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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 14, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: President's Executive Exchange Association

June Walker, Executive Director of the President's Commission on Executive Exchange, has written requesting your views on the use of the word "President's" in "The President's Executive Exchange Association." The Association has no official connection to the Commission or the President's Executive Exchange Program, which is run by the Commission. The Association is, however, composed of certain alumni of the Program, and is open to all alumni. It distributes a quarterly newsletter and an annual directory, and hosts speakers. Walker has complained that the Association is often confused with the Commission. She has asked the group to change its name to "The President's Executive Exchange Alumni Association," but the group has not yet done so.

I called Walker to obtain more information about the Association. She believes it is a non-profit organization. It is not a comprehensive alumni organization, but is composed primarily of exchange executives from the government side of the program -- "those most in need of help," as Walker put it. Walker indicated that there were some ill feelings between the Commission and the Association. She stopped the previous practice of Commission funding of the Association's directory ($3,000 per year), and generally "broke the chord" linking the alumni group to the Commission.

This strikes me as a close call. While the standard practice is, of course, not to approve use of the President's name or other phrases indicating an affiliation with the President, associations of alumni of Presidential programs would seem to have sufficient affiliation in fact to justify an exception. Thus, for example, "The White House Fellows Alumni Association" cannot be faulted for use of a designation indicating an affiliation with the White House. The key would seem to be to insist that the designation be consistent with the general policy concern of not suggesting Presidential endorsement of any particular enterprise or organization. The difficulty in this case is that "The

President's Executive Exchange Association" can be viewed as a Presidential association (which it is not) or an association of Presidential Exchange Executives (which it is). Walker's suggested addition of the word "Alumni" seems ideal, and would track the White House Fellows example.

I recommend a restrained memorandum to Walker, outlining the general policy and agreeing that the addition of the word "alumni" would be desirable. Hopefully she can then reach an agreement with the Association. I think such a low-key approach, at least initially, is better than issuing a "final ruling," writing the Association, or otherwise becoming more directly involved in a dispute that apparently reaches well beyond the technical question of the use of the designation "President's." I have attached a proposed memorandum to Walker.

Attachment

THE WHITE HOUSE

WASHINGTON

December 14, 1982

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: President's Executive Exchange Association

Thank you for your memorandum of December 6, 1982, requesting my views on the use of the word "President's" in the name of the above-referenced group. It is my understanding that the Association is a group of alumni of the President's Executive Exchange Program, with 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. I quite agree that 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 12/14/82
cc: FFFielding/JGRoberts/Subj./Chron

THE WHITE HOUSE

WASHINGTON

December 14, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Report of USIA General Counsel on Arthur Imperatore's Allegations

Charles Z. Wick, Director of the United States Information Agency, has sent you a copy of his November 30, 1982 letter to Attorney General Smith, Comptroller General Bowsher, and Council on Integrity and Efficiency Chairman Wright. That letter transmitted a report by USIA General Counsel Jonathon Sloat on the assertion made by former USIA Ombudsman Arthur Imperatore at the time of his resignation that he could "no longer be associated with the mismanagement, waste, inefficiency and concern about the possibilities of corruption and fraud which remain unaddressed and unabated." The ten-page report concluded that Imperatore's allegations were either unsubstantiated or were already being routinely and actively addressed by USIA at the time. Wick's letter refers to this conclusion and notes that "[t]here appears to be no reason to pursue this issue further, and we consider the matter concluded."

Arthur Imperatore served for less than six months as the unpaid Ombudsman for USIA. He resigned within two weeks of the time the Director rejected a reorganization proposal he submitted, which included placing Imperatore in a Presidentially-appointed position as Deputy Director for Organizational Development. His specific allegations, with the General Counsel's findings, were:

- he did not have adequate access to USIA management. The report disagrees, documenting Wick's request for regular reports, which were never received.

- personnel in data processing were under-utilized. The report essentially agrees, but notes that a review of this area was on-going and has since led to needed reforms.

- there is poor management and a morale problem in the Chinese language section of Voice of America (VOA). The report agrees, noting reforms to address the problems.

- VOA's system of procuring talent vendor services has insufficient safeguards against fraud and nepotism. New policies have strengthened the safeguards, including conflict of interest reviews by the General Counsel whenever there are contracts between USIA and Government employees, former employees, or family members.

- there is possible fraud and corruption in the VOA Turkish branch. This charge was referred to the Justice Department Public Integrity Section, which declined prosecution in favor of administrative action. The individual in question is in the process of being separated from USIA.

- there is a "Broadus Report" on fraud and corruption at USIA. The General Counsel's report notes "Broadus" is the Chief Auditor of USIA, who regularly conducts audits of USIA operations.

- there is a morale problem with respect to hiring and promoting foreign nationals at VOA. The General Counsel's report notes that legislative history has been developed to permit greater flexibility in this area.

I do not believe any action by you is necessary or desirable in response to the General Counsel's report. You did not respond to receipt of copies of previous correspondence on the subject of Imperatore's accusations. The Justice Department has received this report and can determine if any law enforcement action, such as further investigation, needs to be undertaken.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 14, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Forfeiture Case of William J. Diego

The Office of the Counsellor to the President has referred to you a letter and accompanying materials sent to Mr. Meese, concerning an effort by the U.S. Attorney in San Diego to effect a forfeiture of $178,000 in cash. The money was abandoned along a freeway and innocently discovered by William J. Diego, who gave it to the police and claimed it under California's lost property statute. The U.S. Attorney instituted forfeiture proceedings to recover the money under 21 U.S.C. § 881 (1976), which provides that "[a]ll moneys . . . furnished or intended to be furnished by any person in exchange for a controlled substance" "shall be subject to forfeiture to the United States and no property right shall exist in them." The Government alleges, and Diego does not dispute, that the money was involved in drug transactions. Diego's lawyers, from the firm of Gray, Carey, Ames & Frye, filed a petition with the Department of Justice for remission or mitigation of the forfeiture, on the grounds that forfeiture in the case of an innocent finder would not advance the Government's interest in depriving narcotics traffickers of their illicit proceeds and would violate the policy of California's lost property statute. The petition, supported by local media and the San Diego Police, was denied by a Section Chief of the Criminal Division.

