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WITHDRAWAL SHEET

Ronald Reagan Library

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CHRON FILE (02/01/1983 - 02/10/1983)

IGP 8/2/2005

FOIA

F05-139/01

Box Number

COOK

2IGP

DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	ROBERTS TO FILE RE APPOINTMENT TO NATIONAL CAPITAL PLANNING COMMISSION (PARTIAL)	1	2/4/1983	B6	424
2	MEMO	ROBERTS TO FIELDING RE DISPUTE BETWEEN HUD AND THE PRESIDENT'S COMMISSION ON EXECUTIVE EXCHANGE (PARTIAL)	2	2/7/1983	B6	425
3	MEMO	FIELDING TO VON DAMM RE HUD DISPUTE	2	2/7/1983	B6	426

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]

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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.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

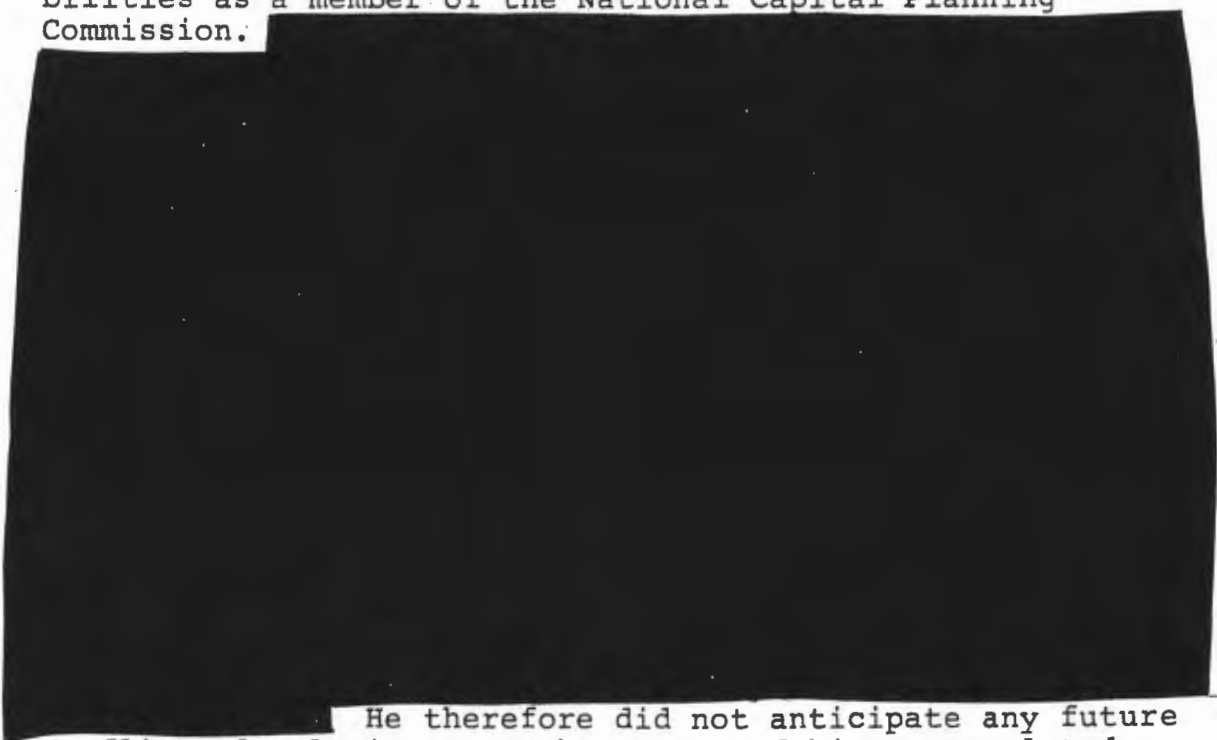
February 4, 1983

MEMORANDUM FOR THE FILE

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Appointment of Glen T. Urquhart to the
National Capital Planning Commission

I talked with Glen T. Urquhart to determine the extent of his real estate interests and whether they would constitute an obstacle to the conflict-free discharge of his responsibilities as a member of the National Capital Planning Commission.



He therefore did not anticipate any future conflicts developing over the course of his contemplated service on the Commission.

b6

THE WHITE HOUSE

WASHINGTON

February 1, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS *ggr*

SUBJECT: Pay Act and Legal Services
Board Appointees

The Pay Act, 5 U.S.C. § 5503 (Tab A), generally prohibits payment from the Treasury to recess appointees appointed to fill vacancies which existed while the Senate was in session. No Pay Act problems are presented with respect to the four new recess appointees to the Legal Services Board (Masson, McCarthy, Santarelli, Shapiro). The vacancies these individuals were appointed to fill arose with the sine die adjournment of the Congress, U.S. Const. art. I, § 2, cl. 3, since that is when the recess appointments of the individuals they viced (DeMoss, McKee, Slaughter, and Dana, respectively) expired. The Pay Act only applies "if the vacancy existed while the Senate was in session." 5 U.S.C. § 5503. These vacancies did not exist while the Senate was in session -- at that time they were filled by individuals holding valid recess appointments (apart from the Pay Act status of those individuals). Thus, for the four new recess appointees, it is not even necessary to argue that the Pay Act does not apply because payment to LSC directors is not "made from the Treasury of the United States." 5 U.S.C. § 5503.

Potential Pay Act problems do exist for the other seven members of the board, who apparently are still on the board by virtue of the holdover provision, 42 U.S.C. § 2996c(b), even though their recess appointments (except for Donatelli and Rathburn) have expired. See Memorandum to Meese, Baker, and von Damm from Fielding, December 17, 1982. (Tab B). These seven individuals -- including Donatelli and Rathburn -- were recess appointed to fill vacancies existing while the Senate was in session. The fact that holdovers were in office at the time does not mean that the vacancies did not exist. See 2 Op. Legal Counsel 398, 400 (1978). None of the exceptions to the Pay Act's prohibition on payment (vacancy arose within 30 days of end of session, nomination pending at end of session, nomination rejected within 30

days of end of session) apply, so the only available argument is that the Pay Act as a whole does not apply, because payments to LSC directors are not made from the U.S. Treasury.

