WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name ROBERTS, JOHN: FILES

Withdrawer IGP 8/6/2005

File Folder JGR/TESTIMONY/APPROVAL (05/24/1983 - 06/13/1983)

FOIA F05-139/01 COOK 65IGP

Box Number 53

DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	LETTER	ROBERT MCCONNELL TO PETER RODINO RE H.R. 743	2	ND	B6	893

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

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

E.O. 13233

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

THE WHITE HOUSE

WASHINGTON

May 24, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Testimony on H.R. 743, for the Relief of Theda June Davis

The Office of Legislative Affairs at the Department of Justice is seeking OMB clearance of a letter to Chairman Rodino, opposing enactment of H.R. 743, a bill for the private relief of Ms. Theda June Davis. Davis was employed by SER/Jobs for Progress, Inc., a federally funded subgrantee of the City of Phoenix under the Economic Opportunity Act of 1964. Davis won a discrimination suit under Title VII against SER for $35,000 plus interest. SER reportedly cannot pay because it is prohibited from using federal grant funds for this purpose. The federal government itself was not found culpable or liable. H.R. 743 would nonetheless give Davis her money from the federal fisc.

The Department's letter opposes H.R. 743 on the usual grounds: private bills lead to unequal results, and force the federal government to pay even though it is legally blameless. The letter also notes that interest under the bill, if allowed, should be allowed pursuant to 28 U.S.C. § 1961, the general interest on judgments provision. I contacted OLA concerning the reference to 28 U.S.C. § 2411(b) in the first paragraph; they agreed that was an error and it will be changed. I see no other legal objections.

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) / /

Name of Correspondent: Yolanda Branche

☐ MI Mail Report **User Codes:** (A) _____ (B) _____ (C) _____

Subject: Testimony on H.R. 743, for the relief of Theda June Davis

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
W Holland	ORIGINATOR	83/05/24			/ /
WAT 18	Referral Note: A	83/05/24			83/05/25
	Referral Note:	/ /			/ /
	Referral Note:	/ /			/ /
	Referral Note:	/ /			/ /
	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

U.S. Department of Justice

Assistant Attorney General
Legislative Affairs

SPECIAL

May 23, 1983

TO: Jeff Weinberg
OMB

FR: Yolanda Branche
OLA (633-2111)

RE: Testimony for Clearance

This is the Department's proposed statement on H.R. 743, for the relief of Theda June Davis for the May 26 hearing on H.R. 743.

cc: Fred F. Fielding

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name
ROBERTS, JOHN: FILES

Withdrawer
IGP 8/6/2005

File Folder
JGR/TESTIMONY/APPROVAL (05/24/1983 - 06/13/1983)

FOIA
F05-139/01
COOK

Box Number
53

65IGP

DOC NO	Document Type / Document Description	No of pages	Doc Date	Restrictions	
1	LETTER ROBERT MCCONNELL TO PETER RODINO RE H.R. 743	2	ND	B6	893

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

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

E.O. 13233

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

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 24, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Statement on S. 52, The Armed Career Criminal Act of 1983

Deputy Assistant Attorney General James Knapp proposes to deliver the above-referenced statement to the Senate Judiciary Committee on May 26. The statement express general support for S. 52, which would create a new federal offense covering persons with two or more robbery or burglary felony convictions who commit another such offense while armed with a firearm. The testimony takes care to stress that federal prosecution under S. 52 would be very selective. Last year's version of this bill was of course vetoed, in part because of expressed constitutional reservations about a provision giving local prosecutors a veto over federal decisions to prosecute. This version of the bill contains a section providing that cases lodged with local prosecutors may only be considered for federal prosecution at the request of the local prosecutor. The testimony objects to this provision, and offers the alternative of an expression in the statute of Congress' intent that federal prosecutions normally not be brought unless the state or local prosecutor concurs. The testimony also suggests that the prior offenses be proved prior to attachment of jeopardy, to avoid double jeopardy problems if one of the prior offenses is later found to be constitutionally infirm, and that it not be required that the defendant himself possess a firearm so long as one of his cohorts did.

I see no legal objections.

Attachment

THE WHITE HOUSE

WASHINGTON

May 24, 1983

MEMORANDUM FOR GREGORY JONES
OFFICE OF MANAGEMENT AND BUDGET

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

SUBJECT: Statement on S. 52, The Armed Career Criminal Act of 1983

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

FFF:JGR:aw 5/24/83

cc: FFFielding
JGRoberts
Subj.
Chron

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Greg Jones

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: S. 52 - The Armed Career Criminal Act of 1983

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CU Holland	ORIGINATOR	83 05 24			/ /
	Referral Note:				
CU AT 18	D	83 05 24		S	83 05 25
	Referral Note:				
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

U.S. Department of Justice

Assistant Attorney General
Legislative Affairs

IF YOU HAVE ANY COMMENTS PLEASE

CONTACT GREG JONES, 395-3802, OMB.

