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DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	ROBERTS TO FRED FIELDING RE NOMINATION FOR PRESIDENTIAL MEDAL (PARTIAL)	1	6/7/1985	B6	1272

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THE WHITE HOUSE

WASHINGTON

June 4, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Wallace v. Jaffree

A sharply divided Supreme Court ruled today in Wallace v. Jaffree that an Alabama statute mandating a one-minute period of silence for "meditation or voluntary prayer" violated the Establishment Clause of the First Amendment. Justice Stevens wrote the opinion for the Court, which was joined unconditionally by only three other Justices -- Brennan, Marshall, and Blackmun. Justice Powell concurred in the opinion (giving Stevens a court); Justice O'Connor concurred in the judgment only; and the Chief Justice and Justices White and Rehnquist each wrote separate dissents. Although the Court struck down the Alabama statute, careful analysis shows at least a majority of the Justices would vote to uphold a simple moment-of-silence statute.

Justice Stevens's opinion for the majority reiterated the three-pronged Establishment Clause test announced in Lemon v. Kurtzman, 403 U.S. 602, 612-613 (1971): to survive constitutional challenge, a law must (1) have a secular purpose, (2) not have a primary effect of advancing or inhibiting religion, and (3) not foster excessive entanglement of the State in religion. The Alabama law failed the first part of the test, since its sponsors stated clearly in the legislative history that their purpose was to return voluntary prayer to schools, and that they had no other purpose. Slip op., at 17-18. The statute was thus struck down because of the peculiarities of the particular legislative history, not because of any inherent constitutional flaw in moment-of-silence statutes.

This conclusion is fortified by the other opinions. Justice Powell concurred because the statute must be assessed against the background of "Alabama's persistence in attempting to institute state-sponsored prayer in public schools," but he noted that "some moment-of-silence statutes may be constitutional." Slip op., at 1. Justice O'Connor wrote a 19-page opinion concurring in the judgment, "to identify the peculiar features of the Alabama law that render it invalid, and to explain why moment of silence laws in other States do not necessarily manifest the same infirmity." Slip op., at 2. The Chief Justice in dissent thought it simply ridiculous

to maintain that a moment of silence violated the Establishment Clause, and Justice White in dissent concluded that "a majority of the Court would approve statutes that provided for a moment of silence but did not mention prayer." Slip op., at 1. Finally, Justice Rehnquist in dissent called for abandoning the Lemon test, arguing from historical analysis that the Establishment Clause prohibited only establishing a state religion or preferring one denomination or sect at the expense of others. Thus, at least five Justices -- the three dissenters and Justices Powell and O'Connor -- would approve some moment-of-silence statutes.

The United States filed an amicus curiae brief defending the law as a neutral accommodation of the exercise of the students' religious freedoms. Again, this position lost as regards this particular statute, but can be seen to have prevailed more generally. The attached press guidance for Russell Mack emphasizes this positive spin. The President's revised Birmingham remarks state that the decision shows we still have an uphill battle to return prayer to schools, and that is accurate -- there is nothing positive in the opinion for prayer, only for a moment of silence.

(For what it's worth, a reading of the opinions strongly suggests that the outcome of this case shifted in the writing. As I see it, Rehnquist was writing for the Court -- he would not write 24 pages of dissent (longer even than Stevens's majority), and the structure and tone of the dissent is that of a majority opinion. He had five votes to uphold the statute, and tried to use the occasion to go after the bigger game of the Lemon test itself. O'Connor probably was in Rehnquist's original majority but was not convinced that the broad opinion applied to the facts, penning a dissent to the would-be majority -- her 19-page concurrence is directed solely to that opinion, critiquing it step-by-step and analyzing none of the others. It is very unusual for a concurrence to take on a dissent in such a fashion, and at such length. O'Connor's dissent apparently persuaded Powell to drop by the wayside as well, with a lame concurring opinion focusing on stare decisis, as if to explain why he was changing a vote. Thus, as I see it, Rehnquist took a tenuous five-person majority and tried to revolutionize Establishment Clause jurisprudence, and ended up losing the majority. Which is not to say the effort was misguided. In the larger scheme of things what is important is not whether this law is upheld or struck down, but what test is applied.)