Diego's lawyers have filed a request for reconsideration with the Attorney General, and have simultaneously addressed a petition to Mr. Meese, suggesting that the earlier denial by "lower-level staffers" did not adequately consider the policy implications. The petition asks Meese to intercede with the Criminal Division. It is accompanied by a "Dear Ed" letter reviewing the case from Richard Burt, a partner in the firm representing Diego. We are requested by the Office of the Counsellor to the President to draft a reply.

I do not think it would be appropriate for Mr. Meese to intercede in this forfeiture action, which Diego's attorneys have promised will be litigated if their petition is denied.

If Meese were successfully to do what Diego's attorneys ask, it would mean the loss of $178,000 to the United States, and the concomitant enrichment of a friend's client (and, through what I assume is a contingency fee arrangement, the friend himself). Appearances alone preclude this. In any event, I am not persuaded by Diego's arguments. The forfeiture statute gives the United States the right to the drug money, a right which is paramount to any rights mere finders may have. While Diego is correct that this may discourage finders from turning in money they discover, such cases are probably rare. Finders such as Diego may, as a matter of equity, be entitled to some reward, but surely not <u>all</u> of the money they happened to stumble across.

I have drafted a proposed reply for Meese. The reply is careful not to express any view on the merits, since the matter could well end up in court and it would be unfortunate to have Meese suggesting reservations about the Government's position.

Attachment

THE WHITE HOUSE

WASHINGTON

December 20, 1982

MEMORANDUM FOR EDWIN MEESE III
COUNSELLOR TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence from Richard A. Burt on William J. Diego Forfeiture Case

Richard A. Burt of the San Diego law firm of Gray, Cary, Ames & Frye asked in his December 2, 1982 letter to you that you intervene in Justice Department consideration of the forfeiture case involving William J. Diego, a client of Burt's firm. Diego innocently discovered $178,000 in cash alongside a highway, and turned it over to the police, claiming it under California's lost property statute. The U.S. Attorney, however, instituted forfeiture proceedings under 21 U.S.C. § 881 (1976), which provides that all moneys furnished or intended to be furnished in illegal drug transactions shall be subject to forfeiture to the United States, and no property right shall exist in them. The evidence indicates that the abandoned money was drug related. Diego filed a petition for remission or mitigation of forfeiture, which was denied by the Criminal Division of the Justice Department. He has filed a petition for rehearing with the Attorney General, and asks you to intercede. His argument is that forfeiture in this case will not advance the government's objective of taking profits from narcotics traffickers, but will frustrate the policies of California's lost property statute.

I recommend that you not become involved in the case. The matter is currently pending, on the government's complaint for forfeiture, before the United States District Court for the Southern District of California. If Diego has valid objections they may be raised in that forum, and the Justice Department has so advised him. In any event, Diego's arguments are not persuasive. The forfeiture statute gives the United States the right to the drug money, a right which is paramount to Diego's right as a mere finder.

I have drafted a proposed reply for your signature.

FFF:JGR:aw 12/20/82
cc: FFFielding/JGRoberts/Subj./Chron

THE WHITE HOUSE

WASHINGTON

December 20, 1982

Dear Dick:

Thank you for your letter of December 2, 1982, describing the situation of your client, William J. Diego. I appreciate the spirit in which your letter was written.

I must, however, decline to become involved in the particular case of Mr. Diego. That case is pending before the courts, and it would not be appropriate for me to intercede. I am confident that you will understand the necessity for my position.

Sincerely,

Edwin Meese III
Counsellor to the President

Richard A. Burt, Esq.
Gray, Cary, Ames & Frye
525 B Street
Suite 2100
San Diego, California 92101

EMIII:FFF:JGR:aw 12/20/82

cc: EMeeseIII
FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 15, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Correspondence from Carl Shipley

Carl Shipley recently wrote you a letter expressing concern about reported efforts by federal workers to resist Reagan Administration plans to reduce the size of the federal work force. He enclosed a column from The Washington Times discussing some such efforts, including the AFGE injunction against RIF's at HUD. Shipley suggested modifying executive orders or regulations to respond to the problem. I have drafted a reply agreeing that federal workers should not obstruct Administration policy, noting that our officials are seeing that this does not happen, and advising Shipley of the Government's recent success in overturning the AFGE injunction on HUD RIF's.

Attachment

THE WHITE HOUSE

WASHINGTON

December 15, 1982

Dear Carl:

Thank you for your letter of December 7, 1982, and the accompanying column from The Washington Times. Your letter expressed concern over efforts by federal employees to resist, through delaying tactics and invocation of administrative process, the plans of this Administration to reduce the size of the federal work force.

I quite agree with you that federal employees have an obligation not to obstruct the objectives of the President. Let me assure you that the appropriate officials are taking every legitimate step to ensure that the President's policies -- including those relating to reduction of the federal work force -- are not frustrated by obstructionist tactics. In this regard you may be interested to know that the government recently succeeded in overturning the injunction against reductions in force at the Department of Housing and Urban Development, referred to in the penultimate paragraph of the article attached to your letter.

I appreciate the spirit in which your letter was written, and am grateful for the benefit of your views.