It is the view of the LSC Acting General Counsel that payments to the LSC board are not made from the U.S. Treasury. See Letter from Mary Weissman to Larry Simms, September 20, 1982. (Tab C). The Office of Legal Counsel has not issued an opinion on this question, but in 1980 it "recommended" in a related context that § 5503 not be construed literally as limited to payments made directly from the Treasury. See File Memorandum from Herman Marcuse, September 23, 1982. (Tab D). Such a recommendation -- an appropriately cautious guide to prospective action -- does not, of course, indicate that the Pay Act would be construed broadly to cover LSC appointees.

Attachments

THE WHITE HOUSE

WASHINGTON

February 2, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Correspondence from Radio Station WTLR
to Edwin Meese on Pending FCC Matter

Edwin Meese has referred to this office a letter he received from Joseph C. Emert, General Manager of radio station WTLR, a religious-oriented station in Pennsylvania. WTLR applied in the summer of 1981 for FCC permission to increase its power, and now complains that the FCC legal staff has unconscionably delayed acting on its routine application. Mr. Emert notes that he is not seeking White House help to obtain a favorable decision, but only help in obtaining some kind of answer.

I recommend that you respond directly to Emert, advising him of the independent status of the FCC, declining to exert any influence with respect to the WTLR application, and noting that you have forwarded the letter to the General Counsel of the Commission. I have prepared an appropriate reply, a cover memorandum to the FCC general counsel, and a memorandum to Mr. Meese advising him of this disposition.

Attachments

THE WHITE HOUSE

WASHINGTON

February 2, 1983

Dear Mr. Emert:

I am writing in response to your letter of December 22, 1982, to Edwin Meese, Counsellor to the President, concerning the Federal Communications Commission matter in which your radio station, WTLR, is involved.

While I can appreciate the importance of this matter to you and to radio station WTLR, and your concern that it be properly resolved, the Federal Communications Commission is an independent regulatory agency. Although the President appoints the members of the Commission, subject to the advice and consent of the Senate, neither he nor members of his staff attempt to influence the Commission's deliberations on particular matters that come before it. This extends to questions of the timing of Commission action as well as the substance. I have, however, taken the liberty of forwarding a copy of your letter to the General Counsel of the Commission.

I appreciate the spirit in which your letter was written, and hope you will understand that neither the President nor members of his staff may seek to influence particular matters subject to the Commission's jurisdiction as an independent agency.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Joseph C. Emert
General Manager
WTLR
315 S. Atherton Street
State College, Pennsylvania 16801

FFF:JGR:aw 2/2/83
cc: FFFfielding/JGRoberts/Subj./Chron

THE WHITE HOUSE

WASHINGTON

February 2, 1983

MEMORANDUM FOR BRUCE FEIN
GENERAL COUNSEL
FEDERAL COMMUNICATIONS COMMISSION

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Attached Correspondence Concerning
Matter Before the Commission

Attached are copies of a letter to Edwin Meese, Counsellor to the President, from Joseph C. Emert, General Manager of radio station WTLR, and my response. As my response makes clear, this letter is being forwarded for your information and such action as you think appropriate. The White House is not, of course, attempting to interfere in a matter pending before the Commission, and no response to this office is needed.

Attachments

FFF:JGR:aw 2/7/83

cc: FFFielding/JGRoberts/Subj./Chron

THE WHITE HOUSE

WASHINGTON

February 2, 1983

MEMORANDUM FOR EDWIN MEESE III
COUNSELLOR TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence from Radio Station
WTLR on Pending FCC Matter

You recently forwarded for appropriate action a letter you received from Joseph C. Emert, General Manager of radio station WTLR, concerning a matter pending before the Federal Communications Commission. Attached are copies of my direct response to Mr. Emert and my memorandum to the General Counsel of the FCC, transmitting copies of the correspondence.

Attachments

FFF:JGR:aw 2/2/83
cc: FFFielding/JGRoberts/Subj./Chron

THE WHITE HOUSE

WASHINGTON

February 2, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *gjr*

SUBJECT: FOIA Request

Herman A. Stuhl, Executive Director of the New York Institute of Legal Research, has addressed an FOIA request to the "Executive Office of the President," seeking documents concerning discussions between representatives of the United States and Ireland on any U.S. citizen later indicted during 1982. I recommend responding that some elements of the Executive Office of the President are subject to the Act and some are not, and that the Institute should contact directly those offices within the EOP which are subject to the Act. I have prepared a draft reply.

Attachment

THE WHITE HOUSE

WASHINGTON

February 2, 1983

Dear Mr. Stuhl:

I have received your letter of January 18, directed to the "Executive Office of the President" and seeking certain documents pursuant to the Freedom of Information Act.

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

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

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Herman A. Stuhl
New York Institute of Legal Research
14 East 60th Street
New York, New York 10022

FFF:JGR:aw 2/2/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

February 2, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JSR*
SUBJECT: Proposed Testimony of Lowell Jensen on Labor
Department Organized Crime Inspector Generals

The Justice Department has provided a copy of testimony Lowell Jensen proposes to give tomorrow before the Senate Committee on Labor and Human Resources on the adequacy of the law enforcement powers available to the Inspector General's Office of Organized Crime within the Labor Department. Agents from that office are assigned to Justice strike forces and U.S. attorneys to assist in investigating and prosecuting organized criminal activity involving labor unions and pension funds. The testimony opposes a proposal to permit those agents to carry weapons, make arrests, and conduct searches. As is currently done, when such powers are necessary the agents can be made deputy marshalls on a case-by-case basis. The testimony also opposes giving the Labor agents independent investigatory authority, preferring to keep the FBI and Justice Department in control of investigations. Finally, the testimony urges passage of legislation to make union office immediately forfeit upon felony conviction, rather than upon exhaustion of all appeals.

This proposed testimony is consistent with prior Administration positions. I see no legal objections and no need for action on your part.