MAY 23 1989

Roberts

DRAFT

STATEMENT

OF

JAMES KNAPP
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

S. 52
The Armed Career Criminal Act of 1983

ON

MAY 26, 1983

Mr. Chairman and Members of the Committee:

I am pleased to appear before the Committee today to express the views of the Department of Justice on S. 52, The Armed Career Criminal Act of 1983. The bill provides for the federal prosecution of persons who have already been convicted of two felony robberies or burglaries under state or federal law and who commit a third such offense while armed with a firearm. If found guilty, a defendant so prosecuted would have to be sentenced to imprisonment for at least fifteen years or to life imprisonment. He could not be given a suspended or concurrent sentence and would not be eligible for parole.

Initially, let me emphasize that the Department of Justice supports the concept of this bill just as we supported the thrust of its predecessor in the 97th Congress, S. 1688, which was passed by the Senate on September 30, 1982 by a margin of 93-1. We view this bill as a vehicle to allow the federal government to assist the states in dealing with the major problems of hard core recidivist robbers and burglars who prey on innocent persons in all parts of this country. Local police, prosecutors, and court systems in most instances would be able to deal with this threat. In some cases there may be a genuine need, however, for federal assistance. For example, court congestion, prison overcrowding, inadequate state sentencing statutes or any number of other factors may render state prosecution and punishment of a particular career robber or burglar inadequate or ineffective. We anticipate that the provisions contained in S. 52 would be used

principally to help the states in a limited number of cases reflecting these types of special situations. We believe we share with the sponsors of this legislation an understanding that its enactment is not intended to signal a general intervention by the federal government into areas of law enforcement traditionally the responsibility of state and local governments.

Having expressed the Department's general support for the goals of this measure, let me now turn to some specific suggestions we have for improving the legislation. The heart of S. 52 is section two which sets out the offense in a new section 2118 of title 18. We strongly believe, initially, that subsection 2118(e) should be deleted. The question of federal intervention into cases where our involvement is not deemed necessary by the local prosecutor, should be handled as a statement of Congressional intent in a revised section four of the bill.

As presently drafted, subsection 2118(e) is apparently an attempt to overcome the Administration's chief problem with the version of this bill that was passed in H.R. 3963 and S. 1688 in the last Congress. Those bills would have allowed a state or local prosecutor to veto any federal prosecution in his district even if the Attorney General had approved prosecution. Such a restraint on federal prosecutorial discretion and delegation of executive responsibility would have raised grave constitutional and practical concerns.

Subsection (e) does appear to overcome these constitutional difficulties by leaving the ultimate decision on whether to seek a federal indictment to federal prosecutors. However, the subsection provides that a case "lodged" in the office of a local prosecutor -- apparently because it has been presented by the local police -- may be received and considered for federal prosecution only on the request of the local prosecuting authority. It is not clear how the United States Attorney's office would ever officially be made aware of such a case if the state prosecutor did not request its consideration. If federal authorities found out about such a case unofficially they could still seek an indictment in spite of what the state prosecutor might want, but the assertion of federal power in such a manner is hardly conducive to good federal-state relations. There is no rational basis for making even the initial determination whether the state or the federal government should prosecute turn on whether a state or federal agency investigated and presented the case. The justification for any federal involvement in this area of traditional state responsibility is to aid the states in certain unique cases. This aid necessitates close coordination and cooperation between state and federal investigators and prosecutors which can often best be obtained by consultations and decisions on a case-by case basis.[1/]

[1/] It should be noted that the FBI would be the federal agency with investigative jurisdiction over the new offense. The FBI's resources are limited, as are those of local jurisdictions. We would emphasize the FBI jurisdiction would be exercised very selectively under the new section.

We recommend that the proposed subsection 2118(e) be deleted and that a new clause be inserted in Section 4 expressing forcefully the intent of Congress that no prosecutions should normally be brought under this provision unless the state or local prosecutor requests or concurs in federal prosecution. Since Section 4 is non-jurisdictional in nature, this language would be consistent with our previously expressed concerns regarding the constitutionality of a local veto provision while at the same time it would minimize the risk of disrupting important federal-local law enforcement relationships when prosecutions are brought under this statute.

