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OFFICE OF PRESIDENTIAL MESSAGES

REQUEST FOR CLEARANCE - COMMENTS

To: JOHN ROBERTS - Counsel's Office

Date Due:

Date of Event:

Subject:

Requested by:

President's Council on Physical Fitness & Sports.

Background:

Council's request attached to proposed message.

Signature:

CLAUDIA KORTE

Date:

2/18/86

Presidential Messages
Old Executive Office Building
Room 18
(202) 456-2941

Your Recommendation/Comments:

NO OBJECTION

DEC

2/18

Signature:

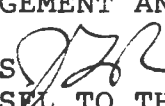
Date:

THE WHITE HOUSE

WASHINGTON

February 18, 1986

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Departments of State and Justice Draft Reports
on H.R. 3321, a bill to codify the provisions
of Title 8 of the USC Relating to the
Immigration and Naturalization Laws

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

THE WHITE HOUSE

WASHINGTON

February 18, 1986

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: DOT International Aviation Decision:
Certain Domestic Air Carriers

Our office has reviewed the above-referenced Department of Transportation International Aviation decision, 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 this order or to the substance of the letter from the President to the Secretary of Transportation.

THE WHITE HOUSE

WASHINGTON

February 18, 1986

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: DOJ and DOA Responses to House Judiciary
Committee Requests Concerning Temporary
Agricultural Worker Provision of
Immigration Reform Legislation

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

THE WHITE HOUSE

WASHINGTON

February 18, 1986

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: HHS Proposed Amendment to Immigration Reform
Legislation (H.R. 3810/S. 1200) to Require
Verification of Immigration Status of Aliens
Applying for Benefits under Certain
Assistance Programs

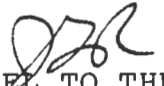
Counsel's Office has reviewed the above-referenced amendment and
finds no objection to it from a legal perspective.

THE WHITE HOUSE

5 0 0

February 18, 1986

MEMORANDUM FOR HILDA SCHREIBER
LEGISLATIVE ANALYST
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Office of Special Counsel, MSPB on H.R. 4033,
"The Whistleblower Protection Act of 1986"

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

THE WHITE HOUSE

WASHINGTON

February 18, 1986

MEMORANDUM FOR HILDA SCHREIBER
LEGISLATIVE ANALYST
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: DOJ Testimony for 2/20 on H.R. 4033, the
Whistleblower Protection Act of 1986

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

FFF/JGR:jmk
cc: FFFielding
✓JGOberts
subject
chron.

THE WHITE HOUSE

WASHINGTON

February 18, 1986

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS  

SUBJECT:

DOJ Testimony for 2/20 on H.R. 4033, the
Whistleblower Protection Act of 1986

OMB has asked for our views on proposed Justice testimony on H.R. 4033, the "Whistleblower Protection Act of 1986." The Justice testimony strongly opposes the bill on constitutional and policy grounds. The bill would make the Special Counsel of the Merit Systems Protection Board an independent counsel not subject to Presidential control. The new independent counsel would have independent litigation authority, representing individual employees against Federal agencies in the courts.

The Justice testimony correctly articulates the constitutional infirmities of a prosecutor not subject to Presidential control, and the difficulties with any grant of independent litigation authority. The latter problems are particularly severe in this instance, since the Special Counsel will frequently be litigating against a Federal agency, or individuals whom it is appropriate for the agency to defend. Since both the Special Counsel and the agency head must be answerable to the President, this litigation would, as Justice points out, require the Federal courts to issue an unconstitutional advisory opinion.

On policy grounds, the testimony stresses the recent GAO report that found the Special Counsel was doing an acceptable job of protecting whistleblowers.

THE WHITE HOUSE

WASHINGTON

February 18, 1986

MEMORANDUM FOR PATRICK J. BUCHANAN
ASSISTANT TO THE PRESIDENT AND
DIRECTOR OF COMMUNICATIONS

FROM: RICHARD A. HAUSER. Original signed by RAH
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Angolan Resistance Stamps

Neal Blair has written both you and Linda Chavez, requesting that the President send a message indicating his interest in and support for a set of four stamps issued for UNITA. The stamps were issued in four different denominations. Two depict Jonas Savimbi, the others feature UNITA themes.