THE WHITE HOUSE

WASHINGTON

February 3, 1983

Dear Mr. Hyland:

With regard to your prospective appointment as Inspector General at the Department of Labor, it will be necessary for you to complete the enclosed Personal Data Statement and Financial Disclosure Report. Please return these forms to me at your earliest convenience.

With best wishes,

Sincerely,



John G. Roberts
Associate Counsel
to the President

Mr. James B. Hyland
30 Ridgemore Circle
Fredericksburg, Virginia 22401

Enclosures

THE WHITE HOUSE

WASHINGTON

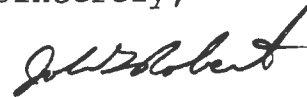
February 3, 1983

Dear Mr. Weinmann:

With regard to your prospective appointment as Commissioner General of the U.S. Government for the 1984 Louisiana World Exposition, it will be necessary for you to complete the enclosed Personal Data Statement and Financial Disclosure Report. Please return these forms to me at your earliest convenience.

With best wishes,

Sincerely,



John G. Roberts
Associate Counsel
to the President

Mr. John Giffen Weinmann
2690 Pan American Life Center
New Orleans, Louisiana 70130

Enclosures

THE WHITE HOUSE

WASHINGTON

February 3, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Inquiries from Jim Coyne, Special
Assistant to the President for
Private Sector Initiatives

Jim Coyne has addressed the following two legal inquiries to me:

1. Are there any restrictions on his campaign committee holding a fundraiser (John Heinz has agreed to host) to retire his outstanding campaign debt?
2. Is WBZ-TV's scheme to raise money for the arts legal? The Boston television station has established a 501(c)(3) organization, WBZ Fund for the Arts. The station agrees to advertise upcoming performances by deserving groups on its (so-called) public service announcements if the group will donate 10 percent of the gate to the WBZ Fund for the Arts. WBZ wants support from the Private Sector Initiatives Office, but Coyne is uncertain if the scheme is legal.

I would be happy to work on these questions but wanted to alert you to them first.

THE WHITE HOUSE

WASHINGTON

February 3, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: OMB Proposed Rules on Political Advocacy
by Government Grantees and Contractors

By notice published in the Federal Register on January 24, 1983, OMB sought comments on a proposal to revise rules on government grants and contracts with nonprofit organizations. The purpose of the proposed revisions is stated to be to ensure that "federal tax dollars are not used, directly or indirectly, for the support of political advocacy." This purpose would be served by disallowing the costs of political advocacy in government grants and contracts. If any group that has a government grant or contract engages in political advocacy, it must segregate the costs associated with that advocacy and not recoup such costs from the government. The proposed revisions apply only to nonprofit groups, but the notice states that similar revisions will be proposed for civilian and defense contractors by Defense, NASA, and GSA.

Craig Fuller has raised the concern that the logic of the proposed rules would affect traditional lobbying activities of government contractors. One of the "Q&A's" accompanying the proposal, for example, specifically notes that the costs of a corporate jet used in part to fly officials for discussions with congressmen could not be included as allocated overhead in a government contract. The definition of political advocacy -- essentially attempting to influence any sort of governmental decision -- could snare many traditional activities of government contractors, although there is an exception of uncertain breadth for providing information in connection with a bid at the request of a government agency. The proposals paint with a much broader brush than is necessary to address the activities of government grantees that have been perceived as most objectionable. It is possible to "defund the left" without alienating TRW and Boeing, but the proposals, if enacted, could do both.

It is also important to recognize that the notice somewhat disingenuously takes a high moral ground by citing legal

precedent of limited relevance. Two decisions are cited in the notice and accompanying Q&A's for the general proposition that First Amendment values are promoted by an effort to restrict government support for political advocacy. The decisions, however, are only vaguely relevant to the proposed revisions. Elrod v. Burns, 427 U.S. 353 (1976), cited four times, was a 3-2-3 decision holding no more than that the routine patronage dismissal of government employees in nonpolicymaking, nonconfidential positions was illegal. Abood v. Detroit Board of Education, 431 U.S. 209 (1977), held that non-union government employees in an agency shop could not be forced to contribute funds to the union to be used for political purposes, but could be forced to contribute dues for more typical union activities.

THE WHITE HOUSE

WASHINGTON

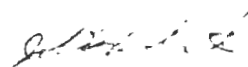
February 4, 1983

Dear Mr. Trent:

With regard to your prospective appointment as Chairman (Rank of Ambassador) of the U.S. Delegation to the U.S.-European Civil Aviation Conference Negotiations on Multi-lateral Pricing, it will be necessary for you to complete the enclosed Tax Check Waivers. Please return these forms to me at your earliest convenience.

With best wishes,

Sincerely,



John G. Roberts
Associate Counsel
to the President

Mr. Darrell M. Trent
Deputy Secretary of Transportation
Department of Transportation
Room 10200
400 Seventh Street, SW
Washington, D.C. 20590

Enclosures

WITHDRAWAL SHEET

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<i>NO Document Description</i>		<i>pages</i>		<i>tions</i>
1	MEMO	1	2/4/1983	B6
ROBERTS TO FILE RE APPOINTMENT TO NATIONAL CAPITAL PLANNING COMMISSION				424

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

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E.O. 13233

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

THE WHITE HOUSE

WASHINGTON

February 4, 1983

MEMORANDUM FOR NANCY RISQUE

FROM: JOHN G. ROBERTS *JGR*
SUBJECT: Motor Carrier Ratemaking Study Commission

Attached is our suggested redraft of the proposed letter in response to correspondence concerning Michael Thometz and his eligibility to serve on the Motor Carrier Ratemaking Study Commission. The redraft incorporates our views and those of the Department of Justice.

Attachment

DRAFT: Motor Carrier Ratemaking Study Commission

Dear :

Thank you for your letter to the President recommending the appointment of _____ to the Motor Carrier Ratemaking Study Commission.