We have three other concerns with section 2118 as set out in the bill. First, and of most significance, we believe that the prior felony convictions which provide the federal jurisdictional basis should be established prior to the attachment of jeopardy. If verification of this jurisdictional element is left until sentencing, a "defective" prior conviction, e.g., one in which the defendant did not have counsel at the entry of a prior plea, could nullify the entire prosecution because double jeopardy considerations would prevent retrial. We suggest the inclusion of language which requires the prosecution to notify the court and the defendant, prior to the attachment of jeopardy, of the prior convictions relied upon to establish jurisdiction and mandate that the defendant contest the validity of any such conviction prior to the attachment of jeopardy on the underlying offense.

Moreover, section 2118(a) is silent on the question of how the possession of the firearm, which is also a requirement for federal jurisdiction, is to be shown. Presumably, it is intended as an element of the offense which must be proven to the trier of fact, inasmuch as the section's application is intended to be limited to firearm-carrying recidivists, but the prior convictions requirement is explicitly not made an element. Thus, it appears that a conviction under section 2118(a) would require proof of possession of a firearm plus proof of all the elements of the state or federal statute that the defendant is charged with having violated. We suggest that this point be specifically confirmed in the legislative history.[2/]

Finally, we think that the requirement that the firearm be in the actual possession of the robber or burglar who has already been convicted twice is too narrow. We believe that the statute should cover such a recidivist robber or burglar while he or any other participant in the offense is in possession of or has readily available to him a firearm or an imitation thereof. Under the provisions of the bill as drafted, a recidivist who planned and organized a particularly life-endangering armed robbery or burglary involving several persons could remove himself from the

---

2/ Since the terms "robbery" and "burglary" are not defined in the proposed statute, we recommend that the legislative history also make it clear that the terms are not limited to their common law meaning and include state offenses that do not use the words "robbery" or "burglary," such as a statute that proscribes criminal entry with different gradations for the types of structures entered and the act committed therein. See United States v. Nardello, 393 U.S. 286 (1969).

reach of the new section simply by having his confederates carry all the firearms. As the Committee knows, in certain types of robberies, like bank robberies, it is not uncommon for one or two persons to actually hold the weapons while others remove the money. Since there is no meaningful difference in their degree of culpability, all participants who have the two prior convictions would be covered by the new statute.

We also suggest that the bill would be strengthened and needless problems avoided if it were amended to include Congressional findings. The proposed statute obviously relies on the commerce power of Congress, but the elements of the offense itself do not require a showing that the crime involved interstate commerce. However, under the Commerce Clause, Congress has the power to regulate even purely intrastate activity where that activity, combined with like conduct by others similarly situated, affects commerce among the states, See, e.g., National League of Cities v. Usery 426 U.S. 833, 840 (1976). Congressional findings on the effect of armed robbery and burglary on interstate commerce, like those made with respect to the effect on commerce of extortionate credit transactions, 18 U.S.C. 891-896, would facilitate the bill's withstanding a constitutional challenge. See Perez v. United States, 402 U.S. 146 (1971). It is anticipated that the bill's heavy mandatory sentence provision, while fully justified by the nature of the offense, will cause it to undergo detailed judicial scrutiny.

Mr. Chairman, that concludes my concludes my prepared testimony and I would be happy to try to answer any questions the committee may have.

Ex Attorney

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 24, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Statement on Parental Kidnapping Prevention Act of 1980

Lawrence Lippe, Chief of the General Litigation Section of the Department of Justice's Criminal Division, proposes to deliver the above-referenced statement before the Senate Subcommittee on Juvenile Justice tomorrow, May 25. The statement is simply the latest episode in the recurring dispute between the FBI and the Congress on the use of the unlawful flight statute, 18 U.S.C. § 1073, in child custody cases. Congress, in response to tearful witnesses, wants the FBI to help foil abductions of children by one estranged spouse from the other, and provided in the Parental Kidnapping Act of 1980 that 18 U.S.C. § 1073 be used for this purpose. The Bureau does not want to get involved in such domestic disputes, and views 18 U.S.C. § 1073 -- historically designed for the hunting of dangerous fugitives -- as an inapt vehicle. After the 1980 Act the FBI issued guidelines authorizing FBI jurisdiction in such cases under 18 U.S.C. § 1073 only if the state requesting such assistance were committed to extraditing the fleeing parent and prosecuting him or her as a fugitive (as opposed to simply using the FBI to locate the child) and the child were in danger of abuse or neglect. This policy was criticized and, last December, Justice suspended the guidelines, leaving the decision whether to invoke jurisdiction under 18 U.S.C. § 1073 to the individual U.S. Attorneys. Lippe's testimony reviews this history and explains the suspension of the guidelines.

I see no legal objections. There is a typographical error on a critical date which should be corrected.