Sincerely,

Fred F. Fielding
Counsel to the President

Carl L. Shipley, Esq.
Shipley, Smoak & Henry
Suite 820
910 - 17th Street, NW
Washington, D.C. 20006

FFF:JGR:aw 12/15/82

cc: FFFielding/JGRoberts/Subj./Chron

THE WHITE HOUSE

WASHINGTON

December 15, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Trade Strategy Issue Papers

Richard Darman has requested comments by today on a package of trade policy decision memoranda to be discussed with the President at a Cabinet Council meeting later this week. The memoranda seek decisions in six areas:

1. what action to take with respect to Domestic International Sales Corporation (DISC) tax deferrals to U.S. exporters, found to violate GATT.

2. whether to establish a trade adjustment assistance program for workers displaced by rising imports, as an alternative to protectionism, and what form such a program should take.

3. whether to develop a new trade adjustment assistance program for firms, again as an alternative to a protectionist response to rising imports.

4. whether to use agricultural subsidies to combat European Community subsidies, or sell excess stocks of dairy products for the same purpose.

5. what should the Eximbank's FY 1984 budget be, and how should it be allocated.

6. should the Internal Revenue Code be amended to authorize tax-exempt industrial revenue bonds to finance exports.

The cover memorandum from Darman asks only for "special concerns," noting that a first draft of the package was circulated on November 18. This office was not included in that earlier distribution, however, and the short turn-around time on this revised draft permits only limited review of the technical subject matter. This should be noted in the response to Darman. Because of the short turn-around, I called Mike Hathaway, Deputy General Counsel at USTR, and the Office of Legal Policy at the Justice Department -- both

familiar with this material -- to see if they would help flag any legal concerns. Neither indicated any legal objections to the policy choices.

Most of the issues involve policy options which would require legislation to implement. The legal issues which are raised, therefore, concern the content of proposed legislation, and the paper simply notes that required legislation will be developed. We can at this stage do little more than note that the legislative proposals will have to be carefully evaluated once a detailed draft is available. For example, one option on DISC calls for development of a revised DISC compatible with GATT: the proposal, when developed, will have to be checked to determine if it is in fact legal under GATT.

I have attached a proposed memorandum to Darman.

Attachment

THE WHITE HOUSE

WASHINGTON

December 15, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: U.S. Trade Strategy Issue Papers (Revised)

This office has received the above-referenced options package, to be discussed with the President at a Cabinet Council meeting later this week. We did not receive the earlier draft of this package, however, and the short turn-around time on the revised package has meant that our review has been a limited one. That review has been supplemented by inquiries with the Department of Justice and the Office of the General Counsel of USTR.

Based on our limited review, and the above-mentioned inquiries, this office has no legal objection to the consideration of the policy options presented in the paper. The options generally call for new legislation to be developed rather than actions to be taken within existing legal authority. Any such legislation which is developed will have to be carefully evaluated to guarantee that it will achieve its desired purpose (for example, making DISC legally compatible with GATT).

FFF:JGR:aw 12/15/82

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 17, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Enrolled Bill S. 2177 - Colorado River Basin Project Cost Indexing

Richard Darman has requested comments by close of business today on Enrolled Bill S. 2177, which would authorize cost indexing of appropriations for construction costs of the non-Indian distribution system of the Central Arizona irrigation project, provided that non-federal entities provide not less than 20 percent of the contruction cost during construction. The original Colorado River Basin Project Act of 1968 permitted adjustments in the appropriation ceiling to keep pace with ordinary fluctuations in construction costs, but this boilerplate provision was omitted, apparently through oversight, with respect to the $100 million appropriation for construction of non-Indian distribution systems. That construction is due to start soon, since water will be available from the project in 1985, and will be impossible if costs must be kept at the 1968 appropriation level, unadjusted for inflation.

Consistent with the Administration's recommendation, the bill amends the 1968 Act to permit cost indexing of the appropriation for construction of non-Indian distribution systems. A floor amendment added a proviso requiring the Secretary to enter into agreements with non-Federal interests to provide at least 20 percent of the subject construction costs during construction. The Department of Interior has indicated it "welcomes" this provision.

I have reviewed the memorandum to the President from James Frey, Assistant Director of OMB for Legislative Reference, the legislative reports, and the bill itself. OMB and Interior approve of the bill. I have no objections and recommend that you sign the attached memorandum to Darman.

Attachment

THE WHITE HOUSE

WASHINGTON

December 17, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 2177 - Colorado River Basin Project Cost Indexing

Counsel's Office finds no objection from a legal perspective to the above-referenced enrolled bill.

FFF:JGR:aw 12/17/82

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 17, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Enrolled Bill H.R. 6403 - Disposition of Wyandot Indians Judgment Funds

Richard Darman has requested your comments by close of business today on Enrolled Bill H.R. 6403, which authorizes distribution of funds previously awarded and appropriated to the Wyandot Indians. The Wyandots were awarded $561,424.21 by the Indian Claims Commission in 1978, and $2,349,679.60 by the Court of Claims in 1979. Funds have been appropriated to cover these awards, and the instant bill authorizes distribution of the funds among the different groups of Wyandots. This legislation, originally introduced by the Department of Interior, is necessary under the Indian Judgment Funds Act of 1973 because the Secretary of Interior did not submit a plan for distribution within 180 days of the time Congress appropriated the funds. OMB and Interior approve of the bill, the latter indicating that it reflects the desires of the Wyandots. The Department of Justice interposes no objection (informally).

I have reviewed the memorandum to the President from James Frey, Assistant Director of OMB for Legislative Reference, the legislative report, and the bill itself, and have no objections. I recommend that you sign the attached memorandum to Richard Darman.

Attachment

THE WHITE HOUSE

WASHINGTON

December 17, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 6403 - Disposition of Wyandot Indians Judgment Funds

Counsel's Office finds no objection from a legal perspective to the above-referenced enrolled bill.

