back pay and injunctive relief under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e), to the class of state employees in jobs primarily (defined as 70% or more) held by women. The theory of the plaintiffs, accepted by the court, was not the traditional Title VII theory that women were being paid less than men doing the same or substantially the same work. The theory was not "equal pay for equal work." Rather, plaintiffs argued and the court agreed that the state violated Title VII because workers in a class of jobs held primarily by women were paid less than workers in a class of jobs held primarily by men, even though the work in both classes of jobs was, according to sociological studies admitted as evidence, "worth" the same.

For example, most truck drivers are male and most laundry workers female. The sociologists, using a four-category "point" system with points for knowledge and skills, mental demands, accountability, and working conditions, determined that driving a truck and working in the laundry are jobs of comparable worth. The predominantly male truck drivers make more than the predominantly female laundry workers, however, and, according to Judge Tanner, that is sex discrimination in violation of Title VII.

In his opinion Tanner recognized that the case was one of first impression. He sought, however, to derive significant support from the 1981 Supreme Court decision in County of Washington v. Gunther, 452 U.S. 161 (1981). In that case a sharply divided Court ruled, 5-4, that female prison guards hired to guard female prisoners could sue under Title VII, alleging that they were discriminatorily paid less than male prison guards hired to guard male prisoners. Defendants had argued that no violation of Title VII could be established, since the female guards could not allege that they were paid less than a man hired to do the same job -- i.e., a male guard hired to guard female prisoners (there was no such person). As noted, this argument was rejected by the narrowest of margins.

Judge Tanner's huge leap from Gunther to a comparison of totally dissimilar jobs such as those of truck drivers and laundry workers has no basis in the language or logic of Gunther. Justice Brennan's opinion for the Court in Gunther expressly noted that the claim in that case was "not based on the controversial concept of 'comparable worth,' under which plaintiffs might claim increased compensation on the basis of a comparison of the intrinsic worth or difficulty of their job with that of other jobs in the same organization or community." 452 U.S., at 166. Justice Rehnquist's dissent, joined by the Chief Justice and Justices Stewart and Powell, pointed out the flaws in the Court's opinion, but concluded that "its narrow holding is perhaps its saving feature. The opinion does not endorse the so-called 'comparable worth' theory...." Id., at 203.

It is difficult to exaggerate the perniciousness of the "comparable worth" theory. It mandates nothing less than central planning of the economy by judges. Under the theory judges, not the marketplace, decide how much a particular job is worth, and restructure wage systems to reflect their determination. The marketplace places a higher value on the work of truck drivers than on that of laundry workers, but Judge Tanner, under the guise of remedying gender discrimination, concluded that both jobs are "worth" the same and ordered that workers in both groups be paid the same. This is a total reorientation of the law of gender discrimination. Under the accepted view, if a qualified woman wanted to become a truck driver, and was denied the opportunity, or was given a job but paid less than a male truck driver, she could seek relief under Title VII. The comparable worth theory, by contrast, offers relief to any group of workers (either predominantly female or male) that can convince a judge that their jobs are intrinsically "worth" more than what they can command in the marketplace. What this theory means in terms of judicial planning of our economy is demonstrated by the frequent references in Judge Tanner's opinion to the 1976-1977 Washington state budget surplus "that could have been used to pay Plaintiff's [sic] their evaluated worth." Slip op., at 22; see also id., at 33.

A good sense of the type of jurist with which we are dealing in this case is conveyed by the following quotation from the opinion:

> Perhaps Defendant adopted the practices and concepts of sex discrimination against women in employment as just another manifestation of centuries old discriminatory attitudes and practices of a male dominated society. The Declaration of Independence probably sheds some light on the practices and concepts of sex discrimination so rampant in this country. "...That all men are created equal; That they are endowed by their creator with certain inalienable rights; That among these are Life, Liberty, and the Pursuit of Happiness." The female gender is conspicuously absent in the Declaration of Independence. Slip op., at 41.

The decision is being appealed to the Ninth Circuit by the State of Washington. No briefing schedule has yet been set. The United States did not participate below; it can participate as amicus in the Ninth Circuit, wait until the almost inevitable petition for Supreme Court review of whatever the Ninth Circuit decides, or not participate at all. I am advised that the Civil Rights Division will send a recommendation to the Solicitor General in two-three weeks. I strongly suspect that recommendation will be that the Government participate on the side of the State before the Ninth Circuit. Whether this makes political sense, when there is the option of waiting until the case reaches the Supreme Court, will have to be addressed at some level above the Civil Rights Division.