A Presidential message of the sort requested should not be sent. It is not clear to me whether the stamps are intended for actual postage in UNITA-held territory or simply as a fundraising device similar to Easter Seals. Endorsement of stamps intended for postage would be inconsistent with our recognition of the Luanda regime, at least for administrative purposes. Nor could the President endorse the stamps as postage without knowing if UNITA were capable of carrying the mails.

If, as seems more likely, the stamps are intended as a fundraising device, and not as postage, a Presidential message would be barred by the general policy against endorsement of particular private fundraising appeals. Occasional exceptions are made to this policy, but only for exclusively charitable 501(c)(3) organizations, not armed resistance movements.

RAH/JGR:jmk
cc: RAHauser
✓JGRoberts
subject
chron.

THE WHITE HOUSE

WASHINGTON

February 18, 1986

MEMORANDUM FOR RICHARD A. HAUSER

FROM:

JOHN G. ROBERTS



SUBJECT:

Angolan Resistance Stamps

Attached are letters from Neal Blair, President of Free the Eagle Citizen's Lobby, to Pat Buchanan and Linda Chavez. The letters ask for a message from the President supporting the issuance of UNITA Angolan resistance stamps. Two of the stamps feature Jonas Savimbi, one a tiger, and the other the UNITA flag with clasped hands.

It is clear neither to me nor to the addressees whether these stamps -- issued in different denominations -- are simply a fundraising device, similar to Easter Seals, or if they are intended for use as postage in areas occupied by UNITA within Angola. Obviously the President should not endorse the stamps if they are intended for use as postage. So far as I am aware, we still recognize the Luanda regime, at least for administrative purposes such as carrying the mails. We have no way of knowing if UNITA could handle postage, and should not encourage others to use UNITA stamps for this purpose.

If, as seems more likely, the stamps are simply a fundraising device, established White House policy precludes Presidential endorsement of particular private fundraising efforts. Exceptions are made occasionally, but only for exclusively charitable 501(c)(3) organizations, not for armed resistance movements. Presidential participation in raising funds for the guerillas could also prejudice efforts to obtain appropriations for UNITA.

Attachment

THE WHITE HOUSE

WASHINGTON

February 18, 1986

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: RICHARD A. HAUSER Original signed by RAH
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Draft DOJ Report on H.R. 3810, the "Immigration
Control and Legalization Amendments Act of
1985" and Justice Response to Agency Comments
on Earlier (H.R. 3080) Version of this Report

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

RAH/JGR:jmk
cc: RAHauser
✓JGRoberts
subject
chron.

THE WHITE HOUSE

WASHINGTON

February 18, 1986

MEMORANDUM FOR RICHARD A. HAUSER

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Draft DOJ Report on H.R. 3810, the "Immigration Control and Legalization Amendments Act of 1985" and Justice Response to Agency Comments on Earlier (H.R. 3080) Version of this Report

OMB has requested views on the above-referenced draft report. The bill in question is the latest House vehicle for comprehensive immigration reform. The Justice report reiterates the Administration's positions on immigration reform, which have been cleared and public for some time. Of particular interest, the Justice report objects to the House bill anti-discrimination provisions as unnecessary, objects to an effort to overturn Oliver v. United States (which upheld warrantless open field "searches"), and supports verification of citizenship or immigration registration as a condition of receipt of various welfare benefits.

Attachment

OFFICE OF PRESIDENTIAL MESSAGES

REQUEST FOR CLEARANCE - COMMENTS

To: JOHN ROBERTS - Counsel's Office

Date Due: As soon as possible

Date of Event:

Subject: Presidential Message for Air/Space America of California.

Requested by: Dee Kuhn - Department of Justice

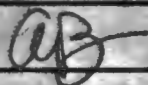
Background:

Message is for the Chairman of the above-named company congratulating him on the plans for an aerospace trade exposition in 1988.

This is an unusual request, therefore we have not yet prepared a message but would like a ruling from you whether or not this is something we should do.

Could you please return the charts? Thank you.

Signature: Anita Bevacqua



Date: January 9, 1986

Presidential Messages
Old Executive Office Building
Room 18
(202) 456-2941

Your Recommendation/Comments:

NO - PREMATURE; REQUESTER
COULD BE REFERRED TO
COMMERCE DEPT.