FFF:JGR:aw 12/17/82

cc: FFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 20, 1982

TO: FRED F. FIELDING

FROM: JOHN ROBERTS JGR

SUBJECT: Enrolled Bill H.R. 4364 - Trust Land for Pascua Yaqui Tribe

Richard Darman has requested comments by close of business today on Enrolled Bill H.R. 4364, which would transfer 570 acres of land held by the Bureau of Land Management in Pima County, Arizona, to the Pascua Yaqui Tribe. The bill would add the land to the existing reservation, and is justified on the ground that the existing reservation is too small (200 acres) to support the tribe (5,000 members). The bill leaves existing legal rights in the land unaffected, and stipulates that Arizona will exercise civil and criminal jurisdiction over the land. OMB recommends approval, and Interior has no objection.

As noted in the memorandum to the President from James Frey, Assistant Director of OMB for Legislative Reference, however, the land transfer violates Administration policy that land transfers be accompanied by payment of fair market value. The Administration generally supported the bill prior to establishment of this policy by the Property Review Board, and subsequently sought an appropriation to purchase the land for the tribe, in order that the transfer would be consistent with the Property Review Board policy. This effort was not successful. OMB nonetheless recommends approval, noting that the bill can be "grandfathered" without creating a serious precedent of violating the fair market value policy.

I contacted Bruce Selfon, Deputy Director of the Property Review Board, to discuss the bill. He was originally under the impression that Interior was going to recommend a veto. In any event, he noted that the Property Review Board had serious reservations about the bill, for the foregoing reasons, and would communicate them directly to Darman. I recommend that you note this concern in the memorandum to Darman.

Attachment

THE WHITE HOUSE

WASHINGTON

December 20, 1982

TO: RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT
AND DEPUTY TO THE CHIEF OF STAFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 4364 - Trust Land for Pascua Yaqui Tribe

The above-referenced Enrolled Bill is, as noted in the memorandum to the President from James Frey, Assistant Director of OMB for Legislative Reference, inconsistent with the policy of the Property Review Board to require payment of fair market value for most transfers of Federal land. While this does not preclude Executive approval of the bill, the Property Review Board has advised this office that it has serious reservations about such approval. The Property Review Board will communicate those concerns directly to you.

THE WHITE HOUSE

WASHINGTON

December 20, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Civil Aeronautics Board Decisions in Philippine Airlines, Inc., Empresa Guatemalteca de Aviacion, China Airlines, Ltd., and British Caledonian Airways, Limited

Richard Darman's office requested comments by close of business today on the above-referenced CAB orders involving international aviation, which were submitted for Presidential review under section 801(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 1461(a). Under this section, the President may disapprove, solely on the basis of foreign relations or national defense considerations, CAB actions involving either foreign air carriers or domestic carriers involved in foreign air transportation. If the President wishes to disapprove such CAB actions, he must do so within sixty days of submission (in the case of Philippine Airlines, Inc., by December 27, 1982; in the case of Empresa Guatemalteca de Aviacion, by January 7, 1983; in the case of China Airlines, Ltd., by January 17, 1983; in the case of British Caledonian Airways, Limited, by January 22, 1983).

The orders have been reviewed by the appropriate departments and agencies, following the procedures established by Executive Order No. 11920 (1976). OMB recommends that the President not disapprove, and reports that the NSC and the Departments of State, Defense, Justice and Transportation have not identified any foreign relations or national defense reasons for disapproval. Since this order involves foreign carriers, the proposed letter from the President to the CAB Chairman prepared by OMB omits the standard sentence designed to preserve availability of judicial review.

My review of the orders and related materials confirms the OMB description of these as "routine, noncontroversial" matters (particularly from the foreign relations and national defense standpoint). The orders would amend the Philippine Airlines permit, to include additional U.S. destinations; grant a three-year permit to the Guatemalan

airline to fly to four U.S. cities; amend the permit of China Airlines to add New York and Seattle as terminal points; and add Los Angeles to the routes of British Caledonian.

A memorandum for Darman is attached for your review and signature.

Attachment

THE WHITE HOUSE

WASHINGTON

December 20, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decisions in Philippine Airlines, Inc., Empresa Guatemalteca de Aviacion, China Airlines, Ltd., and British Caledonian Airways, Limited

Our office has reviewed the above-referenced CAB decisions and related materials, and has no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(a).

We also have no legal objection to OMB's recommendation that the President not disapprove these orders, or to the substance of the letter from the President to the CAB Chairman prepared by OMB.

FFF:JGR:aw 12/20/82

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

December 20, 1982

MEMORANDUM FOR EDWIN MEESE III
COUNSELLOR TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence from Richard A. Burt on William J. Diego Forfeiture Case

Richard A. Burt of the San Diego law firm of Gray, Cary, Ames & Frye asked in his December 2, 1982 letter to you that you intervene in Justice Department consideration of the forfeiture case involving William J. Diego, a client of Burt's firm. Diego innocently discovered $178,000 in cash alongside a highway, and turned it over to the police, claiming it under California's lost property statute. The U.S. Attorney, however, instituted forfeiture proceedings under 21 U.S.C. § 881 (1976), which provides that all moneys furnished or intended to be furnished in illegal drug transactions shall be subject to forfeiture to the United States, and no property right shall exist in them. The evidence indicates that the abandoned money was drug related. Diego filed a petition for remission or mitigation of forfeiture, which was denied by the Criminal Division of the Justice Department. He has filed a petition for rehearing with the Attorney General, and asks you to intercede. His argument is that forfeiture in this case will not advance the government's objective of taking profits from narcotics traffickers, but will frustrate the policies of California's lost property statute.