THE WHITE HOUSE

WASHINGTON

June 4, 1985

MEMORANDUM FOR RUSSELL MACK
DIRECTOR, PUBLIC AFFAIRS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Wallace v. Jaffree

A sharply-divided Supreme Court ruled today, in Wallace v. Jaffree, that an Alabama statute providing for a one-minute period of silence "for meditation or voluntary prayer" violated the Establishment Clause of the First Amendment. Justice Stevens, joined by Justices Brennan, Marshall, Blackmun, and Powell, focused on the articulated purpose of the sponsors of the law. Those legislators stated that their purpose was to bring voluntary prayer back to the public schools, and that they had no other purpose. The law accordingly failed the Establishment Clause test announced in the 1971 decision of Lemon v. Kurtzman, since it had no secular purpose.

It is important to note, however, that at least five members of the Court -- a majority -- wrote that they would uphold some moment-of-silence statutes. Justice Powell indicated that he would in a separate concurring opinion, as did Justice O'Connor in an opinion concurring in the judgment. The Chief Justice and Justices White and Rehnquist, each of whom wrote a separate dissent, obviously consider such statutes constitutional. The Alabama law failed not because moment-of-silence statutes are necessarily unconstitutional, but because of the peculiarities of this particular statute, and its legislative history. As Justice White concluded, "a majority of the Court would approve statutes that provided for a moment of silence but did not mention prayer."

The opinions in Wallace v. Jaffree demonstrate the need to continue to push for a school prayer amendment. They also demonstrate, however, that some moment-of-silence laws may be constitutional even in the absence of such an amendment.

FFF:JGR:aea 6/4/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

June 5, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Potential Changes in the Review Process for International Aviation Decisions Submitted to the President

I have reviewed the changes in the review process for international aviation decisions proposed by Connie Horner. I agree that it is necessary to revise Executive Order 11920, in light of the "sunset" of the Civil Aeronautics Board (CAB). I am not convinced, however, of the desirability of the principal change in the review process proposed by Ms. Horner.

Ms. Horner would establish a two-track system for review of international aviation orders proposed by the Department of Transportation (DOT). Review would be coordinated by DOT unless an affected agency contemplated recommending disapproval of an order. In that event, review would be coordinated by OMB.

Providing distinct review processes depending on the merits of a case, however, discloses significant information about the Presidential deliberative process. Thus, whenever a case were channeled to OMB, interested parties and observers would know that at least one of the affected agencies objected to the proposed decision, even if the President ultimately decided not to disapprove it. In addition, agencies may become reluctant to voice minor qualms about an order, if doing so requires activating a special review process. The President, however, should be made aware of all agency concerns, and not have some filtered out because of the administrative costs of raising them.

These are, admittedly, not overly serious problems, but I see no benefits to the two-track approach that outweigh them. Indeed, the two-track approach is inefficient, in that it requires two sets of bureaucrats trained in handling Section 801 cases -- one in DOT and one in OMB -- rather than one.

I would delete sections 3(a), (b), and (c) of Ms. Horner's proposed order. I would style the first sentence of section 3 as section 3(a), change 4(a) to 3(b), and 4(b) to 3(c), and renumber the remainder of the order accordingly. I have no strong views on whether time deadlines for submission of agency views to OMB should be imposed in the Executive Order.