JZR 2/18

Signature:

Date:

THE WHITE HOUSE
WASHINGTON

February 18, 1986

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Draft DOJ Report on Proposed Amendment to
S. 397, the "Foreign Trade Antitrust
Improvements Act of 1985"

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

THE WHITE HOUSE

WASHINGTON

February 18, 1986

MEMORANDUM FOR BEN ELLIOTT
DEPUTY ASSISTANT TO THE PRESIDENT AND
DIRECTOR OF SPEECHWRITING

FROM: JOHN G. ROBERTS *JGR*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Revised Address: Queen's Park,
St. George, Grenada

Counsel's Office has reviewed the revised version of the above-referenced address. This revised version still contains (now on page 5, second full paragraph) the language found legally objectionable by the General Counsel at USTR. As I pointed out in my memorandum of February 14 on the first circulated draft, it is the view of USTR that the President cannot legally promise quota-free access for C.B.I. products, in particular apparel that is the product of American-made materials.

cc: David L. Chew

THE WHITE HOUSE

WASHINGTON

February 19, 1986

MEMORANDUM FOR FILE

FROM: JOHN G. ROBERTS 
SUBJECT: Delay re: U.S. Institute of Peace Nominees

The attached threat from Congressman Glickman to consider litigation if the Administration did not submit nominations for the Institute of Peace as required by statute has been mooted by the submission of the nominations. Legislative Affairs informally advised Glickman shortly after receipt of his correspondence that the nominations were imminent.

THE WHITE HOUSE

WASHINGTON

February 19, 1986

MEMORANDUM FOR THOMAS F. GIBSON III
SPECIAL ASSISTANT TO THE PRESIDENT AND
DIRECTOR OF PUBLIC AFFAIRS

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Request for Joint Statement of Past Four
Presidents for 20th Anniversary Dinner
Invitation of the Center for the Study
of the Presidency

You have asked for our views on a request from the Center for the Study of the Presidency that the President join former Presidents Nixon, Ford, and Carter in approving a joint statement commemorating the Center's twentieth anniversary. We have no objection to granting this request. If the Center will accept stylistic suggestions, "appreciate" works better than "are appreciative for" in the second line of the fourth paragraph, and a synonym should replace one of the two "admirably's."

THE WHITE HOUSE

WASHINGTON

February 19, 1986

MEMORANDUM FOR DIANNA G. HOLLAND

FROM:

JOHN G. ROBERTS 

SUBJECT:

Combined Federal Campaign -- Wants
Counsel's Office to write to OPM

I must recuse myself from this matter, in light of pending discussions with Mr. Hyman's firm concerning possible future employment.

THE WHITE HOUSE

WASHINGTON

February 19, 1986

MEMORANDUM FOR FILE

FROM: JOHN G. ROBERTS 
SUBJECT: Request for Presidential Photo for
Child Who is Becoming U.S. Citizen

I orally advised Claudia Korte that I had no objection to the attached photo request. Zhenia Klevitsky and her parents obtained citizenship as regular immigrants, after the statutory period of permanent resident status.

THE WHITE HOUSE

WASHINGTON

February 19, 1986

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS



SUBJECT:

Change in the Number of Years
Representatives and Senators Serve

Lloyd Cutler recently wrote Mr. Regan to urge support for a four-year term for Representatives and an eight-year term for Senators. Under this proposal, there would be no mid-term elections, with all Representatives and half the Senators being up for election at the same time the President is elected. Cutler noted that he is now opposed to a single six-year term for the President.

Regan sent Cutler a brief acknowledgement on February 11, sending a copy of the reply and incoming to you, presumably because you were mentioned in Cutler's letter. I see no need for any further response. The President has reportedly expressed support for the four-year term for Representatives, but with the Gramm-Rudman battle raging I think any effort to promote constitutional reform at this time would simply get lost in the shuffle. Cutler's motive in writing was to attempt to have the issue mentioned in the State of the Union, but that question is obviously OBE.