As you know, this Commission was established by the Motor Carrier Act of 1980 to study ratemaking in the trucking industry and to make recommendations to Congress. There are ten members of the Commission, including four members of the public appointed by the President. Section 14(b)(3)(C) of the Act describes requirements for eligibility of the four members of the public for appointment to the Commission. Mr. Thometz fully met the requirements to be appointed as "a motor common carrier of property from the membership of a major regional motor common carrier rate bureau," and was duly appointed in November 1980. Compliance with the statutory requirements for appointment of members to the Commission ensured that the Commission would be composed of individuals with varying backgrounds and fields of expertise. Mr. Thometz did not suddenly cease to have the background and expertise which qualified him for appointment to the Commission simply because his original firm (Badger) went bankrupt. We

are advised by the Department of Justice that Mr. Thometz did not become ineligible to continue to serve on the Commission because of changes in the circumstances which originally qualified him for appointment. In addition, it is noteworthy that Mr. Thometz is presently associated with two trucking firms, Blakeman and S.T. Freight.

Finally, there is an important practical consideration to keep in mind. The official voting functions of the four public members of the Commission will soon expire (at the last meeting of the Commission, sometime next month). At this point, it would be extremely impractical to replace Mr. Thometz, who has been actively involved in the Commission's work from the beginning, with someone who has not been involved in the Commission's lengthy hearings and the substantial testimony that has been obtained to date.

We appreciate your interest in the Study Commission, and hope this information is helpful.

With best wishes,

Sincerely,

Kenneth M. Duberstein
Assistant to the President

The Honorable _____

cc: w/copy of incoming, Rosalie Vasiliou - FYI

THE WHITE HOUSE

WASHINGTON

February 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Correspondence from Hugh B.
Kaufman to Karen Hart

Craig Fuller has transmitted for your information a note and news clips sent by Hugh B. Kaufman to Fuller's Executive Assistant, Karen Hart, a personal acquaintance of Kaufman. The clippings concern the charge that E.P.A. investigated Kaufman in retaliation for his "whistle blowing" efforts. Kaufman asserts that the Administration will be severely embarrassed at the upcoming public hearing before a Labor Department ALJ to examine these charges.

No response is necessary.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Draft Decision Memo: Transfer of Civil Space Remote Sensing Systems to the Private Sector

Richard Darman has requested comments by close of business February 8 on the above-referenced proposed decision memorandum for the President from the Cabinet Council on Commerce and Trade (CCCT). The memorandum asks the President to decide between transferring civil space weather and land satellites to the private sector (the unanimous choice of CCCT) and retaining government control of weather satellites while closing out the land satellites. While complex legal questions would arise in the course of implementing a decision to transfer control of the satellites to the private sector, including safeguarding national security and foreign policy interests, nothing precludes consideration of that option as a policy matter.

Attachment

THE WHITE HOUSE

WASHINGTON

February 7, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Decision Memo: Transfer of Civil Space
Remote Sensing Systems to the Private Sector

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

FFF:JGR:aw 2/7/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

February 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Pablo Cabrera

Pablo Cabrera, more popularly known at the Eastern Correctional Facility in Napanoch, New York, as #76-A-1468, has sent Michael Deaver a copy of a letter he addressed to Jack Gillespie, at the American Embassy in the Dominican Republic. Cabrera is serving twenty years for manslaughter, and wants to return to his Dominican Republic homeland. His letter relates his hatred of the United States.

While it is understandable that Cabrera may want to return home rather than serve his sentence, 8 U.S.C. § 1252(h) provides that "[a]n alien sentenced to imprisonment shall not be deported until such imprisonment has been terminated by the release of the alien from confinement." I do not think any response or referral is necessary.

THE WHITE HOUSE

WASHINGTON

February 7, 1983

MEMORANDUM FOR THE FILE

FROM: JOHN G. ROBERTS *gdr*

SUBJECT: Nomination of Darrell Trent
to Rank of Ambassador

In reviewing Darrell Trent's 278, I found it necessary to call him to determine the identity of some of his holdings. According to Mr. Trent, Hagan Systems, Inc., La Pacific, and Intecom, Inc., are hi-tech firms from the San Francisco area. Knost Novelty is a vending company for which Mr. Trent renders no personal services. He invested in the company, which is run by contract by another individual. Mr. Trent could see no way in which any of his holdings could create an appearance of conflict with his contemplated ambassadorial duties.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