As you doubtless know, the issue of possible participation by the United States has already attracted considerable media attention. There is no need for action by our office at this time, but we should be alert that the transition at Justice does not result in this decision receiving anything less than the most careful consideration, not only at Justice but over here as well.

THE WHITE HOUSE

WASHINGTON

February 3, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Power of the President to Remove Members of the Railroad Retirement Board

Presidential Personnel has asked for an opinion from our office concerning the authority of the President to remove members of the Railroad Retirement Board ("the Board") from office, particularly those in a holdover status. I have worked on questions concerning the Board in the past -- you may recall the dispute concerning whether the President was required to [redacted] to the Board as the choice of carrier representatives -- and have begun to research this question. I send it over at this point only to alert you to the inquiry, and for formal staffing. B6

I would point out, however, that my preliminary view is that the President may not remove members of the Board, even those in a holdover status. The Board is an "independent agency" and appears to have quasi-judicial functions, see 45 U.S.C. § 231f. The members serve fixed five-year terms, and there is a statutory holdover provision. I will advise further when I have completed some additional research.

THE WHITE HOUSE

WASHINGTON

February 3, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Power of the President to Remove Members of the Railroad Retirement Board

Presidential Personnel has asked for an opinion from our office concerning the authority of the President to remove members of the Railroad Retirement Board ("the Board") from office, particularly those in a holdover status. I have worked on questions concerning the Board in the past [redacted] and have begun to research this question. I send it over at this point only to alert you to the inquiry, and for formal staffing.

b6

I would point out, however, that my preliminary view is that the President may not remove members of the Board, even those in a holdover status. The Board is an "independent agency" and appears to have quasi-judicial functions, see 45 U.S.C. § 231f. The members serve fixed five-year terms, and there is a statutory holdover provision. I will advise further when I have completed some additional research.

THE WHITE HOUSE

WASHINGTON

February 3, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Civil Aeronautics Board Decisions in Aermediterranea - Linee Aeree and Intl. de Aviacion, S.A.

Richard Darman's office has asked for comments by February 7 on the above-referenced CAB decisions, which were submitted for Presidential review as required by § 801(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 1461(a). Under this section, the President may disapprove, solely on the basis of foreign relations or national defense considerations, CAB actions involving either foreign air carriers or domestic carriers involved in foreign air transportation. If the President wishes to disapprove such CAB actions, he must do so within sixty days of submission (in these cases, by March 9, 1984).

The orders here have been reviewed by the appropriate departments and agencies, following the procedures established by Executive Order No. 11920 (1976). OMB recommends that the President not disapprove, and reports that the NSC and the Departments of State, Defense, Justice and Transportation have not identified any foreign relations or national defense reasons for disapproval. Since these orders involve foreign carriers, the proposed letter from the President to the CAB Chairman prepared by OMB omits the standard sentence designed to preserve availability of judicial review.

The Aermediterranea order authorizes that carrier to provide service between the United States and Italy. The Internacional de Aviacion order authorizes freight service by that carrier between Panama and various coterminal points in the United States. OMB describes the orders as "routine, noncontroversial matters."

A memorandum for Darman is attached for your review and signature.

Attachment

THE WHITE HOUSE

WASHINGTON

February 3, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decisions in Aermediterranea - Linee Aeree and Intl. de Aviacion, S.A.

Our office has reviewed the above-referenced CAB decisions and related materials, and has no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(a).

We also have no legal objection to OMB's recommendation that the President not disapprove these orders or to the substance of the letter from the President to the CAB Chairman prepared by OMB.

FFF:JGR:aea 2/3/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 2, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Connie Marshall Seal Inquiry

On the attached memorandum you asked if your grant of permission to use the Seal would end the controversy. The answer is no. Any use of the Seal of the President must clear two separate hurdles: 18 U.S.C. § 713(b) and § 713(a). The section 713(b) hurdle is cleared if the use falls within one of the specific categories of Executive Order 11649 or if the Counsel to the President gives written permission pursuant to subsection 1(g) of the Executive Order. The grant of permission, however, only goes to compliance with § 713(b). Only § 713(b) refers to regulations promulgated by the President, and the Executive Order expressly is issued by virtue of the authority in § 713(b).