THE WHITE HOUSE

WASHINGTON

February 19, 1986

MEMORANDUM FOR THOMAS F. GIBSON III
SPECIAL ASSISTANT TO THE PRESIDENT AND
DIRECTOR OF PUBLIC AFFAIRS

FROM: JOHN G. ROBERTS *JGR*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Talking Points on the Budget

Counsel's Office has reviewed the "FY 87 Budget Update" talking points. The Gramm-Rudman points should be slightly revised in the interest of accuracy. In line 2 of the first Gramm-Rudman items, delete "upheld" and substitute "recently ruled on." Substitute the following for the second item: "The Court rejected broad challenges to the entire Act, but upheld the Administration's position that the Comptroller General cannot determine the spending cuts necessary to implement the Act because that is an executive branch function." The third Gramm-Rudman item is unobjectionable.

cc: David L. Chew

THE WHITE HOUSE

WASHINGTON

February 19, 1986

MEMORANDUM FOR BEN ELLIOTT
DEPUTY ASSISTANT TO THE PRESIDENT AND
DIRECTOR OF SPEECHWRITING

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Remarks: Dinner
With the Nation's Governors

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

cc: David L. Chew

THE WHITE HOUSE

WASHINGTON

February 19, 1986

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Executive Order Entitled
"The President's Export Council"

Counsel's Office has reviewed the above-referenced draft Executive Order. In line 8, "Senate" should be inserted after "United States."

THE WHITE HOUSE
WASHINGTON

February 19, 1986

MEMORANDUM FOR DIANNA G. HOLLAND

FROM:

JOHN G. ROBERTS 

SUBJECT:

Appointment of Jean Kearns to the Board for
International Food and Agricultural Development

I have completed the review begun by Hugh Hewitt of the Personal Data Statement submitted by Dr. Jean Kearns in connection with her prospective appointment to the Board for International Food and Agricultural Development. The President appoints seven members to this Board, including at least four from universities. 22 U.S.C. § 2220c. The Board participates in planning, issuing recommendations, and monitoring efforts under 22 U.S.C. § 2220b to promote university programs on international agricultural development, and to promote such development more generally.

On December 30, 1985, Hugh sent a memorandum to the A.I.D. General Counsel, alerting him to several consulting contracts Dr. Kearns had with A.I.D. or A.I.D. grant recipients. Nancy Frame from A.I.D. returned my call on February 11 with the results of her review in response to Hugh's memorandum. According to Frame, Dr. Kearns's situation was similar to that of many Board members, and any perceived conflicts were the result of the statutory requirement that membership on the Board be drawn in part from potential recipient universities. Frame advised that A.I.D. regularly issues 208(b) waivers to deal with this issue, and would do so in Dr. Kearns case. Frame also noted that A.I.D. would advise Dr. Kearns to recuse herself from participation in any grant review or other matter involving any institution with which she had a consultancy or other financial arrangement. I telephoned Kearns and advised her independently of the need to do this.

In light of the foregoing, I have no objection to proceeding with this appointment. There is scheduled a "retreat" for Board members this weekend; it would be very helpful if Dr. Kearns (who has been patient throughout this extended process) could be appointed in time to participate.

THE WHITE HOUSE

WASHINGTON

February 19, 1986

MEMORANDUM FOR BEN ELLIOTT
DEPUTY ASSISTANT TO THE PRESIDENT AND
DIRECTOR OF SPEECHWRITING

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT 

SUBJECT: Presidential Remarks: Peace
and National Security

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

cc: David L. Chew

THE WHITE HOUSE

WASHINGTON

February 20, 1986

MEMORANDUM FOR ABRAHAM L. SOFAER
LEGAL ADVISER
DEPARTMENT OF STATE

FROM: RICHARD A. HAUSER *Original signed by RAH*
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: ABA Free Flow Proposal

Thank you for your memorandum of February 10, responding to mine of February 4, on possible Administration support for the American Bar Association proposal to repeal or modify 8 U.S.C. § 1182(a)(28). As I noted on February 4, we will defer to the affected agencies on the desirability of supporting the ABA resolution.

I would point out at this time, however, that your proposed revision of 8 U.S.C. § 1182(a)(28) -- exclusion of aliens whose entry "would be detrimental to the national security" -- seems to fall far short of permitting exclusion for foreign policy reasons. Both your previous draft memorandum and the ABA materials indicated that "foreign policy" rather than the more restrictive "national security" standard would be retained as a legitimate basis for exclusion. Any legislative proposal must, of course, go through the formal OMB clearance process.