Attachment

THE WHITE HOUSE

WASHINGTON

May 24, 1983

MEMORANDUM FOR GREGORY JONES
OFFICE OF MANAGEMENT AND BUDGET

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

SUBJECT: Statement on Parental Kidnapping Prevention Act of 1980

Counsel's Office has reviewed the above-referenced statement, and finds no objection to it from a legal perspective. On page 7, line 10, I assume "1983" should be "1982."

FFF:JGR:aw 5/24/83

cc: FFFielding
JGRoberts
Subj.
Chron

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) / /

Name of Correspondent: Greg Jones

☐ MI Mail Report **User Codes:** (A) _____ (B) _____ (C) _____

Subject: Parental Kidnaping Prevention Act of 1980

ROUTE TO:		ACTION		DISPOSITION	
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response / Code	Completion Date YY/MM/DD
CW	Holland	ORIGINATOR	830524		/ /
CWAT	18	Referral Note: A	830524		583/05/24
		Referral Note:	/ /		/ /
		Referral Note:	/ /		/ /
		Referral Note:	/ /		/ /
		Referral Note:			

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

U.S. Department of Justice

Assistant Attorney General
Legislative Affairs

MAY 21 1983

IF YOU HAVE ANY COMMENTS

PLEASE CONTACT GREG JONES,

395-3802, OMB

DRAFT

NOT FINAL

Statement

of

Lawrence Lippe, Chief
General Litigation and Legal Advice Section
Criminal Division

before the

Committee on the Judiciary
Subcommittee on Juvenile Justice
United States Senate

concerning

THE PARENTAL KIDNAPING PREVENTION ACT OF 1980

May 25, 1983

Thank you for the opportunity of appearing here today to discuss with the Subcommittee the actions taken by the Department of Justice to implement the Parental Kidnaping Prevention Act of 1980 (PKPA) as it relates to the issuance of unlawful flight to avoid prosecution warrants. As you know, in Section 10 of the PKPA, Congress expressly declared its intent that the unlawful flight statute (18 U.S.C. 1073) apply to cases involving parental kidnaping and resulting interstate or international flight to avoid prosecution under applicable state felony statutes.

The unlawful flight statute makes it a Federal crime to travel in interstate or foreign commerce with the intent to avoid prosecution for a felony offense under the laws of the place from which the fugitive flees. To obtain an arrest warrant for unlawful flight, there must be probable cause to believe that an individual charged with a state felony offense has fled from that state and that his flight was for the purpose of avoiding prosecution.

Although drawn as a penal statute and, therefore, permitting prosecution in Federal court for its violation, the primary purpose of the unlawful flight statute is to provide the FBI with a jurisdictional basis for assisting state law enforcement agencies in the location and apprehension of

fugitives from state justice. Therefore, prosecutions for violations of the unlawful flight statute are extremely rare. In fact, the statute prohibits prosecution unless formal written approval of the Attorney General or an Assistant Attorney General is obtained.

The unlawful flight statute is not an alternative to interstate extradition. When the FBI locates and arrests an individual on an unlawful flight warrant, the arresting agents normally turn the fugitive over to law enforcement authorities in the asylum state to await extradition or waiver of extradition, and the unlawful flight charge is then dismissed. Therefore, as a matter of policy, we require that any state law enforcement agency requesting FBI assistance, under the unlawful flight statute, give assurances that they are determined to take all necessary steps to secure the return of the fugitive from the asylum state, and that it is their intention to bring the fugitive to trial on the state charges for which he is sought.

Similarly, as a matter of policy, FBI assistance is not authorized when the location of the fugitive is known to the requesting state law enforcement agency. In such cases, the state seeking the fugitive can initiate an interstate extradition proceeding and request state law enforcement authorities in the asylum state to place the fugitive in

custody until there has been a resolution of the extradition proceeding. ~~For~~ In more than twenty years ago, ~~the~~ Congress ~~has~~ recognized that the unlawful flight statute is a vehicle in aid of the extradition process; and that FBI involvement is normally limited to those criminal cases in which the state has demonstrated sufficient interest in obtaining the return of the fugitive to warrant incurring the necessary expense incident to extradition. H.R. Rep. No. 827, 87th Congress, 1st Session (1961).

Until recently, it had ~~It has~~ been a longstanding policy of the Department to avoid involving Federal law enforcement authorities in domestic relations controversies, including parental abduction situations. This policy had been based, in part, on the parental abduction exemption in the Federal kidnaping statute, from which we inferred a Congressional intent that Federal law enforcement agencies stay out of such controversies. Consistent with that policy, the Department, prior to the PKPA, did not authorize FBI involvement under the unlawful flight statute for the purpose of apprehending a parent charged with a child custody related felony offense. In rare instances, the Department made exceptions to this policy in situations where there was "convincing evidence that the child was in danger of serious bodily harm as a result of the mental condition or past behavior patterns of the abducting parent."