FFF:JGR:aea 6/5/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

June 5, 1985

MEMORANDUM FOR FRED F. FIELDING

THRU: RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: Potential Changes in the Review Process for International Aviation Decisions Submitted to the President

Connie Horner has asked David Chew for White House reactions to a proposed revision of the Executive Order governing processing of international aviation decisions. Chew has asked for your views by June 5. Horner proposes transferring responsibility for coordinating the interagency review process from OMB to Transportation in all non-controversial cases. If any affected agency should recommend or contemplate recommending disapproval of a proposed order, OMB would reassume responsibility for processing the case. Horner's proposal would also establish a 28-day deadline for agencies to communicate their views to Transportation in non-controversial cases. The provisions on ex parte contacts would be unchanged, generally prohibiting individuals within the Executive Office of the President from discussing section 801 cases with private parties.

A new Executive Order should be issued, but I do not agree with Horner's proposed changes. Providing distinct review processes depending on the merits of a case discloses significant information about the Presidential deliberative process. Thus, whenever a case were channeled to OMB, interested parties and observers would know that at least one of the affected agencies objected to the proposed decision, even if the President ultimately decided not to disapprove it. In addition, agencies may become reluctant to voice minor qualms about an order, if doing so requires activating a special review process. The President, however, should be made aware of all agency concerns, and not have some filtered out because of the administrative costs of raising them.

These are, admittedly, not overly serious problems, but I see no benefits to the two-track approach that outweigh them. Indeed, the two-track approach is inefficient, in that it requires two sets of bureaucrats trained in handling

section 801 cases -- one in DOT and one in OMB -- rather than one.

For the foregoing reasons, I recommend objecting to the proposed two-track system. I would suggest instead simply revising Executive Order 11920 to reflect the transfer of CAB responsibilities in these cases to Transportation, without substantive changes. The only changes I would make, other than changing "CAB" to "Department of Transportation," are:

° include a new sentence specifically directing OMB to coordinate submission of agency recommendations to the President. OMB's current role in this regard is based only on custom and practice.

° change "defense or foreign policy" in Executive Order 11920 wherever it appears to "foreign relations or national defense." The Executive Order antedates the 1978 amendments to the Act, and restricted Presidential review of international aviation decisions to "defense or foreign policy" considerations before the 1978 amendments restricted Presidential review to "foreign relations or national defense" considerations. The Executive Order should be changed to track the new statutory terminology. (This is not a substantive change. Horner makes this change in her proposal.)

After consideration of our discussion after yesterday's staff meeting, I do not recommend expanding the current provision generally barring ex parte contacts in section 801 cases to cover all aviation matters, whether or not they are subject to Presidential review under section 801. In the first place, this Executive Order is concerned only with section 801 cases -- a provision governing ex parte contacts in other types of aviation decisions would be out of place. Second, our policy generally prohibiting White House participation in particular regulatory decisions, procurement matters, or adjudications is just that -- a policy. There is nothing illegal, as a general matter, with White House staff or the President becoming involved in such decisions, at least so long as the decision-making responsibility is in the Executive Branch, as it now is with respect to aviation decisions. In a rare case, we may want to become involved, and we should not elevate a prudential policy against such involvement to the level of regulation codified in an Executive Order.

Attachment

THE WHITE HOUSE

WASHINGTON

June 6, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: INSPIRE '85/Presidential 10K Race

The President's Committee on Employment of the Handicapped (PCEH) is sponsoring Inspire '85: An International Forum and Festival on Leisure, Sports and Cultural Arts for Disabled Persons, to be conducted in Washington September 17-21, 1985. The First Lady is Honorary Chairman of Inspire '85. Fred Ryan's office has been working with PCEH on the event, and has asked if a planned ten-kilometer race around the mall for the disabled could be called a "Presidential 10-k Race for the Physically Challenged."

I have no objection. The event is already closely affiliated with the President, since it is sponsored by the PCEH and the First Lady is Honorary Chairman. It is not a fundraising event.