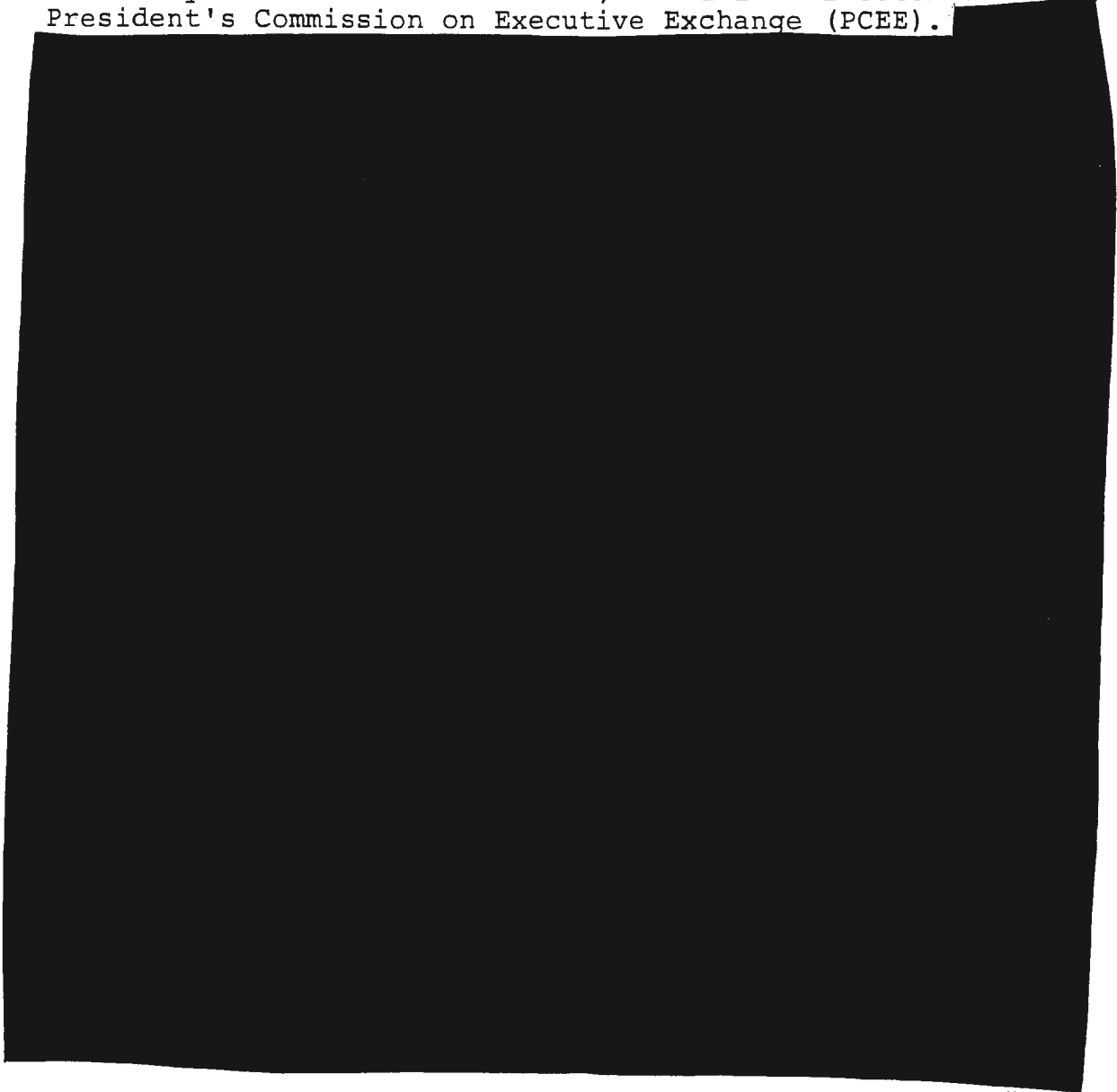
February 7, 1983

MEMORANDUM FOR FRED F. FIELDING

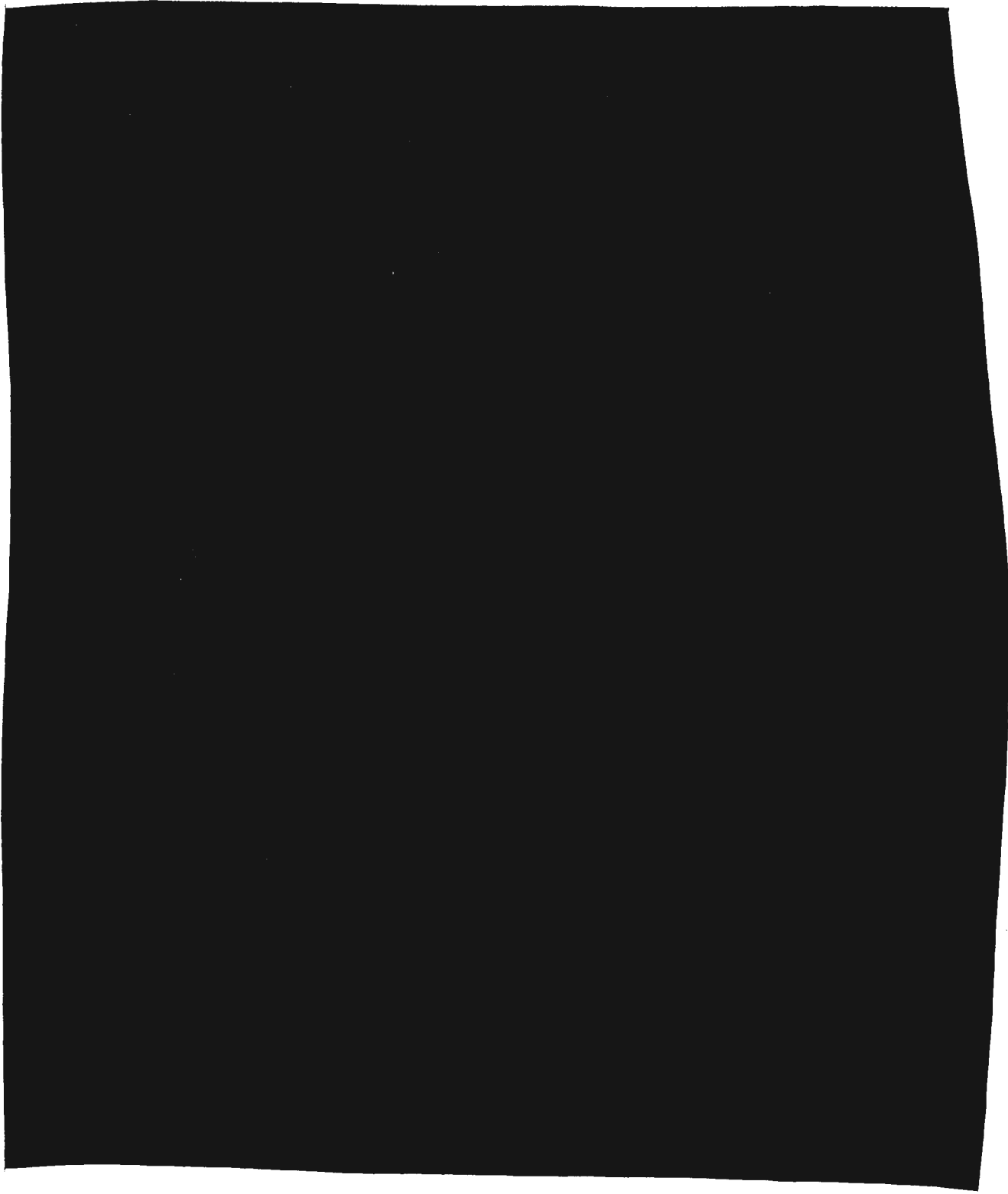
FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Dispute Between HUD and the President's
Commission on Executive Exchange

The Office of Presidential Personnel has requested a legal opinion to resolve a dispute which has arisen between Secretary Pierce and June Walker, Executive Director of the President's Commission on Executive Exchange (PCEE).



b6



Attachment

b6

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3 MEMO

2 2/7/1983 B6

426

FIELDING TO VON DAMM RE HUD DISPUTE

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

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E.O. 13233

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

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JSR*

SUBJECT: Keister

Alfred J. Schweppe, an attorney from Seattle, has written enclosing an only mildly clever Seattle Times column on the etymology of the word "keister" and a letter he wrote to the columnist. Schweppe "thought you might want to show the research to the President." I doubt it. Frankly, I've had it up to my keister with newspaper columns about an expression fairly common to those of us reared in the Midwest. I have drafted a reply.