Shortly after passage of the PKPA, the Department's policy guidelines limiting involvement in parental kidnaping, under the unlawful flight statute, were reviewed, modified and made less restrictive. It became the Department's policy that, as a matter of prosecutorial discretion, the filing of unlawful flight complaints, based on child custody related felony offenses, would be authorized if, in addition to having probable cause to believe that a violation of the unlawful flight statute had occurred, and the requesting state law enforcement agency was committed to extradite and prosecute the offending parent, there also was independent credible information that the victim child was in physical danger or was then in a condition of abuse or neglect. Very simply, our policy guidelines were relaxed by reducing the standard from "serious bodily harm" to an "abuse or neglect" standard. Further, in an effort to achieve a uniform nationwide application of these policy guidelines, we required Criminal Division authorization prior to the filing of such complaints.

The PKPA also requires the Attorney General to report semiannually to the Congress on the Department's implementation of the Act. It was determined that the FBI would assume responsibility for compiling data relating to parental kidnaping complaints. It was also decided that in keeping with the spirit of the PKPA, the FBI would compile data on all

complaints alleging parental abductions, rather than limiting the data only to requests received from state law enforcement agencies. Since passage of the PKPA, the Department has submitted five reports to the Congress setting forth our efforts to implement the Act as well as the accumulated statistical data relating to the issuance of unlawful flight warrants in child custody related felony cases.

In calendar year 1981, the Department took action on 129 law enforcement requests for unlawful flight warrants in parental kidnaping cases. Consistent with our parental kidnaping policy guidelines, FBI involvement was authorized in 48 cases and was declined in 81 cases. In calendar year 1982, FBI involvement was authorized in 46 such cases and was declined in 36 cases. Although there was no formal data compilation prior to the PKPA, the FBI has informed us that in the seven years prior to the PKPA, FBI involvement was authorized in a total of 49 cases, an average of seven cases per year. Clearly, there was a significant increase in the level of FBI involvement in parental kidnapings in the first two years after passage of the PKPA.

As you know, our parental kidnaping policy guidelines have been the subject of considerable criticism by members of Congress and others. We think it is important to note, however, that of the 117 law enforcement requests that were

declined in 1981 and 1982, a substantial number of these requests were declined for reasons wholly independent of our parental kidnaping policy guidelines. For example, we regularly received requests for FBI involvement in situations in which the accused parent was living at a known location in another state, or in which the accused parent had obtained a presumptively valid custody decree in another state. Clearly, there was no need for FBI fugitive hunts in such situations.

Based on numerous inquiries received by the Department, it appears that many complaining parents and others are under the mistaken impression that the PKPA authorizes the FBI to seek an unlawful flight warrant based on the parent's complaint, as opposed to a state law enforcement request. It further appears that many concerned parents are under the mistaken impression that an unlawful flight warrant authorizes the FBI to locate and return abducted children to the custodial parents. In response to inquiries from FBI agents in the field, we have advised that the PKPA and the unlawful flight statute confer no authority on the arresting agents to take custody of a fugitive's child. Very simply, an unlawful flight warrant gives the arresting agents authority to take into custody only the person or persons named in the warrant. We further suggested that when a fugitive is arrested in the company of a child, it may be proper and appropriate to leave the child with

a responsible adult relative or friend of the fugitive. If no responsible adult is available, the arresting agents would arrange for the local child welfare agency to take custody of the child.

In the latter part of 1982, the Department undertook another review of the parental kidnaping policy guidelines. As a result of this review, a determination was made that the guidelines would be suspended indefinitely. This policy decision was communicated to all United States Attorneys' Offices by a teletype dated December 23, 1983. In approximately one year, we will review ~~our~~ this policy change. As a result of this decision, parental kidnaping felonies now are handled on the same basis as other fugitive felon requests. In the first three months after suspension of the guidelines, FBI involvement was authorized in 38 parental kidnaping felony cases and was declined in 3 cases.

It continues to be the Department's position that the unlawful flight statute is to be used for the purpose of assisting state law enforcement authorities in serious criminal cases, and that the statute should not be used merely as a pretext for enforcing compliance with child custody decrees. Unfortunately, our experience has shown that, in some cases, state prosecutors have declined to seek extradition of accused parents, arrested on unlawful flight warrants, the issuance of

which they had requested. We have advised United States Attorneys that care should be taken not to authorize warrants where there is reason to believe the state will not extradite and prosecute once the fugitive is located and arrested by the FBI.