I recommend that you not become involved in the case. The matter is currently pending, on the government's complaint for forfeiture, before the United States District Court for the Southern District of California. If Diego has valid objections they may be raised in that forum, and the Justice Department has so advised him. In any event, Diego's arguments are not persuasive. The forfeiture statute gives the United States the right to the drug money, a right which is paramount to Diego's right as a mere finder.

I have drafted a proposed reply for your signature.

FFF:JGR:aw 12/20/82
cc: FFFielding/JGRoberts/Subj./Chron

THE WHITE HOUSE

WASHINGTON

December 20, 1982

Dear Dick:

Thank you for your letter of December 2, 1982, describing the situation of your client, William J. Diego. I appreciate the spirit in which your letter was written.

I must, however, decline to become involved in the particular case of Mr. Diego. That case is pending before the courts, and it would not be appropriate for me to intercede. I am confident that you will understand the necessity for my position.

Sincerely,

Edwin Meese III
Counsellor to the President

Richard A. Burt, Esq.
Gray, Cary, Ames & Frye
525 B Street
Suite 2100
San Diego, California 92101

EMIII:FFF:JGR:aw 12/20/82

cc: EMeeseIII
FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 21, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Enrolled Bill H.R. 2329 - Waiver of Statutes of Limitations for Cherokee, Choctaw, and Chickasaw Nations of Oklahoma

Richard Darman has requested comments by close of business today on Enrolled Bill H.R. 2329, which would waive the statutes of limitations applicable to two claims the Cherokee, Choctaw, and Chickasaw Indians wish to raise against the United States. The first claim involves damage to the Arkansas River riverbed -- owned by the tribes -- caused by the government during construction of the Arkansas River Navigation System. The government clearly took minerals of value from the riverbed, but under the doctrine of navigational servitude is not liable for damages to the owner. See United States v. Rands, 389 U.S. 121, 122-123 (1967); Choctaw Nation v. State of Oklahoma, 397 U.S. 620, 635 (1970). Although there were negotiations on compensation between the tribes and Interior, Interior ultimately decided against compensation, and by that time the statute of limitations on the tribes' "takings claim" had expired.

The second claim is also a takings claim, arising out of a 1906 Act which extinguished an existing reversionary interest of the tribes in abandoned railroad stations. The Secretary of Interior was authorized by the 1906 Act to seek money awards for the tribes, but did not do so. Suit by the tribes on these claims was authorized in separate acts in 1924 and 1946, but the three tribes covered by the present bill did not pursue their claims before expiration of the applicable limitations periods.

The Department of Justice and OMB recommend disapproval of the bill, on the grounds that ad hoc waivers of applicable statutes of limitations undermine the policy of finality underlying such statutes, are discriminatory in favoring selected claimants, and invite other time-barred claimants to seek similar waivers. There is no compelling justification for waiver in these cases: the tribes have not lacked adequate legal counsel and could have had their day in court. Furthermore, with respect to the riverbed claim,

the tribes have no case on the merits, and permitting suit would simply result in a meaningless waste of litigation resources. Interior recommends approval, noting that the government originally erred in contending that the tribes did not own the riverbed, and that the tribes were wrongfully deprived of property in the railroad station cases. Assistant Attorney General Robert McConnell has also written you separately, asking for your support in obtaining disapproval of the bill and enclosing a copy of the Justice Department enrolled bill letter to Stockman and proposed memorandum of disapproval.

I recommend that you concur in the views of Justice and OMB that the President disapprove this bill. There is no legally cognizable claim with respect to the riverbed. While there is a claim with respect to the railroad stations, it is in the nature of statutes of limitations to bar meritorious claims. Permitting exceptions because of the existence of meritorious claims ignores the policy of finality underlying limitations periods. I have attached a proposed memorandum to Darman.

Attachment

THE WHITE HOUSE

WASHINGTON

December 21, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 2329 - Waiver of Statutes of Limitations for Cherokee, Choctaw, and Chickasaw Nations of Oklahoma

I have reviewed the above-referenced enrolled bill, which would waive the statutes of limitations with respect to claims by the indicated Indian tribes against the United States. I concur in the recommendation of the Department of Justice and OMB that the President disapprove this bill. The bill would undermine the policy of finality in the applicable statutes of limitations, for no compelling reason, and invite other time-barred claimants to seek similar relief. Furthermore, there is no merit to the underlying claim concerning damage to the Arkansas River riverbed, so the bill would simply authorize wasteful litigation with respect to that claim. I have no objection to the memorandum of disapproval drafted by the Department of Justice.

FFF:JGR:aw 12/21/82

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

December 22,]982

MEMORANDUM FOR ROBERT C. HILL

FROM: JOHN G. ROBERTS JGR

SUBJECT: Request for Photo

If available, I would appreciate having a photograph of the President signed for The Roberts Family.

Many thanks!

THE WHITE HOUSE

WASHINGTON

December 22, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Transfer of Private Sector Initiatives Databank to Partnerships Dataline USA

On December 7, 1982, Jay Moorehead submitted for your review a proposed agreement under which the databank compiled by the President's Task Force on Private Sector Initiatives would be transferred to a new private entity known as Partnerships Dataline USA. Richard Hauser and Dede Neal had discussed the outlines of this agreement with Moorehead at an earlier meeting. On December 8, the Task Force issued a press release announcing the agreement (Tab A) and conducted a press briefing at which it was described (Tab B).