Attachment

THE WHITE HOUSE

WASHINGTON

June 6, 1985

MEMORANDUM FOR FREDERICK J. RYAN, JR.
DEPUTY ASSISTANT TO THE PRESIDENT
DIRECTOR, PRESIDENTIAL SCHEDULING

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: INSPIRE '85/Presidential 10K Race

You have asked if a ten-kilometer race around the Mall for the disabled, to be held in conjunction with Inspire '85: An International Forum and Festival on Leisure, Sports and Cultural Arts for Disabled Persons, may be designated a "Presidential 10-k Race for the Physically Challenged." The President is already associated with this event, since it is sponsored by the President's Committee on Employment of the Handicapped and the First Lady is Honorary Chairman of the event. It is not a fundraising event. Under these unique circumstances, I have no legal objection to labeling the 10-k race "Presidential."

FFF:JGR:aea 6/6/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

June 6, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Superfund Improvement Act of 1985

OMB has provided us with a copy of testimony Hank Habicht proposes to deliver before the Senate Judiciary Committee tomorrow on the Superfund program and proposed amendments to the Superfund Act. The testimony describes at some length the EPA and Lands Division procedures for securing private clean-up of hazardous waste sites by responsible parties. From both monetary and timeliness perspectives, such negotiated clean-ups are far preferable to litigation. The testimony also discusses the Department's policy on choosing defendants when litigation is necessary, in an effort to quiet fears that the Department will seek to hold an insignificant contributor to a waste site liable for the entire clean-up on the basis of joint and several liability of tortfeasors.

Turning to proposed amendments to the Superfund Act, Habicht supports an Administration proposal to codify various settlement procedures, and to codify the right of defendants in Superfund cases to contribution from joint tortfeasors. The testimony also supports a proposal to permit the responsible waste generators to participate with EPA in selecting an appropriate clean-up remedy. Habicht opposes, however, a proposed amendment that would create a new private cause of action for any citizen for non-compliance with the Superfund Act. As the testimony explains, the goal of Superfund is prompt and efficient clean-up of the hazardous waste sites, a goal that will not be advanced by private litigation.

I have no objection to the testimony. I have already alerted Habicht to some redundancy in the draft, which he has cleaned up. No action is necessary.

THE WHITE HOUSE

WASHINGTON

June 6, 1985

MEMORANDUM FOR FRED F. FIELDING

THRU: RICHARD A. HAUSER

FROM: JOHN G. ROBERTS JGR

SUBJECT: Potential Changes in the Review Process for International Aviation Decisions Submitted to the President

Connie Horner has asked David Chew for White House reactions to a proposed revision of the Executive Order governing processing of international aviation decisions. Chew has asked for your views as soon as possible. Horner proposes transferring responsibility for coordinating the interagency review process from OMB to Transportation in all non-controversial cases. If any affected agency should recommend or contemplate recommending disapproval of a proposed order, OMB would reassume responsibility for processing the case. Horner's proposal would also establish a 28-day deadline for agencies to communicate their views to Transportation in non-controversial cases. The provisions on ex parte contacts would be unchanged, generally prohibiting individuals within the Executive Office of the President from discussing section 801 cases with private parties.

A new Executive Order should be issued, but I do not agree with Horner's proposed changes. Providing distinct review processes depending on the merits of a case discloses significant information about the Presidential deliberative process. Thus, whenever a case were channeled to OMB, interested parties and observers would know that at least one of the affected agencies objected to the proposed decision, even if the President ultimately decided not to disapprove it. In addition, agencies may become reluctant to voice minor qualms about an order, if doing so requires activating a special review process. The President, however, should be made aware of all agency concerns, and not have some filtered out because of the administrative costs of raising them.

These are, admittedly, not overly serious problems, but I see no benefits to the two-track approach that outweigh them. Indeed, the two-track approach is inefficient, in that it requires two sets of bureaucrats trained in handling

section 801 cases -- one in DOT and one in OMB -- rather than one.

For the foregoing reasons, I recommend objecting to the proposed two-track system. I would suggest instead simply revising Executive Order 11920 to reflect the transfer of CAB responsibilities in these cases to Transportation, without substantive changes. The only changes I would make, other than changing "CAB" to "Department of Transportation," are:

° include a new sentence specifically directing OMB to coordinate submission of agency recommendations to the President. OMB's current role in this regard is based only on custom and practice.