Even if a use of the Seal is permissible under § 713(b), because it falls within one of the permitted categories or has been approved by you in writing, it must still comply with § 713(a). That subsection prohibits any use of the Seal to convey or in a manner reasonably calculated to convey a false impression of Government sponsorship. It makes no reference to regulations promulgated by the President. Thus, theoretically at least, a use of the Seal approved by you in writing could still violate § 713(a) because it conveys a false impression of Government sponsorship or approval of the product on which the Seal appears.

In this case, there is no problem under § 713(b), since the Seal will be used in a book concerning the Presidency. There is a potential problem under § 713(a), however, since use of the Seal on the cover of the book may convey a false impression of Government approval or sponsorship of the book, depending on the actual appearance of the cover.

Attachment

THE WHITE HOUSE

WASHINGTON

January 30, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Seal Inquiry

Connie Marshall, of the Juvenile Books division of Random House, Inc., has requested a copy of the Seal of the President for possible use on the cover of the upcoming The Look-It-Up Book of Presidents. Marshall describes the volume as a children's trade book, and suggests the use of the Seal would be an "educational use."

Executive Order 11649, section 1(b), permits use of the Seal "in encyclopedias, dictionaries, books, journals, pamphlets, periodicals, or magazines incident to a description or history of...the Presidency." The contemplated use of the Seal by Random House thus appears to comply with 18 U.S.C. § 713(b), which prohibits use of the Seal except in accordance with regulations issued by the President.

A separate question is raised under 18 U.S.C. § 713(a), however, by the contemplated use of the Seal on the cover of the book. Section 713(a) prohibits knowing display of the Seal for the purpose of conveying or in a manner reasonably calculated to convey the false impression of governmental sponsorship. A use of the Seal can comply with 18 U.S.C. § 713(b) and the regulations issued thereunder and still violate 18 U.S.C. § 713(a). It is quite easy to imagine a use of the Seal on a book cover that runs afoul of § 713(a) by conveying the impression that the book is a government sponsored or approved publication.

I recommend sending Marshall a copy of the pertinent statute and Executive Order along with the Seal, and alerting her to the concern that the book cover not run afoul of § 713(a). I do not, as a general matter, think it advisable for us to seek pre-publication review of the precise nature of planned uses of the Seal that comply with § 713(b) on the ground that they might violate § 713(a). In this case that would involve review of a mock-up of the cover, after which we would be in the position of giving an advisory opinion on compliance with a criminal statute -- something I think we should never do.

John - If I grant permission, doesn't that end this controversy? F.

Attachment

THE WHITE HOUSE

WASHINGTON

February 6, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Go America, Inc.

George P. Hurdes, President of Go America, Inc., has written the President, asking him to support the use of the "Go America" symbol throughout government and industry. The copyrighted symbol, apparently the principal asset of Go America, Inc., is intended by its promoters to be used as a means of rekindling pride in American quality and productivity.

Go America, Inc., is not a 501(c)(3) organization, and it would be inappropriate for the President to endorse the use of a symbol that is the copyrighted property of a private corporation. The "Go America" paraphernalia accompanying Hurdes's letter suggests that Go America, Inc., intends to market the emblem in a variety of ways, and I do not think the President should promote this private, commercial venture.

Anne Higgins referred the letter to us, requesting a recommendation on a response. A memorandum to Higgins is attached, noting that it would be inappropriate for the President to endorse the use of an emblem that is the copyrighted property of a private corporation.

Attachment

THE WHITE HOUSE

WASHINGTON

February 6, 1984

MEMORANDUM FOR ANNE HIGGINS
SPECIAL ASSISTANT TO THE PRESIDENT
DIRECTOR OF CORRESPONDENCE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Go America, Inc.

You have requested a recommendation from this office on a response to the letter from George P. Hurdes, President of Go America, Inc., to the President. In his letter Mr. Hurdes asked the President to support the use of the "Go America" symbol throughout industry and government.

It would be inappropriate for the President to endorse the use of the "Go America" symbol, since it is the copyrighted property of a private corporation. Mr. Hurdes may be thanked for his supportive comments, but we must decline his request for Presidential endorsement of the use of his emblem.