Since December 23, 1982, authorization to file unlawful complaints in child custody related felony offenses is a matter entirely within the sound discretion of the various United States Attorneys. The Criminal Division, of course, remains available for consultation and advice in all fugitive cases. We expect that this policy change will significantly increase FBI assistance to state law enforcement agencies seeking fugitives wanted for parental kidnaping felony prosecutions.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 7, 1983

FOR: FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Proposed Statement by Deputy Assistant Attorney General Vance on Section 213 of H.R. 2797

Sue Thau of OMB has requested clearance of the above-referenced testimony, scheduled to be delivered at 2:30 today. Section 213 of H.R. 2797, the Department of Energy authorization bill, would substitute the United States for independent contractors in nuclear weapons testing lawsuits. By contract the United States already reimburses the contractors for any liability, including costs of litigation. The proposed testimony recognizes this fact and states that the Administration does not oppose substituting the United States for the contractors in suits. The testimony, however, recommends that section 213 be amended so that suits proceed under the Federal Tort Claims Act, with all its exceptions and limitations.

I see no legal objections. The United States is already liable in these suits, and the proposal to have them proceed under the Tort Claims Act is advantageous to the government. I will call Sue Thau if you agree.

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Sue Thau

☐ MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Statement of B. Wayne Vance Concerning H.R. 2797 to authorize appropriations for the Dept. of Energy for National Security Programs for fiscal year 1984, and for other purposes

ROUTE TO: Office/Agency (Staff Name)	ACTION Action Code	Tracking Date YY/MM/DD	DISPOSITION Type of Response	Code	Completion Date YY/MM/DD
CW Holland	ORIGINATOR	831061 07			1 1
	Referral Note:				
CWAT18	A	831061 07		5	831061 07
	Referral Note:				
		1 1			1 1
	Referral Note:				
		1 1			1 1
	Referral Note:				
		1 1			1 1
	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

DRAFT

STATEMENT

OF

B. WAYNE VANCE
DEPUTY ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION

BEFORE

THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 2797

TO AUTHORIZE APPROPRIATIONS FOR THE
DEPARTMENT OF ENERGY FOR NATIONAL
SECURITY PROGRAMS FOR FISCAL YEAR 1984,
AND FOR OTHER PURPOSES

to be delivered
at 2:30 pm
TODAY

DRAFT

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I am pleased to appear before you today in response to your invitation to discuss Section 213 of H.R. 2797. Section 213 would clarify the status of certain contractors operating government-owned facilities relating to atomic energy national defense activities.

Litigation arising from alleged exposure to toxic substanaces has increased enormously over the past several years. Asbestos, Agent Orange, toxic chemicals and radiation exposure are among the subject matters which increasingly are the focal points of litigation. As a part of this unprecedented surge in litigation, many actions have been brought against certain contractors who have invaluably assisted the Government of the United States in carrying out its nuclear weapons testing program. The actions allege exposure to radiation as a result of weapons testing.

The provisions of the Federal Tort Claims Act provide the rights of individuals and corporate litigants to seek monetary recovery from the United States for alleged torts, including those arising from exposure to toxic substances. Typically, the United States cannot be sued for and is not liable for the acts of independent contractors providing goods or services to the United States. However, contractors who operate nuclear

weapons testing facilities for the Department of Energy or its predecessor agencies and, as a result, have participated in the atmospheric nuclear testing program are unique. These contractors were and are utilized by the United States as instruments of national policy to assist in an entirely governmental task--nuclear weapons research, development and testing. Further, the government reimburses the contractors for any liability arising out of their assistance in the weapons program, including the costs of litigation. Although the use of the contractors to implement national policy and perform a uniquely governmental function cannot be disputed, their status and relationship to the United States in litigation arising from our nuclear weapons testing has not been as clear as it should be. Section 213 would clarify this status and relationship. Because the United States, through the Department of Energy's predecessor agencies, was exclusively responsible for, and in control of, the atmospheric atomic weapons testing program, the Administration does not oppose amendment of H.R. 2797 to recognize and give effect to the unique role of these contractors.