Under the agreement, the Task Force databank -- a computerized collection of over 2,500 verified and indexed examples of private sector initiatives -- will be turned over to Partnerships Dataline USA. The databank was compiled by Task Force volunteers, and has been available to interested groups throughout the past year. Partnerships Dataline USA consists of the New York-based Citizens Forum on Self-Government (formerly the National Municipal League) and the Washington-based Partners for Livable Places, both 501(c)(3) organizations. These two organizations have together committed $200,000 to the project, will fold into the databank their own existing databanks, and will continually update and verify the merged product. Jay Moorehead is to seek matching funds from Federal Government sources. The databank will be available to all groups seeking information on charitable projects, originally on a no-cost basis. A committee chaired by National Association of Manufacturers President Alexander Trowbridge will oversee the development of the system.

In order to obtain more information about the transfer, I talked with Moorehead, his Deputy Michael Castine, and Neil Hepp, a Task Force volunteer in charge of the databank. I also met briefly with Joan Hammond and Bill Alexander of the Citizens Forum, who were in town for a meeting with Moorehead.

A number of legal issues are raised by the proposed (and announced) agreement:

1. The Task Force itself cannot transfer the databank. The Task Force is an advisory committee, E.O. No. 12329 (Oct. 14, 1981), and under the Advisory Committee Act is limited to advisory functions. 5 U.S.C. App. I § 9(b) (1976). The decision to transfer the databank should be made by an appropriate officer of the Federal Government. Id. The December 8 press release indicated that the Task Force recommended that the databank be continued, but was vague on precisely when a decision was reached on transfer to Partnerships Dataline USA, and who made the decision. The Task Force should be advised that the transfer decision must be made not by it but by government officials acting on its recommendation.

2. The Disposal of Records Act defines "record" to include "machine readable materials." 44 U.S.C. § 3301 (1976). Assuming that the databank is an agency record, 44 U.S.C. § 3314 (1976) bars its alienation or disposal, except in compliance with the Disposal of Records Act. The databank would not be disposed of or alienated if the government simply turned over a copy to Partnerships Dataline USA. Moorehead has been alerted that the government must retain a set of whatever it turns over to Partnerships Dataline USA. He has indicated that the Commerce Department will do so.

3. A range of issues is presented by the governmental decision (on advice of the Task Force) to transfer the databank to Partnerships Dataline USA, as opposed to any other group. Groups interested in continuing the databank made presentations to the Task Force before the cooperative arrangement between Citizens Forum and Partners for Livable Places was settled upon. Those two groups were selected because of their willingness and ability to commit funding ($100,000 each per year) to continuing the databank. Groups not selected to assume a lead role in the databank project were invited to participate in it, and several have agreed to do so. The facts that the groups not selected are participating in the project, and have access to the resource, lend me to discount the possibility of complaints about the selection process. In any event, the government is simply giving Partnerships Dataline a publicly available record, and Moorehead has indicated his willingness to give the record to any group that wants it.

4. Another range of issues is presented by the contemplated operation of the databank once transferred. These issues fall into two categories: responsibility of the government

for the conduct of Partnerships Dataline with respect to the databank, and means of ensuring the adherence of Partnerships Dataline to its commitments concerning access, verification of entries, and the like.

The former category of issues does not seem to present serious problems. In essence, all that the government is doing is turning over a set of publicly available records to a private operation. The original decision to have any "agreement" at all may have raised unnecessary concerns. The government can arguably be no more liable for what Partnerships Dataline does with the databank than it is for what any person does with agency records he obtains, for example, under the FOIA, or for what weathermen do with National Weather Service Information they obtain from the government.

On the other hand, this view of the transaction limits the recourse of the government should Partnerships Dataline not abide by its commitments. A formal contract outlining Partnership's obligations would, however, present more problems than it would solve. It would link the government more closely to the operation of a private program, which is more problematic than simply limiting our involvement to turning over an extra set of the records. There are in any event no indications of possible misuse of the databank by the 501(c)(3) organizations obtaining it. If a more formal agreement were entered into concerning transfer of the databank, it would have to be between some government official and the private groups. Entering into a formal contract would exceed the advisory functions of the Task Force. On the government's side, the only "obligation" -- Moorehead's commitment to seek Federal matching funds for Partnerships Dataline -- probably cannot be more formalized. Neither Moorehead nor the Partnerships Dataline representatives see any need for a more formalized arrangement.

I recommend a memorandum to Moorehead, noting that you have reviewed the contemplated agreement. I would stress the need to limit Task Force activity to advice, and also the importance of keeping a set of whatever records -- including "machine readable materials" -- are turned over. I do not recommend any effort to formalize the "agreement."

Attachment

THE WHITE HOUSE

WASHINGTON

December 27, 1982

MEMORANDUM FOR JAY MOORHEAD
DIRECTOR, PRESIDENT'S TASK FORCE ON PRIVATE SECTOR INITIATIVES

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Transfer of Private Sector Initiatives Databank to Partnerships Dataline USA

I have reviewed the agreement on transfer of the Private Sector Initiatives databank, sent to me on December 7 and announced to the press on December 8. This office has no legal objections to providing Partnerships Dataline USA a copy of the databank, after which Partnerships Dataline USA will supplement the information it contains and make this information available to interested parties. The decision to transfer the databank in this manner must of course be made by a government official and not the Task Force itself, which is limited by the Advisory Committee Act to advisory functions. 5 U.S.C. App. I § 9(b) (1976). Furthermore, it is my understanding that the Department of Commerce will retain a set of whatever is turned over to Partnerships Dataline USA. It is important that this be done to avoid any possible difficulties with the law governing alienation or disposal of records. The term "records," incidentally, is defined to include "machine readable materials." 44 U.S.C. § 3301 (1976); see id. § 3314.

FFF:JGR:aw 12/27/82

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 22, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Civil Aeronautics Board Decision in Republic Airlines, Inc., and Republic Airlines West, Inc.