° change "defense or foreign policy" in Executive Order 11920 wherever it appears to "foreign relations or national defense." The Executive Order antedates the 1978 amendments to the Act, and restricted Presidential review of international aviation decisions to "defense or foreign policy" considerations before the 1978 amendments restricted Presidential review to "foreign relations or national defense" considerations. The Executive Order should be changed to track the new statutory terminology. (This is not a substantive change. Horner makes this change in her proposal.)

After consideration of our discussion after yesterday's staff meeting, I do not recommend expanding the current provision generally barring ex parte contacts in section 801 cases to cover all aviation matters, whether or not they are subject to Presidential review under section 801. In the first place, this Executive Order is concerned only with section 801 cases -- a provision governing ex parte contacts in other types of aviation decisions would be out of place. Second, our policy generally prohibiting White House participation in particular regulatory decisions, procurement matters, or adjudications is just that -- a policy. There is nothing illegal, as a general matter, with White House staff or the President becoming involved in such decisions, at least so long as the decision-making responsibility is in the Executive Branch, as it now is with respect to aviation decisions. In a rare case, we may want to become involved, and we should not elevate a prudential policy against such involvement to the level of regulation codified in an Executive Order.

It may be appropriate, however, to revise the White House staff manual (page F-9) to indicate that the Department of Transportation now has the CAB regulatory responsibilities,

and that the normal rules against ex parte contacts on particular cases now applies to aviation decisions at Transportation. We may also want to issue a brief memorandum to the staff.

Attachment

THE WHITE HOUSE

WASHINGTON

June 6, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Potential Changes in the Review Process for International Aviation Decisions Submitted to the President

I have reviewed the changes in the review process for international aviation decisions proposed by Connie Horner. I agree that it is necessary to revise Executive Order 11920, in light of the "sunset" of the Civil Aeronautics Board (CAB). I am not convinced, however, of the desirability of the principal change in the review process proposed by Ms. Horner.

Ms. Horner would establish a two-track system for review of international aviation orders proposed by the Department of Transportation (DOT). Review would be coordinated by DOT unless an affected agency contemplated recommending disapproval of an order. In that event, review would be coordinated by OMB.

Providing distinct review processes depending on the merits of a case, however, discloses significant information about the Presidential deliberative process. Thus, whenever a case were channeled to OMB, interested parties and observers would know that at least one of the affected agencies objected to the proposed decision, even if the President ultimately decided not to disapprove it. In addition, agencies may become reluctant to voice minor qualms about an order, if doing so requires activating a special review process. The President, however, should be made aware of all agency concerns, and not have some filtered out because of the administrative costs of raising them.

These are, admittedly, not overly serious problems, but I see no benefits to the two-track approach that outweigh them. Indeed, the two-track approach is inefficient, in that it requires two sets of bureaucrats trained in handling Section 801 cases -- one in DOT and one in OMB -- rather than one.

I would delete all of section 3 of Ms. Horner's proposed order. I would add a new section 3(a) to read as follows: "After an Order under section 801 is transmitted to the President for review, OMB shall obtain the recommendations to the President of the agencies referred to in section 1(c) of this Order." Section 4(a) of the proposed order should then be changed to 3(b), and 4(b) to 3(c), and the remainder of the order renumbered accordingly. In section 2(b) of the proposed order, "outside" should be inserted between "agencies" and "of." I have no strong views on whether time deadlines for submission of agency views to OMB should be imposed in the Executive Order.

FFF:JGR:aea 6/6/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

June 7, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Talking Points Regarding Phone Call to Americans Against Abortion Rally

David Chew has asked that comments on the above-referenced talking points be sent directly to Linda Chavez by 1:00 p.m. today. The President will use the talking points in a Sunday telephone call to the anti-abortion rally in Los Angeles.