As drafted, Section 213 of H.R. 2797 seeks the result suggested above. I suggest, however, that the Congress consider revision of Section 213 to avoid ambiguities in the

operation of the provision and its effect. I am submitting with my Statement a proposed substitute for Section 213 as it presently stands. This substitute would cause all litigation, including suits now filed against contractors, to be maintained against the United States pursuant to the provisions of the Federal Tort Claims Act. The substantive provisions of the Tort Claims Act would not be affected. Thus, suits would proceed to the extent that the Tort Claims Act permits, subject to the substantive and procedural provisions of that general statute. Thereafter, the exceptions and limitations in the Act, including the doctrine enunciated in Feres v. United States, 340 U.S. 135 (1960), would apply in each suit covered by Section 213 in which a final judgment had not been entered as of the date of enactment. Thus, the Federal Tort Claims Act would exclusively determine the liability of the United States for acts or omissions, including any allegations against these contractors, in the conduct of the atmospheric atomic weapons testing program. Because the United States conducted the tests and because the existing contracts require the United States to reimburse the contractors for any judgments entered against them, the proposed Section 213 would sensibly clarify the status of the contractors in relation to the litigation or potential litigation; the Federal Tort Claims Act provides a time-tested framework for effecting this result.

Therefore, if legislation to clarify the status of these unique contractors is deemed desirable by Congress, I recommend this revised version of Section 213.

DRAFT

SUBJECT: Amendment to Proposed Section 213 of H.R. 2797

Proposed section 213 should be amended to read as follows:

(a) The remedy against the United States provided by sections 1346(b) and 2672 of Title 28 of the United States Code for injury or loss of property or personal injury or death shall apply to any civil action for injury or loss of property or personal injury or death due to exposure to radiation based on acts or omissions by a contractor in carrying out a contract in the conduct of the United States atmospheric atomic weapons testing program. This remedy shall be exclusive of any other civil action or proceeding for the purpose of determining civil liability arising from any act or omission of the contractor without regard to when the act or omission occurred. The employees of such a contractor shall be considered to be employees of the Government, as specified in 28 U.S.C. §2671, for the purposes of any such civil action or proceeding and the civil action or proceeding shall proceed in the same manner as any action against the United States filed pursuant to 28 U.S.C §1346(b), and shall be subject to the limitations and exceptions applicable to those actions.

(b) A contractor against whom a civil action or proceeding described in subsection (a) is brought shall promptly deliver all process served upon that contractor to the Attorney General. Upon certification by the Attorney General that the suit against the contractor is within the provisions of subsection (a) of this section, a civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceedings shall be deemed a tort action brought against the United States under the provisions of Section 1346(b), 2401(b), 2402, 2671-2680, of Title 28 of the United States Code, and all references thereto. For purposes of removal, the certification by the Attorney General under this subsection establishes contractor status conclusively.

(c) The provisions of this section shall apply to any action now pending or hereafter commenced which is an action within the provisions of subsection (a) of this section. Notwithstanding section 2401(b) of Title 28, United States Code, if a civil action or proceeding pending on the date of enactment of this section is dismissed because the plaintiff in such action or proceeding did not file an administrative claim as required by section 2672 of that Title, the plaintiff in that action or proceeding shall have 30 days from the date of the dismissal or two years from the date upon which the claim accrued, whichever is later, to file an administrative claim and any claim or subsequent civil action or proceeding shall thereafter be subject to the provisions of section 2401(b) of Title 28.

(d) For purposes of this section, "contractor" includes a contractor or subcontractor of any tier operating a facility for the Department of Energy (or its predecessor agencies) participating in the conduct of the United States Atmospheric atomic weapons testing program. "Contractor" also includes facilities which conduct or have conducted research concerning health effects of ionizing radiation in connection with the testing under contract with the Department of Energy (or its predecessor agencies).

DRAFT

STATEMENT

OF

B. WAYNE VANCE
DEPUTY ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION

BEFORE

THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 2797

TO AUTHORIZE APPROPRIATIONS FOR THE
DEPARTMENT OF ENERGY FOR NATIONAL
SECURITY PROGRAMS FOR FISCAL YEAR 1984,
AND FOR OTHER PURPOSES

DRAFT

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I am pleased to appear before you today in response to your invitation to discuss Section 213 of H.R. 2797. Section 213 would clarify the status of certain contractors operating government-owned facilities relating to atomic energy national defense activities.

Litigation arising from alleged exposure to toxic substanaces has increased enormously over the past several years. Asbestos, Agent Orange, toxic chemicals and radiation exposure are among the subject matters which increasingly are the focal points of litigation. As a part of this unprecedented surge in litigation, many actions have been brought against certain contractors who have invaluably assisted the Government of the United States in carrying out its nuclear weapons testing program. The actions allege exposure to radiation as a result of weapons testing.