Attachment

THE WHITE HOUSE

WASHINGTON

February 10, 1983

Dear Mr. Schweppe:

Thank you for your recent letter enclosing a copy of the Seattle Times column on the President's use of the word "keister," and a copy of your own letter to the columnist supplementing his observations. It is interesting how familiarity with slang phrases often varies among different parts of our country. In this case, excuse the bad pun, but I suppose it may depend on where one was reared.

Sincerely,

Fred F. Fielding
Counsel to the President

Alfred J. Schweppe, Esq.
Schweppe, Doolittle, Krug,
Tausend & Beezer, P.S.
1600 Peoples National Bank Building
1415 Fifth Avenue
Seattle, Washington 98171

FFF:JGR:aw 2/10/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 7, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: June Walker Request

June Walker, Executive Director of the President's Commission on Executive Exchange, has asked that you rephrase your December 14, 1982 memorandum to her so that it not indicate that it was written in response to a request from her. The memorandum agreed with Walker that the name of the unofficial alumni group of exchange executives -- The President's Executive Exchange Association -- was problematic in suggesting the endorsement or support of the President. Walker apparently wants to show the memorandum to alumni without revealing that she originally raised the question.

I see no problem with making the minor changes in the memorandum suggested by Walker, and have attached a revised version and a cover memorandum for Walker.

Attachment

THE WHITE HOUSE

WASHINGTON

February 7, 1983

MEMORANDUM FOR JUNE G. WALKER
EXECUTIVE DIRECTOR
PRESIDENT'S COMMISSION ON EXECUTIVE EXCHANGE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Alumni Association

The attached responds to your request for a rephrasing of my December 14, 1982 memorandum on the President's Executive Exchange Association. I hope it meets your needs.

Attachment

FFF:JGR:aw 2/7/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

February 7, 1983

MEMORANDUM FOR JUNE G. WALKER
EXECUTIVE DIRECTOR
PRESIDENT'S COMMISSION ON EXECUTIVE EXCHANGE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Alumni Association

It has come to my attention that a group of alumni of the President's Executive Exchange Program have formed an association known as "The President's Executive Exchange Association." This group has no official connection to the President's Commission on Executive Exchange.

It is our usual practice not to grant permission to use the name of the President, or designations indicating an affiliation with the President, in a manner that might connote his connection with or endorsement of a particular enterprise that is unrelated to his official duties. This has been the policy of prior Administrations, and it is enforced without regard to the merits of particular organizations. Groups of alumni of Presidential programs may appropriately indicate their prior affiliation, when this is not done for a commercial purpose, and when the manner of doing so is consistent with the general rule of not suggesting Presidential endorsement of a particular organization.

"The President's Executive Exchange Association" is problematic, since it could be viewed as an official association with the endorsement or support of the President. This concern would be met if the word "alumni" figured prominently in the group's title, for example, "Associated Alumni of the President's Executive Exchange Program," or "The President's Executive Exchange Alumni Association." The latter designation would track the example of the White House Fellows Alumni Association. Whatever title is chosen should not suggest Presidential endorsement or support of the organization.

FFF:JGR:aw 2/7/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 8, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Inquiry from Kenneth Kneisley Con-
cerning Presidential Seal and Flag

A Kenneth E. Kneisley of Bluffton, Ohio has written seeking information on the use of the Presidential seal and guidance on how to obtain a seal and a Presidential flag. He states that he does work for President Harding's Home, and would pass the information along to the Museum Manager at the Harding Home and the Museum Manager at the President Hayes Home. His stationery, however, includes the slogan "Buy or Sell Political Buttons" and the American Eagle as it appears on the Presidential Seal and the Great Seal, encircled by the words "American Political Items Collectors." I therefore do not recommend responding to any inquiries the Harding or Hayes Museums may have through Mr. Kneisley. We should advise Mr. Kneisley that we can only respond directly to the museum directors, and that his use of the American Eagle appears to be in violation of 18 U.S.C. § 713(b), which prohibits, inter alia, the knowing reproduction of a substantial part of the Presidential seal. I have prepared a draft reply.

Attachment

THE WHITE HOUSE

WASHINGTON

February 8, 1983

Dear Mr. Kneisley:

Thank you for your letter inquiring into the use of the Presidential Seal and how to obtain a copy of the seal and a Presidential flag. Title 18 of the United States Code, Section 713 generally prohibits the use of the Seals of the President and Vice President, except in accordance with regulations promulgated by the President. Those regulations are embodied in Executive Order 11649. A copy of the statute and implementing regulations are enclosed for your information.

I would call your attention to the fact that reproduction of substantial parts of the Presidential seal on personal or commercial stationery is prohibited. The emblem appearing in the center of your stationery thus appears to constitute a violation of the law, and I must advise you to cease using it.

The regulations do permit certain libraries and museums to use the Presidential seal. I would be happy to respond directly to any inquiries Mr. Gary or Mr. Snider may have concerning permitted uses of the seal.

Thank you for your inquiry.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Kenneth E. Kneisley
115 East Washington
Bluffton, Ohio 45817

Enclosures

FFF:JGR:aw 2/8/83

cc: FFFielding/JGRoberts/Subj./Chron

THE WHITE HOUSE

WASHINGTON

February 8, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Milton Masson

A member of the Legal Services Corporation Board of Directors may not be a "full-time employee of the United States." 42 U.S.C. § 2996c(a). A part-time director of the Synthetic Fuels Corporation -- Masson's status, according to the Executive Clerk's Office -- "may not hold any full-time salaried position in the Federal Government or in any State or local government." 42 U.S.C. § 8712(c). Masson is neither a full-time employee of the United States nor does he hold a full-time salaried position in any government. He is the executive vice president and treasurer of Sullivan and Masson, Inc., a consulting firm. 19 Weekly Compilation of Presidential Documents 94 (January 21, 1983). Based on my review of the statutory provisions establishing the LSC board and the Synfuels board (attached), I see no problems with Masson holding a part-time position on both boards.