The remarks call for reversing "the tragedy of Roe v. Wade and Doe v. Bolton," but the President has done that often in the past. The rest of the remarks simply express support for the pro-life position, noting advances in medical technology that permit increased care for the unborn, and applauding those who are providing compassionate alternatives to abortion. I have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

June 7, 1985

MEMORANDUM FOR LINDA CHAVEZ
DEPUTY ASSISTANT TO THE PRESIDENT
DIRECTOR, OFFICE OF PUBLIC LIAISON

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Talking Points Regarding Phone Call to Americans Against Abortion Rally

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

cc: David L. Chew

FFF:JGR;aea 6/7/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

June 7, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Portal-to-Portal Inquiry from GAO

As discussed this morning. I have slightly expanded my May 8 suggested reply.

Attachment

THE WHITE HOUSE

WASHINGTON

June 7, 1985

MEMORANDUM FOR CHRISTOPHER HICKS
DEPUTY ASSISTANT TO THE PRESIDENT
FOR ADMINISTRATION

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Portal-to-Portal Inquiry from GAO

You have asked for my views on a response to an inquiry from GAO on the provision of portal-to-portal service in the Executive Office of the President. You should compile the data requested in questions 1a, 1b, 1d, 1e, 2a, 2b, 2c, and 2e. You should list yourself as the administrative contact in response to question 4. The following response may be given to question 1c:

> Security and the need to maintain a constant communications link with the President are the principal justifications for the provision of portal-to-portal transportation to these key officials. The transportation is provided not as a service to the individuals but in the best interests of the Government and national security. Various Executive branch and other legal opinions issued over the years have accepted the validity of these justifications for portal-to-portal service.
>
> We are aware that Comptroller General decision B-210555 (June 3, 1983) questioned the validity of such justifications. The Department of Justice has concluded, as a matter of constitutional law, that opinions of the Comptroller General interpreting substantive provisions of law are advisory only and not binding upon the Executive branch. In light of the confusion surrounding the portal-to-portal issue -- recognized in the Comptroller General decision -- the Administration is working with both the Congress and GAO to develop legislation clarifying the authority to provide such transportation. Such legislation will be formally submitted to Congress in the very near future.

I will not know how to respond to question 2d until you apprise me of the facts involved. There is some limited authority we can point to justifying transporting spouses of officials entitled to portal-to-portal to and from official

or quasi-official events, but I need to know the scope of the use of vehicles by spouses before framing a reply. This question is also dealt with in the proposed bill. Perhaps you will want to reply to this portion of the GAO request separately. Finally, I would respond to question 3 as follows: "Those working in the Executive Office of the President are provided appropriate legal guidance as necessary."

FFF:JGR:aea 6/7/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

June 7, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Update of 18 U.S.C. § 1751 List

David Kline of the Justice Department Criminal Division, who maintained at the Department the list of individuals covered by 18 U.S.C. § 1751, called my office several weeks ago to request an updated list. Kline has since left the Department, and accordingly I recommend that you transmit the updated list to Lowell Jensen, who will see that it is routed to the appropriate operational people. Dianna compiled the list; I prepared the transmittal memorandum.

Attachment

THE WHITE HOUSE

WASHINGTON

June 7, 1985

MEMORANDUM FOR D. LOWELL JENSEN
DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Update of 18 U.S.C. § 1751 List

Attached is an updated list of those individuals covered by 18 U.S.C. § 1751, as of today. In light of the various changes in the White House staff, I thought it advisable to provide a current list.

Attachment

FFF:JGR:aea 6/7/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

June 7, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Nomination of the Late Timothy Murphy for a Presidential Medal

The citation could read: [redacted] b6

In any event, pursuant to 42 U.S.C. § 1921, the Department of Justice administers the Young American Medal for Bravery program, and accordingly this recommendation should be referred to the Department.