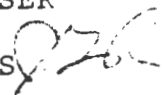
RAH/JGR:jmk
cc: RAHauser
✓JGRoberts
subject
chron.

THE WHITE HOUSE

WASHINGTON

February 20, 1986

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS 

SUBJECT: ABA Free Flow Proposal

Abe Sofaer has responded to your memorandum of February 4, which was written in response to Sofaer's original memorandum on the American Bar Association's proposal to repeal the ideological exclusion provision of the McCarran-Walter Act of 1952. I have attached my memorandum for you of February 4, which described the background of this proposal. Your reply to Sofaer deferred to the Secretary of State, Attorney General, and Director of Central Intelligence, but stressed that any repeal of 8 U.S.C. § 1182(a)(28) must not undermine the authority of the United States to exclude aliens for foreign policy reasons. You also suggested that the Administration act on its own rather than simply react to the ABA.

Sofaer, in response, agrees that the Administration should not support any specific ABA language on repeal, but only the ABA's general resolution that aliens should not be excluded solely on the basis of past or current political beliefs or associations or the expected content of an alien's remarks in the United States. Administration support for this resolution would be accompanied by a statement that repeal of 8 U.S.C. § 1182(a)(28) must be accomplished in a manner that does not impair the existing ability to exclude aliens whose presence would be potentially damaging to important national interests. Sofaer attaches proposed language that he believes would accomplish this result. He concludes by asking if the foregoing adequately responds to your concerns, noting that Casey has signed off and he is awaiting word from Meese.

In reply, I would caution Sofaer that exclusion of aliens who "would be detrimental to the national security" -- his proposed revision -- is a far cry from exclusion for foreign policy reasons, which he and the ABA have argued would be retained as a legitimate basis for exclusion.

THE WHITE HOUSE

WASHINGTON

February 20, 1986

MEMORANDUM FOR JUDYT MANDEL
DEPUTY DIRECTOR
INTERNATIONAL INFORMATION POLICY
NATIONAL SECURITY COUNCIL

FROM: RICHARD A. HAUSER *Original copy*
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Proposed State and Administration
Position Concerning U.S. Visa Policy

You have asked for our views on a State Department proposal to support an American Bar Association resolution to the effect that aliens should not be excluded from entry on the basis of political beliefs or associations or the expected content of their speech. We have previously advised State that we will defer to the affected agencies -- in particular, Justice and CIA -- on the desirability of supporting the resolution. As we advised State, however, any change in 8 U.S.C. § 1182(a)(28) must not detract from the Government's authority to exclude aliens for foreign policy reasons. Any Administration statement or legislative proposal must be carefully analyzed to ensure it meets this test.

In my view, the statement proposed by the State Department is inadequate. The last sentence states we could not support any change in 8 U.S.C. § 1182(a)(28) "that would derogate from current ability to exclude terrorists and other aliens whose presence the Executive concludes would be potentially damaging to important national interests." State and ABA memoranda on this issue, however, have stressed that any change need not infringe on our ability to exclude aliens for "foreign policy reasons," a more flexible standard.

I would change the above-quoted language to "that would derogate from current authority to exclude terrorists or any other aliens whom the Executive concludes should be excluded for foreign policy reasons."

RAH/JGR:jmk
cc: RAHauser
JGRoberts
subject
chron.

THE WHITE HOUSE

WASHINGTON

February 20, 1986

MEMORANDUM FOR THOMAS E. HARVEY
GENERAL COUNSEL AND CONGRESSIONAL LIAISON
UNITED STATES INFORMATION AGENCY

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Portal-to-Portal

Thank you for your letter of January 21, concerning Director Wick's interest in being designated to receive portal-to-portal transportation under the legislative proposal currently pending before Congress. I agree with you that any such requests are premature and will remain so until the bill becomes law. I remain hopeful that we will secure passage of a bill, but any consideration of designation requests at this time could do nothing but jeopardize those chances.

FFF/JGR:jmk
cc: FFFielding
JGRoberts
subject
chron.