Richard Darman's office requested comments by 4:00 p.m. today on the above-referenced CAB order involving international aviation, which was submitted for Presidential review under section 801(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 1461(a). Under this section, the President may disapprove, solely on the basis of foreign relations or national defense considerations, CAB actions involving either foreign air carriers or domestic carriers involved in foreign air transportation. If the President wishes to disapprove such CAB actions, he must do so within sixty days of submission (in this case, by January 15, 1982).

The Board's order would transfer the foreign certificate authority of Republic Airlines West, Inc. (formerly Hughes Airwest) to Republic Airlines, Inc. This is the final step in Republic's acquisition of Hughes Airwest, initially approved by the Board over two years ago. That initial approval was not submitted for Presidential review. The Board's decision to submit only this final formalization of the acquisition effectively circumvents Presidential review of a decision with potential foreign policy and national defense implications, due to the difficulty of unscrambling the merger at this late date. The Departments of Transportation, State, and Justice and OMB therefore recommend that the President's letter to the CAB Chairman include a paragraph reiterating the Executive Branch position that Board decisions on acquisitions must be submitted for Presidential review. Since the Department of Justice is currently litigating this position in the Air Florida/Western Airlines case before the Court of Appeals for the D.C. Circuit, it would be noteworthy if the President failed to mention it in his letter.

A memorandum for Darman is attached for your review and signature.

Attachment

THE WHITE HOUSE

WASHINGTON

December 22, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision in Republic Airlines, Inc., and Republic Airlines West, Inc.

Our office has reviewed the above-referenced CAB decision and related materials, and has no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(a).

We also have no legal objection to OMB's recommendation that the President not disapprove this order.

As noted in the memorandum for the President prepared by Annelise Anderson, Associate Director of OMB for Economics and Government, the CAB order in this case is simply the final step in an acquisition initially approved by the Board over two years ago. The Board did not submit that initial approval for Presidential review, although it is the position of the Executive Branch that it was required to do so. We agree with the recommendation of OMB and the Departments of State, Justice, and Transportation that the letter from the President to the CAB Chairman express this position, and have no objection to the substance of the letter prepared by OMB.

FFF:JGR:aw 12/22/82

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 22, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Enrolled Bill S. 2611 - Readjustment Allowance for Peace Corps Volunteer Leaders

Richard Darman has requested comments by 2:00 p.m. today on Enrolled Bill S. 2611, which would authorize an increase in the readjustment allowance paid to Peace Corps volunteer leaders. The increase would be retroactive to December 29, 1981, when the International Security and Development Cooperation Act of 1981 was enacted. That act authorized an increase in the readjustment allowance for Peace Corps volunteers, but through an oversight omitted similar treatment for volunteer leaders. This bill, at Administration request, corrects the oversight.

I have reviewed the memorandum to the President from James Frey, Assistant Director of OMB for Legislative Reference, and the bill itself. OMB and the Peace Corps approve of the bill. I have no objections and recommend that you sign the attached memorandum to Darman.

Attachment

THE WHITE HOUSE

WASHINGTON

December 22, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 2611 - Readjustment Allowance for Peace Corps Volunteer Leaders

Counsel's Office finds no objection from a legal perspective to the above-referenced enrolled bill.

FFF:JGR:aw 12/22/82

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

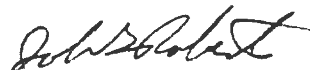
December 22, 1982

Dear Mr. Gould:

With regard to your prospective appointment to the National Council on the Handicapped, it will be necessary for you to complete the enclosed Personal Data Statement. Please return this to me at your earliest convenience.

With best wishes,

Sincerely,



John G. Roberts
Associate Counsel
to the President

Mr. R. Budd Gould
2205 South Fifth West
Missoula, Montana 59801

Enclosures

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 23, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: CAB Decision in Mexicana de Aviacion, S.A. - 10 Day Case

Richard Darman's office asked for comments by 1:00 p.m. today on the above-referenced CAB decision, which was submitted for Presidential review as required by § 801(b) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 1461(b). Under this provision, any order of the Board pursuant to 1482(j) of Title 49, "suspending, rejecting or canceling a rate, fare, or charge for foreign air transportation, and any order rescinding the effectiveness of any such order," must be submitted to the President. The President may disapprove a submitted order, but only for foreign policy or national defense reasons. If the President wishes to disapprove an order, he must do so within ten days of submission of the order to him by the Board (in this case, by December 27, 1982).

The CAB order would suspend certain fare revisions of Mexicana de Aviacion, S.A. The proposed revisions are similar to revisions implemented by Western Airlines, but Western's revisions have received only "temporary and conditional" approval by Mexican authorities. Western has been informed it must provide Mexican authorities with detailed justification for the revisions. The CAB order notes that "our own approvals of Mexican carriers' fare proposals have always been complete and unconditional, and we expect the Mexican authorities to accord the same treatment to U.S. carriers' proposals," and indicates a willingness to allow the revisions proposed by Mexicana if Western is granted its revisions on a permanent basis by Mexico.

The order here has been reviewed by the appropriate departments and agencies, following the procedures established by Executive Order No. 11920 (1976). OMB recommends that the President allow the order to go into effect, and reports that the NSC and the Departments of State, Defense, Justice and Transportation have no objection to the Board's order. In ten-day review cases, unlike sixty-day review cases under

49 U.S.C. § 1461(a), it is standard simply to take no action on CAB orders not being disapproved, rather than sending a "no disapproval" letter to the Board.

In this case, however, the Departments of State and Transportation and OMB recommend that the President send a letter to the CAB Chairman, in order to recommend that the CAB consider in the investigation occasioned by its order the assertion of the Mexican government, subsequent to the CAB order, that its action was justified by an exchange of diplomatic notes in November 1977. The CAB and Departments of State and Transportation have not yet determined if the exchange justifies Mexico's action, and therefore ask the President to recommend to the CAB Chairman that he consider the Mexican communication in the investigation and any subsequent orders.