The provisions of the Federal Tort Claims Act provide the rights of individuals and corporate litigants to seek monetary recovery from the United States for alleged torts, including those arising from exposure to toxic substances. Typically, the United States cannot be sued for and is not liable for the acts of independent contractors providing goods or services to the United States. However, contractors who operate nuclear

weapons testing facilities for the Department of Energy or its predecessor agencies and, as a result, have participated in the atmospheric nuclear testing program are unique. These contractors were and are utilized by the United States as instruments of national policy to assist in an entirely governmental task--nuclear weapons research, development and testing. Further, the government reimburses the contractors for any liability arising out of their assistance in the weapons program, including the costs of litigation. Although the use of the contractors to implement national policy and perform a uniquely governmental function cannot be disputed, their status and relationship to the United States in litigation arising from our nuclear weapons testing has not been as clear as it should be. Section 213 would clarify this status and relationship. Because the United States, through the Department of Energy's predecessor agencies, was exclusively responsible for, and in control of, the atmospheric atomic weapons testing program, the Administration does not oppose amendment of H.R. 2797 to recognize and give effect to the unique role of these contractors.

As drafted, Section 213 of H.R. 2797 seeks the result suggested above. I suggest, however, that the Congress consider revision of Section 213 to avoid ambiguities in the

operation of the provision and its effect. I am submitting with my Statement a proposed substitute for Section 213 as it presently stands. This substitute would cause all litigation, including suits now filed against contractors, to be maintained against the United States pursuant to the provisions of the Federal Tort Claims Act. The substantive provisions of the Tort Claims Act would not be affected. Thus, suits would proceed to the extent that the Tort Claims Act permits, subject to the substantive and procedural provisions of that general statute. Thereafter, the exceptions and limitations in the Act, including the doctrine enunciated in Feres v. United States, 340 U.S. 135 (1960), would apply in each suit covered by Section 213 in which a final judgment had not been entered as of the date of enactment. Thus, the Federal Tort Claims Act would exclusively determine the liability of the United States for acts or omissions, including any allegations against these contractors, in the conduct of the atmospheric atomic weapons testing program. Because the United States conducted the tests and because the existing contracts require the United States to reimburse the contractors for any judgments entered against them, the proposed Section 213 would sensibly clarify the status of the contractors in relation to the litigation or potential litigation; the Federal Tort Claims Act provides a time-tested framework for effecting this result.

Therefore, if legislation to clarify the status of these unique contractors is deemed desirable by Congress, I recommend this revised version of Section 213.

DRAFT

SUBJECT: Amendment to Proposed Section 213 of H.R. 2797

Proposed section 213 should be amended to read as follows:

(a) The remedy against the United States provided by sections 1346(b) and 2672 of Title 28 of the United States Code for injury or loss of property or personal injury or death shall apply to any civil action for injury or loss of property or personal injury or death due to exposure to radiation based on acts or omissions by a contractor in carrying out a contract in the conduct of the United States atmospheric atomic weapons testing program. This remedy shall be exclusive of any other civil action or proceeding for the purpose of determining civil liability arising from any act or omission of the contractor without regard to when the act or omission occurred. The employees of such a contractor shall be considered to be employees of the Government, as specified in 28 U.S.C. §2671, for the purposes of any such civil action or proceeding and the civil action or proceeding shall proceed in the same manner as any action against the United States filed pursuant to 28 U.S.C §1346(b), and shall be subject to the limitations and exceptions applicable to those actions.

(b) A contractor against whom a civil action or proceeding described in subsection (a) is brought shall promptly deliver all process served upon that contractor to the Attorney General. Upon certification by the Attorney General that the suit against the contractor is within the provisions of subsection (a) of this section, a civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceedings shall be deemed a tort action brought against the United States under the provisions of Section 1346(b), 2401(b), 2402, 2671-2680, of Title 28 of the United States Code, and all references thereto. For purposes of removal, the certification by the Attorney General under this subsection establishes contractor status conclusively.

(c) The provisions of this section shall apply to any action now pending or hereafter commenced which is an action within the provisions of subsection (a) of this section. Notwithstanding section 2401(b) of Title 28, United States Code, if a civil action or proceeding pending on the date of enactment of this section is dismissed because the plaintiff in such action or proceeding did not file an administrative claim as required by section 2672 of that Title, the plaintiff in that action or proceeding shall have 30 days from the date of the dismissal or two years from the date upon which the claim accrued, whichever is later, to file an administrative claim and any claim or subsequent civil action or proceeding shall thereafter be subject to the provisions of section 2401(b) of Title 28.

(d) For purposes of this section, "contractor" includes a contractor or subcontractor of any tier operating a facility for the Department of Energy (or its predecessor agencies) participating in the conduct of the United States Atmospheric atomic weapons testing program. "Contractor" also includes facilities which conduct or have conducted research concerning health effects of ionizing radiation in connection with the testing under contract with the Department of Energy (or its predecessor agencies).