Attachments

THE WHITE HOUSE

WASHINGTON

June 7, 1985

MEMORANDUM FOR D. LOWELL JENSEN
DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Nomination of the Late Timothy Murphy for a Presidential Medal

Pursuant to 42 U.S.C. § 1921, the Department of Justice administers the Young American Medal for Bravery program. The attached recommendation for an award under that program is submitted for whatever consideration may be appropriate. We express no view on the recommendation.

Attachment

FFF:JGR:aea 6/7/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

June 7, 1985

Dear Mr. Sckolnick:

Thank you for your letter of April 11 to the President, recommending that the late Timothy Murphy be considered for a Presidential medal.

Congress has provided that a Young American Medal for Bravery may be personally awarded by the President to any child eighteen years of age or under "who has exhibited exceptional courage, extraordinary decision, presence of mind, and unusual swiftness of action, regardless of his or her own personal safety, in an effort to save or successfully saving the life or lives of any person or persons whose life or lives were in actual imminent danger." 42 U.S.C. § 1921. The Department of Justice administers the Young American Medal for Bravery program, and accordingly I have taken the liberty of referring your recommendation to that Department.

Thank you for your recommendation.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Lewis Sckolnick
511 Long Plain Road
Leverett, MA 01054

bcc: Pat Gleason
FFF:JGR:aea 6/7/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

June 10, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Portal-to-Portal

Horowitz has sent you a copy of the latest version of the portal-to-portal bill, which he has also sent to Dwight Ink at GSA. Apparently the plan is for GSA to submit the bill to Congress. Horowitz has also sent a proposed transmittal letter for Ink's signature. After obtaining Ink's expected approval this morning, Horowitz will run the package by Socolar, since the transmittal letter contains representations of GAO support for the bill. Horowitz hopes to have full clearance by close of business today.

In this latest version, Horowitz has added a general Level II provision (Section 1344(b)(2)(B)) rather than a White House Level II and Executive Branch Level II provision, as in the old version. He has kept in, however, the provision for heads and deputy heads of Cabinet departments and three "Cabinet-level or equivalent status" agencies designated by the President (Section 1344(b)(2)(A)). I had thought your suggestion was simply to provide for Executive Branch Level II or above, period. Cabinet heads are of course at Level I and would be covered by a general Level II or above provision. So would deputy secretaries at State, Treasury, Defense, Agriculture, Transportation, and Energy, and the Deputy Attorney General. The six other deputy heads of Cabinet departments -- typically under secretaries rather than deputy secretaries -- are paid at Level III and would lose out if we changed to a straight Level II or above system. John Cooney at OMB advises me that Section 1344(b)(2)(A) was kept in to allow the President flexibility to designate three agencies with "Cabinet level or equivalent status" that would not be covered by a general Level II provision, such as GSA or the VA.

Horowitz's new version retains special treatment for the Joint Chiefs of Staff and the two Under Secretaries of Defense, and adds the Commandant of the Coast Guard. The Comptroller General and the Chairman of the Federal Reserve Board are mentioned separately (since they are not in the Executive Branch). The new version also omits the spousal transportation provision.

If your agreement with Horowitz was to shift to a straight Level II approach, this bill does not do it, because the separate provision for heads and deputy heads of Cabinet and up to three "Cabinet-level or equivalent status" agencies is retained. If your objective was simply to eliminate separate mention of the White House staff in the bill, that goal has been achieved. We should discuss as soon as possible in order to be able to halt Horowitz before he sends the package to Socolar, if necessary.

THE WHITE HOUSE

WASHINGTON

June 10, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Request that the President Donate a Personal Firearm for a Charity Auction

Catherine Lincoln, on behalf of the Metropolitan Museum of Art in New York, has written you to ask that the President donate a firearm to be auctioned at an auction of celebrity firearms to benefit the museum. The attached draft advises Lincoln of our established policy against providing memorabilia for auction.

Attachment

THE WHITE HOUSE

WASHINGTON

June 10, 1985

Dear Ms. Lincoln:

Thank you for your letter of June 5, requesting that the President donate a firearm to be auctioned to benefit the Metropolitan Museum of Art in New York.