Attachment

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 8, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Kim Morderosian

Kim Morderosian, a seventeen year old high school student, has written to the President to explain why she is filing a civil suit against Gerald Carmen, Administrator of GSA. Miss Morderosian describes the career of her father, a GS-13 in GSA. Miss Morderosian is upset at his working conditions and the alleged fact that he is not permitted to transfer to more suitable investigative work. She states that she is going to sue for \$1.00 with money she earned during summer vacation to obtain a judgment that her father's health is being ruined by mismanagement of GSA.

I do not know if Miss Morderosian has filed her suit yet, but in any event I recommend a brief reply noting that we cannot discuss the merits. I do not recommend a referral to the GSA General Counsel, since Miss Morderosian may be on a lark of her own, and I would not want to muddy unnecessarily her father's employment file.

THE WHITE HOUSE

WASHINGTON

February 9, 1983

Dear Miss Morderosian:

Thank you for your recent letter to the President, describing the circumstances of your contemplated lawsuit against the Administrator of the General Services Administration. Since your letter concerns litigation against the Federal Government, I am certain you will understand that I am not at liberty to discuss the underlying merits of the dispute.

I do, however, recommend that you discuss this matter with your father.

Sincerely,

Fred F. Fielding
Counsel to the President

Miss Kim I. Morderosian
8909 Applecross Lane
Springfield, Virginia 22153

FFF:JGR:aw 2/9/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Request for Presidential
Endorsement of Patriotic Song

"Pop" lyricist Linwood Simon and "disco" vocalist Gloria Gaynor have written Michael Deaver, enclosing a copy of a letter to the President. The letter seeks Presidential support for the promotion of their new song "America" (not the traditional National Hymn "America, the Beautiful"). They view the promotion of this song as a means of re-kindling national pride and responsibility in order to bring about a more unified and patriotic America.

While I have no reason to doubt the sincerity of Simon and Gaynor, their concerts and distribution of the album containing their song "America" are, of course, profit-seeking ventures. The President therefore should not become affiliated with their campaign, however patriotic its theme. I have drafted a proposed reply to Simon and Gaynor, and a memorandum to Deaver advising him of our disposition of the matter.

Attachment

THE WHITE HOUSE

WASHINGTON

February 7, 1983

Dear Mr. Simon and Ms. Gaynor:

Deputy Chief of Staff and Assistant to the President Michael Deaver has referred your letter of January 28, 1983, to me for appropriate action. That letter was accompanied by a letter to the President, describing your song "America" and seeking the President's support for a campaign to bring about a more unified and patriotic America through, in part, the use of the song in concert.

The campaign you propose to increase national pride and responsibility is admirable, and you are both to be applauded for your efforts in this regard. The White House, however, cannot become involved in this campaign, because it is inextricably linked to your perfectly legitimate commercial endeavors of album sales and concerts. White House policy does not permit Presidential endorsement of a commercial product or enterprise, or the use of the President's name, likeness, or photograph in a manner that suggests an endorsement by the President of a commercial product or enterprise. This has been the policy of previous Administrations, and it is a policy to which the White House and the President strictly adhere.

I am certain you will appreciate the need for us to adhere to this policy, irrespective of the merits of the underlying proposal. Thank you for telling us about your song "America," and best of luck with your patriotic efforts.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Linwood M. Simon and
Ms. Gloria Gaynor
American World-Wide Sounds
& Music, Inc.
P.O. Box 374
Fairview, New Jersey 07022

FFF:JGR:aw 2/7/83
cc: FFFfielding/JGRoberts/Subj./Chron

THE WHITE HOUSE

WASHINGTON

February 7, 1983

MEMORANDUM FOR MICHAEL K. DEEVER
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Inquiry from Linwood Simon and Gloria Gaynor
Seeking Presidential Endorsement of Their
Song "America"

As you will see from the attached, I have advised Linwood Simon and Gloria Gaynor that the President cannot endorse the promotion of their song "America," however patriotic it may be, because doing so would constitute endorsement of a commercial enterprise.

Attachment

FFF:JGR:aw 2/7/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

February 9, 1983

Dear Mr. Amstutz:

With regard to your prospective appointment as Under Secretary, International Affairs and Commodity Programs, at the Department of Agriculture, it will be necessary for you to complete the enclosed Personal Data Statement and Financial Disclosure Report. Please return these forms to me at your earliest convenience.

With best wishes,

Sincerely,


John G. Roberts
Associate Counsel
to the President

Mr. Daniel G. Amstutz
875 Fifth Avenue
New York, New York 10021

Enclosures

THE WHITE HOUSE

WASHINGTON

February 10, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: HUD Unauthorized Use of Government Vehicles

On January 26 Michael Francis Marshall, Vice President of an American Federation of Government Employees Local based at HUD, wrote suggesting that you include Secretary Pierce's actions with regard to a HUD IG report in your review of conflict of interest among high level HUD employees. He enclosed a copy of a letter he wrote on the same day to Secretary Pierce. In that letter Marshall cited an IG report identifying non-official uses of government vehicles by HUD officials and quoted 31 U.S.C. § 638a(c)(2), which provides that wilful use of a government vehicle for non-official purposes is punishable by suspension for at least one month.

I talked with HUD General Counsel John Knapp about this, and he advised me that the HUD officials in question would soon be asked to reimburse the government for the documented instances of non-official use. He indicated that the statutory penalty would not be invoked because the violations were not wilful. On the basis of your advice at this morning's staff meeting I called Knapp to tell him that this determination should be documented in writing, and he assured me that it would be.

