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THE WHITE HOUSE

WASHINGTON

February 14, 1983

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS

SUBJECT: The Third Branch Interview

Attached are draft responses to questions 1, 2 and (at the request of RAH) 8.

Attachments

1. The functions and responsibilities of the Counsel to the President defy any easy or shorthand description. As a general matter the Office is responsible for providing advice and services on legal matters of uniquely Presidential concern. While the Department of Justice and counsels in the various departments and agencies are generally responsible for the legal work within the Executive Branch, it has been evident since the time of Franklin Roosevelt that there was a need for a focal point in the White House for legal matters affecting the Presidency. The Counsel's Office provides that focal point and, when appropriate, brings a Presidential perspective to bear on legal questions arising throughout the Government. The Office makes certain that White House decisions and actions have received proper consideration from a legal perspective, and also performs certain "general counsel" functions with respect to the White House staff. Despite the breadth of its responsibilities, the Counsel's Office has remained very small, and so we rely to the maximum extent practicable on the expertise of lawyers throughout the Executive Branch for research and other assistance.

2. I do participate in the deliberations of the Cabinet Council on Legal Policy, one of six cabinet councils formed to promote the President's desire for effective cabinet government. The Cabinet Council on Legal Policy is chaired by the Attorney General and includes the Secretaries of State, Treasury, Interior, Commerce, Labor, Health and Human Services, Housing and Urban Development, and Transportation, as well as the Vice President, the Counsellor to the President, the President's Chief of Staff, and the Assistant to the President for Policy Development. Representatives of other departments are invited to participate as appropriate.

The Cabinet Council on Legal Policy reviews legal policy questions with interdepartmental ramifications. Typical examples are issues arising in such areas as narcotics control and narcotics law enforcement, civil rights, and immigration. A good example of the work of the Cabinet Council on Legal Policy was the formation last fall of the President's broad-ranging initiative to combat organized crime and narcotics trafficking. It was evident that a serious effort to confront these two closely related threats required the resources and expertise of several departments, and the Cabinet Council on Legal Policy provided a vehicle for developing and implementing a coordinated plan of attack.

8. I do not think that the driving force behind proposals to withdraw Supreme Court jurisdiction over such matters as abortion and school prayer is a desire to ease the burden on the Supreme Court. Proponents of these proposals rather view them as a means of addressing the problem of judicial activism. This Administration has sought to promote the constitutional values of judicial restraint through other means, such as avoiding arguments in court that invite departures from judicial restraint and by appointing to the bench highly-qualified men and women who recognize the limits on the role of the judiciary in our constitutional system of separated powers.

THE WHITE HOUSE

WASHINGTON

February 7, 1983

MEMORANDUM FOR RICHARD A. HAUSER
SHERRIE M. COOKSEY
PETER J. RUSTHOVEN
JOHN G. ROBERTS, JR. ✓

FROM: DIANNA G. HOLLAND *DGH*

SUBJECT: The Third Branch Interview

Attached are questions which have been submitted to Mr. Fielding for an interview for the publication The Third Branch. This interview was cancelled a number of times and they have now requested that Mr. Fielding simply prepare written replies. I would appreciate it if you could put together a draft response for his review to the questions highlighted on the attached copy. For those of you who submitted responses for the original interview, I have attached a copy of what you prepared.

I would greatly appreciate it if you could submit these to me by close of business February 11.

Thank you very much.

JGR

QUESTIONS FOR MR. FRED FIELDING

COUNSEL TO THE PRESIDENT

JGR [REDACTED] As Counsel to the President, there are some obvious responsibilities the title carries with it, but each President organizes his staff to suit his own needs. How would you describe the duties of your position?

JGR [REDACTED] President Regan constituted a new group called the Cabinet Council on Legal Policy. Do you participate in meetings of this group? [Here, please expand on purpose of the Council, who are the members, etc.]

SHE 3. During the Carter Administration nominating commissions were appointed to suggest candidates to be considered for circuit judgeships. President Regan has abandoned this procedure. What procedures are followed now?

SHE 4. This administration has been criticized for appointing few women and minorities to the federal bench. Would you comment on this, please.

SHE 5. The process of nominating judges has accelerated recently but there are still a number of vacancies. When can we expect that these will be filled?

RJR 6. Will the administration support the requests of certain cities and counties to reverse ongoing mandatory busing plans imposed by the federal courts? Will it oppose the imposition of such plans?

7. Proposals have been made recently by several members of the U.S.

RJR Supreme Court to change procedures currently followed in an effort to meet steadily increasing caseloads. As a member of the Supreme Court Bar would you care to comment on any of these proposals?

8. Do you feel that proposals to withdraw Supreme Court jurisdiction over some matters now filed in federal district and circuit courts would really make a significant impact on the Court's caseload?

9. In the criminal area there are a number of issues that have recently drawn national attention, among them drugs, bail, and the insanity defense. What is the administration doing about these?

10. The future of the Legal Services Corporation is still undecided. What can we expect from the President with respect to the Legal Services Corporation?

11. In the last two years of the President's term, what can we expect in the way of action affecting the federal judiciary?