I see no reason for disagreeing with the recommendation that the President not disapprove this order. The order treats Mexicana de Aviacion in a manner similar to the manner in which Mexico is treating Western, on essentially identical fare revision requests. I also see no objection to the proposed letter from the President, mentioning the diplomatic exchange. This will permit the new Mexican argument be considered in due course. You should note in the memorandum to Darman, however, that we have not had the opportunity to review Mexico's argument, and are not suggesting that it is relevant to CAB deliberations.

Attachment

THE WHITE HOUSE

WASHINGTON

December 23, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: CAB Decision in Mexicana de Aviacion, S.A. - 10 Day Case

We have reviewed the above-referenced CAB decision and have no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(b).

We also have no legal objection to OMB's recommendation that the President not disapprove this order.

Finally, we have no legal objection to the recommendation of OMB and the Departments of State and Transportation that the President send a letter to the CAB Chairman indicating his decision not to disapprove this order, and recommending that the CAB consider in its investigation the communication from the Mexican government to the State Department on this case. We have not, however, had the opportunity to review the Mexican communication, and do not mean to suggest that it is in any way relevant to CAB deliberations. We have reviewed the proposed letter and have no legal objections to it.

FFF:JGR:aw 12/23/82

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 23, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Enrolled Bill H.R. 6204 - Supreme Court Police

Richard Darman has requested comments by close of business Monday on Enrolled Bill H.R. 6204, which would clarify the authority of the Supreme Court Police. The Chief Justice sought this legislation last April. Current law describes the authority of the Supreme Court Police as existing "within the Supreme Court Building and grounds and adjacent streets," 40 U.S.C. § 13n (1976). The bill would authorize the Police to protect The Supremes and their official guests anywhere in the United States, and to protect Supreme Court employees anywhere in the United States if the employees are engaged in performance of their official duties. It also authorizes the Police to make arrests and carry firearms as necessary to discharge these duties. (Problems have arisen in the past due to the perceived inability of the Police to carry firearms off Court grounds, for example, when escorting female employees to the non-adjacent parking lot.) The bill provides for the expiration of new Police powers after three years, and annual reports on the cost of the new powers to Congress by the Marshal in the interim.

I have reviewed the memorandum to the President from James Frey, Assistant Director of OMB for Legislative Reference, the legislative report, and the bill itself. OMB and the Administrative Office of the U.S. Courts approve of the bill, the Department of Justice and the District of Columbia have no objection, and Treasury has no comment.

I have attached a proposed memorandum to Darman.

Attachment

THE WHITE HOUSE

WASHINGTON

December 23, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 6204 - Supreme Court Police

Counsel's Office finds no objection from a legal perspective to the above-referenced enrolled bill.

FFF:JGR:aw 12/23/82

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

December 23, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Amended Complaint in United States v. The House of Representatives

The Civil Division has requested comments by close of business today on a proposed amended complaint in the Gorsuch case. It intends to file the amended complaint on Monday, December 27, 1982. There are three major changes from the original complaint:

1. Anne Gorsuch is added as a plaintiff. This was done to lessen "case or controversy" problems, since some of the injury in this case -- needed to establish a Constitutionally adjudicable case or controversy -- is more readily conceived as an injury to Mrs. Gorsuch than to the United States _qua_ United States. In addition, some of the arguments are personal arguments concerning Mrs. Gorsuch rather than general arguments of governmental privilege.

2. Demands for injunctive relief have been deleted. In the amended complaint, only declaratory relief is specifically requested. This change was made because there is really nothing to enjoin at present -- the U.S. Attorney is not taking any action with respect to the contempt citation, nor is he about to -- and a request for injunctive relief raises Speech and Debate Clause problems to a greater degree than a request for declaratory relief.

3. Paragraph 30 of the amended complaint is new. It presents the argument that it is impossible for Gorsuch to comply with the subpoena, because she has no authority to do so after having been directed by the President not to produce the documents. This argument is based on _Touhy v. Ragen_, 340 U.S. 462 (1951), which held that a subordinate Department of Justice official could not be held in contempt for failure to produce documents when the Attorney General, through a regulation, had directed him not to do so.

I see no objections to the first two changes outlined above. The addition of ¶ 30, however, does raise a concern of which you should be aware. The logical consequence of any argument based on Touhy v. Ragen is that the contempt citation should be directed against the President himself, not Mrs. Gorsuch. Should the court agree with this argument, the logical step would be for Congress to reframe its citation as one directed against the President, and the privilege issues would then be presented for decision. This is implicit in the majority opinion in Touhy v. Ragen, 340 U.S., at 467, 469, and explicit in Justice Frankfurter's concurring opinion, id., at 471-473.

I am not certain that Touhy v. Ragen applies to this case at all: there is a significant difference between a lower-level employee following the order of the Attorney General and a Presidential appointee carrying out a Presidential directive. If successful, the argument in ¶ 30 would simply delay ultimate resolution of the basic issue, assuming Congress responded to a decision based on Touhy v. Ragen by reframing its contempt citation. And the downside is significant: a Congressional contempt citation against the President -- the logical result of the argument in ¶ 30 -- could be very politically damaging. With Mrs. Gorsuch in the case there is at least a "buffer" separating the President from the dispute. I see no reason why the privilege issue cannot be decided in the context of a contempt citation against Gorsuch. We do not gain anything by reframing the dispute as one directly involving the President, and this is all that the argument in ¶ 30 would do.

I strongly recommend that you object to ¶ 30 of the amended complaint, perhaps in a call to Deputy Attorney General Schmults.