THE WHITE HOUSE

WASHINGTON

February 20, 1986

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Portal-to-Portal: Wick Request

Following up on our conversation concerning the placement of the Brooks' portal-to-portal bill on the suspension calendar, you may not be surprised to learn that we have already received a pitch for Presidential designation of eligibility for the service. It comes from Director Wick, through his General Counsel Tom Harvey. Harvey indicates that he told the Director the request was "precipitous," but the Director wanted Harvey to solicit your views.

The attached reply agrees with Harvey that it would be premature to consider requests for designation under a bill that has not yet been enacted.

Attachment

THE WHITE HOUSE

WASHINGTON

February 20, 1986

MEMORANDUM FOR DONALD T. REGAN
CHIEF OF STAFF TO THE PRESIDENT

FROM: RICHARD A. HAUSER Original signed by RAH
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Nixon Papers Regulations and Opinion

You should be aware that on February 21 OMB will formally clear, under Executive Order 12291, regulations proposed by the National Archives and Records Administration governing public access to Nixon White House files. The Nixon files were seized by the Government pursuant to an Act of Congress passed immediately upon President Nixon's departure from office. The Act directed the Archivist to issue regulations governing public access to the files. The question has been in litigation for twelve years, with Nixon and certain former White House aides contesting various proposed plans for disclosure. The latest effort to issue regulations governing disclosure raised several serious questions concerning treatment of possible claims of executive privilege. OMB referred the proposed regulations to the Department of Justice Office of Legal Counsel (OLC) for analysis.

OLC has now provided a lengthy opinion clearing the proposed regulations, with certain understandings and interpretations. The OLC opinion is binding on the Archivist. The most significant conclusion in the opinion is that privilege claims of a former President should be respected by an incumbent, unless doing so would interfere with a constitutional obligation of the incumbent. In the present context this means that the Archivist must accede to privilege claims raised by Nixon concerning the Nixon White House papers. Since the Archivist has until now been fighting such claims, this legal conclusion can be expected to generate considerable media interest and editorial criticism. The media may also attempt to portray the opinion as an effort to protect Reagan Administration papers after 1989. Litigation to compel disclosure of protected documents can also be expected, in which the Administration will be in the position of defending any reasonable privilege claims raised by Nixon.

Although there are obvious public relations costs to the OLC opinion, it is a careful and objective analysis. The doctrine of executive privilege would amount to very little if all

protection were lost upon departure from office, or if a former President were forced to rely on the good graces of an incumbent who will often be a political opponent. It is in many respects unfortunate that this issue has arisen in the context of Nixon papers, but that is unavoidable.

Mr. Fielding has recused himself from this matter.

RAH/JGR:jmk
cc: RAHauser
✓GRoberts
subject
chron.

THE WHITE HOUSE

WASHINGTON

February 20, 1986

MEMORANDUM FOR BEN ELLIOTT
DEPUTY ASSISTANT TO THE PRESIDENT AND
DIRECTOR OF SPEECHWRITING

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Remarks: National
Governors' Association

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

cc: David L. Chew

THE WHITE HOUSE

WASHINGTON

February 20, 1986

MEMORANDUM FOR THOMAS F. GIBSON III
SPECIAL ASSISTANT TO THE PRESIDENT AND
DIRECTOR OF PUBLIC AFFAIRS

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Talking Points on Housing

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

cc: David L. Chew

THE WHITE HOUSE

WASHINGTON

February 20, 1986

MEMORANDUM FOR BARBARA WOOD
STAFF ASSISTANT
OFFICE OF LEGISLATIVE AFFAIRS

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence from Representative
Fawell on White House Recipes

You have inquired concerning the status of our review of the January 24 letter from Representative Harris Fawell to you, requesting written permission to use White House recipes in a printed document. I telephoned Fawell's office several weeks ago for information on their intended use of the recipes. Jane in Fawell's office said she would investigate and get back to me. I never heard from her, and when I called again today Jane advised that Fawell had decided for various reasons of his own not to pursue the project. Accordingly, I consider this matter closed.

THE WHITE HOUSE

WASHINGTON

February 20, 1986

MEMORANDUM FOR BEN ELLIOTT
DEPUTY ASSISTANT TO THE PRESIDENT AND
DIRECTOR OF SPEECHWRITING

FROM: JOHN G. ROBERTS *JGR*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Radio Talk: Grenada

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

cc: David L. Chew