FFF:JGR:aea 2/6/84
cc: FFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 6, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Draft Proclamation: Red Cross Month, 1984

Dodie Livingston has asked for our comments on the above-referenced draft proclamation, which was submitted by the American Red Cross and has been approved by OMB. The proclamation falls into the category of those traditionally issued, having been issued annually since 1943. The proclamation extols the work of the Red Cross, and urges Americans to generously support the work of their local Red Cross chapter. As is traditional, the proclamation describes the President as "Honorary Chairman of the American Red Cross."

I have no legal objections to the proclamation, but the first sentence of the first full paragraph on page 2 strikes me as cryptic at best. I do not know what is meant by "as our Nation's social conditions change." I recommend changing this to "as we face new challenges," or something similar.

Attachment

THE WHITE HOUSE

WASHINGTON

February 6, 1984

MEMORANDUM FOR DODIE LIVINGSTON
SPECIAL ASSISTANT TO THE PRESIDENT
DIRECTOR, SPECIAL PRESIDENTIAL MESSAGES

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Proclamation: Red Cross Month, 1984

Counsel's Office has reviewed the above-referenced draft proclamation, and finds no objection to it from a legal perspective. On page 2, line 4, however, "as our Nation's social conditions change" strikes us as cryptic at best. We recommend changing this to "as we face new challenges," or something similar.

FFF:JGR:aea 2/6/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 6, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Takeover by Texaco of Getty Oil and Finder's Fee to Grant MacDonald

Grant MacDonald, a self-styled "International Financial Advisor" from Toronto, has asked you to place a hold on the proposed Texaco takeover of Getty Oil until he is paid the $1 million finders fee allegedly owed him for presenting Reserve Oil to Getty. Getty acquired Reserve in 1980.

Our office should not become involved in this matter. I recommend referring MacDonald's correspondence to the FTC General Counsel for appropriate handling. A memorandum accomplishing that is attached for your review and signature, as is a letter to MacDonald noting the action we have taken.

Attachment

THE WHITE HOUSE

WASHINGTON

February 6, 1984

MEMORANDUM FOR JOHN H. CARLEY
GENERAL COUNSEL
FEDERAL TRADE COMMISSION

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Takeover by Texaco of Getty Oil and Finder's Fee to Grant MacDonald

The attached correspondence is submitted for whatever action you consider appropriate. We have no recommendation whatsoever and no continuing interest in this matter.

Many thanks.

FFF;JGR:aea 2/6/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 6, 1984

Dear Mr. MacDonald:

This is written in response to your letter of January 29, 1984, requesting that I place a hold on the proposed takeover of Getty Oil by Texaco until you are paid a finders fee of $1 million.

I have referred your correspondence to John H. Carley, General Counsel of the Federal Trade Commission, for whatever action he considers appropriate. Any further correspondence on this question should be directed to Mr. Carley.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Grant D. MacDonald II
33 Harbour Square
Suite 3239
Toronto, Ontario
CANADA M5J 2G2

FFF:JGR:aea 2/6/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 6, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Letter to President of Farmland Industries

Richard Darman has asked for our views by close of business today on the attached draft letter from the President to Kenneth A. Nielsen, President of Farmland Industries. The letter was prepared by OPD and has been approved by Joe Wright, Deputy Director of OMB. It is in response to a letter from Nielsen, on behalf of the "500,000 farm families who comprise the Farmland system," urging the President to support expansion of the Commodity Credit Corporation credit guarantee program. The letter was accompanied by a resolution signed by 1,089 members of the "Farmland family." The memorandum from Roger Porter to Darman seeking clearance of the letter notes that "there is good reason to believe" that it might be reproduced in the Farmland Industries newsletter.

On the specific point of the resolution, the response notes that the Administration has approved a $1 billion increase in agricultural export credit guarantees, bringing the total to $4 billion, the second highest level ever (though still short of the resolution's $6 billion request). The rest of the letter recognizes the problems plaguing the agricultural community, and reviews Administration efforts to respond to them. The letter also looks to the future, calling for "a new farm bill" in 1985 and efforts to open markets for American farm products. The letter concludes by noting that the Administration is embarking on a comprehensive review of food and agriculture programs.

I have no objections to the letter. It is a direct response to an inquiry concerning agricultural policies; there is no explicit or implicit endorsement of Farmland. Any reproduction and distribution of the letter is Farmland's business; all we are doing is writing to Nielsen.

Attachment

THE WHITE HOUSE

WASHINGTON

February 6, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Letter to President of Farmland Industries

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

FFF:JGR:aea 2/6/84
cc: FFFielding/JGRoberts/Subj/Chron