Established White House policy generally precludes providing memorabilia to be auctioned to benefit charity. As you might imagine, the White House receives countless requests to support charitable fundraising through the donation of memorabilia or other means. We cannot comply with all such requests, and out of fairness have adopted the general policy of denying them all.

I hope you will understand why we cannot comply with your request, and that our inability to do so is in no sense an adverse reflection on the museum. I trust that the auction will be a great success.

Sincerely,

Fred F. Fielding
Counsel to the President

Ms. Catherine R. Lincoln
414 MacArthur Avenue
Vienna, VA 22180

FFF:JGR:aea 6/10/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

June 10, 1985

MEMORANDUM FOR FRED F. FIELDING
RICHARD A. HAUSER

FROM: H. LAWRENCE GARRETT III
JOHN G. ROBERTS

SUBJECT: NSDD and Draft Statement Regarding Establishment of a Blue Ribbon Commission on Defense Management

We have reviewed the materials on the proposed Blue Ribbon Commission. The Commission should not present serious problems, although we cannot opine on the details of compliance with the Federal Advisory Committee Act until we see an Executive Order, or with the conflicts laws until we see a list of prospective appointees. The attached memorandum to Chew makes these fairly elementary points.

The memorandum also objects to something in the materials that is likely to present problems. Both in the NSDD and the draft remarks one function of the Commission is described as "presenting to the public" what the Administration has done so far. Such a self-conscious public relations role would be more than solely advisory, and would present a wide range of complications. The Commission can achieve the desired effect simply by being given the task of "assessing and evaluating" what has been done.

THE WHITE HOUSE

WASHINGTON

June 10, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: NSDD and Draft Statement Regarding Establishment of a Blue Ribbon Commission on Defense Management

I have reviewed the memorandum for the President, draft National Security Decision Directive, draft Presidential remarks, and draft remarks by David Packard prepared in connection with the proposed establishment of a Blue Ribbon Commission on Defense Management. The Commission is to be established by an Executive Order, which I have not yet seen. The Commission will be subject to the Federal Advisory Committee Act, 5 U.S.C. App. II. Most questions concerning compliance with that Act cannot be answered without reference to the Executive Order establishing the Commission. For example, the Act requires the membership of any Federal advisory committee to be "fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee," 5 U.S.C. App II § 5. An assessment of whether the membership of an advisory committee satisfies this requirement turns on careful analysis of the function of the committee as articulated in the Executive Order.

At this point I can state that an Executive Order can be developed to establish an advisory committee meeting the goals outlined in the National Security Decision Directive, with one caveat. Both the directive and the draft remarks refer to a purpose of the Commission "to present to the people" the progress that has been made in improving defense management. The Commission can certainly assess and evaluate management reforms that have been undertaken, and report its conclusions to the President. For the Commission to be formally tasked with a public relations mission, however, would present serious problems under the Federal Advisory Committee Act and other statutes. Federal advisory committees are generally limited to advisory functions, 5 U.S.C. App. II § 9(b). The President may, by specific directive, provide for additional functions, but no committee with such functions may operate for more than one year without specific congressional authorization and appropriation to pay its

expenses. 31 U.S.C. § 1347. In addition, a public relations function would present difficulties in assessing the "balanced membership" requirement. I also think the Commission's credibility would be seriously impaired from the outset if its mission were described as being to inform the public of the great strides already made by the Administration in reforming defense management. It would be far preferable to describe the function as being to assess and evaluate progress made in management reform, and delete any references to presenting the facts to the public. The work of the Commission will of course reach the public, but this should not appear as a formal goal.

Appointees to the Commission will have to undergo the normal White House clearance procedures. I do not foresee any serious conflicts problems, in view of the broad mandate of the Commission, but will need to consider each prospective appointee individually.

FFF:JGR:aea 6/10/85
cc: FFFielding
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Chron

THE WHITE HOUSE

WASHINGTON

June 10, 1985

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