I do not think that any response to Mr. Marshall's one-sentence letter is required. He presumably will receive a substantive response to his letter to Secretary Pierce.

THE WHITE HOUSE

WASHINGTON

February 10, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Document Security Memorandum

You asked that I rewrite, for style and order, the draft memorandum from John Rogers to the White House Staff on document security. I have attached a proposed draft.

Attachment

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 10, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *ps-c*

SUBJECT: Proposed Proclamation Entitled Temporary
Duty Reductions on Certain Articles
Pursuant to Legislation Implementing the
Nairobi Protocol to the Florence Agreement

Richard Darman has requested comments on the above-referenced proposed proclamation by close of business February 11. The proclamation, prepared by USTR and approved by the Office of Legal Counsel, modifies the appendix to the U.S. Tariff Schedule, 19 U.S.C. § 1202, to accord duty-free treatment for articles for the handicapped, specified printed, visual, and auditory material, and certain scientific tools. The proclamation notes that this action is being taken pursuant to the recently enacted Educational, Scientific, and Cultural Materials Importation Act of 1982, P.L. 97-446, § 167(b).

I have reviewed the proposed proclamation and the statute on which it is based, and see no legal objection to the President issuing the proclamation. I have prepared a memorandum to Darman for your signature to that effect.

Attachment

THE WHITE HOUSE

WASHINGTON

February 10, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Proclamation Entitled Temporary
Duty Reductions on Certain Articles
Pursuant to Legislation Implementing the
Nairobi Protocol to the Florence Agreement

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

FFF:JGR:aw 2/10/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

February 10, 1983

MEMORANDUM FOR DODIE LIVINGSTON

FROM: FRED F. FIELDING

SUBJECT: Draft Proclamation Designating the
Week of March 13, 1983, as National
Children and Television Week

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

FFF:JGR:aw 2/10/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 10, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Draft Proclamation Designating the
Week of March 13, 1983, as National
Children and Television Week

Dodie Livingston, for Richard Darman, has requested comments by close of business February 14 on the above-referenced draft proclamation. Congress authorized and requested the Proclamation in S.J. Res. 264, which was signed by the President. The proclamation extols the positive potential of television as a formative influence on youth, and cites the efforts of concerned citizens to realize that potential.

I have reviewed the draft proclamation and the act on which it is based and see no legal objection to the President issuing the proclamation. I have prepared a memorandum for your signature to Dodie Livingston.

Attachment

THE WHITE HOUSE

WASHINGTON

February 10, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Chief Justice's Proposals

The Chief Justice devoted his Annual Report on the State of the Judiciary to the problem of the caseload of the Supreme Court, a problem highlighted by several of the Justices over the course of last year. The Chief Justice proposed two steps to address and redress this problem: creation of "an independent Congressionally authorized body appointed by the three Branches of Government" to develop long-term remedies, and the immediate creation of a special temporary panel of Circuit Judges to hear cases referred to it by the Supreme Court -- typically cases involving conflicts between the Courts of Appeals.

It is difficult to develop compelling arguments either for or against the proposal to create another commission to study problems of the judiciary. The Freund and Hruska committees are generally recognized to have made valuable contributions to the study of our judicial system -- but few of their recommendations have been adopted. I suspect that there has been enough study of judicial problems and possible remedies, but certainly would not want to oppose a modest proposal for more study emanating from the Chief Justice.

The more significant afflatus from the Chief Justice is his proposal for immediate creation of a temporary court between the Courts of Appeals and the Supreme Court, to decide cases involving inter-circuit conflicts referred to it by the Supreme Court. The Chief would appoint 26 circuit judges -- two from each circuit -- to sit on the court in panels of seven or nine. The Chief estimates that this would relieve the Supreme Court of 35 to 50 of its roughly 140 cases argued each term. The Supreme Court would retain certiorari review of decisions of the new court.

It is not at all clear, however, that the new court would actually reduce the Court's workload as envisioned by the Chief. The initial review of cases from the Courts of Appeals would become more complicated and time-consuming. Justices would have to decide not simply whether to grant or

deny certiorari, but whether to grant, deny, or refer to the new court. Cases on certiorari from the new court would be an entirely new burden, and a significant one, since denials of certiorari of decisions from the new court will be far more significant as a precedential matter than denials of cases from the various circuits. The existence of a new opportunity for review can also be expected to have the perverse effect of increasing Supreme Court filings: lawyers who now recognize that they have little chance for Supreme Court review may file for the opportunity of review by the new court.

Judge Henry Friendly has argued that any sort of new court between the Courts of Appeals and the Supreme Court would undermine the morale of circuit judges. At a time when low salaries make it difficult to attract the ablest candidates for the circuit bench, I do not think this objection should be lightly dismissed. Others have argued that conflict in the circuits is not really a pressing problem, but rather a healthy means by which the law develops. A new court might even increase conflict by adding another voice to the discordant chorus of judicial interpretation, in the course of resolving precise questions.

The proposal to have the Chief Justice select the members of the new court is also problematic. While the Chief can be expected to choose judges generally acceptable to us, liberal members of Congress, the courts, and the bar are likely to object. In addition, as lawyers for the Executive, we should scrupulously guard the President's appointment powers. While the Chief routinely appoints sitting judges to specialized panels, the new court would be qualitatively different than those panels, and its members would have significantly greater powers than regular circuit judges.

My own view is that creation of a new tier of judicial review is a terrible idea. The Supreme Court to a large extent (and, if mandatory jurisdiction is abolished, as proposed by the Chief and the Administration, completely) controls its own workload, in terms of arguments and opinions. The fault lies with the Justices themselves, who unnecessarily take too many cases and issue opinions so confusing that they often do not even resolve the question presented. If the Justices truly think they are overworked, the cure lies close at hand. For example, giving coherence to Fourth Amendment jurisprudence by adopting the "good faith" standard, and abdicating the role of fourth or fifth guesser in death penalty cases, would eliminate about a half-dozen argued cases from the Court's docket each term.

So long as the Court views itself as ultimately responsible for governing all aspects of our society, it will, understandably, be overworked. A new court will not solve this problem.