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# WITHDRAWAL SHEET

## Ronald Reagan Library

**Collection Name**

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**FOIA**

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COOK

3RW

DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	JOHN ROBERTS TO FRED FIELDING RE NEW CHAIRMAN OF MARINE MAMMAL COMM (PARTIAL)	1	1/7/1983	B6	421
2	MEMO	JOHN ROBERTS TO DIANA HOLLAND RE REMOVAL FROM PROMOTION LIST	1	1/14/1983	B6	422

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]

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THE WHITE HOUSE  
WASHINGTON

January 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Correspondence from Congressman Dingell  
on Appointment of New Chairman of Marine  
Mammal Commission

John Dingell wrote the President on December 10, 1982, to raise concerns about the prospective appointment of a new chairman for the Marine Mammal Commission. He quoted the provisions of the Marine Mammal Protection Act of 1972, 16 U.S.C. § 1401(b)(1) [incorrectly cited in the letter to 15 U.S.C.] which require that commissioners be knowledgeable in marine ecology and chosen from a list submitted by several agencies. Dingell stated he had received "disquieting" reports that those provisions were not being followed, and requested that the President advise him of any actions he might take with regard to this matter and identify how any appointments he might make to the Commission comply with the law.

The Office of Presidential Personnel advises that they are not going ahead with plans to appoint [REDACTED] the apparent source of Dingell's concern. That prospective appointment was never even announced. They have asked that this office draft a reply to Dingell. b6

Dingell's letter does no more than tell the President what the law is and admonish him to abide by it. I have drafted what I consider an appropriate reply to such a presumptuous letter, telling Dingell we are aware of the law and will, as always, comply with it. As for his request to be kept advised of any actions taken with respect to this matter, I would tell Dingell that appointments to Commissions of this sort are routinely publicly announced. The contemplated [REDACTED] appointment was never announced, and I do not think Dingell has any right to know that we have decided not to pursue it. b6

THE WHITE HOUSE

WASHINGTON

January 7, 1983

Dear Congressman Dingell:

Thank you for your letter of December 10, 1982, to the President, concerning the Marine Mammal Commission. In that letter you reviewed the provisions of the Marine Mammal Protection Act of 1972 governing appointment of members of the Commission. You requested to be advised of any actions the President might take with respect to new appointments to the Commission, and also requested that the President identify how any appointments comport with the requirements of the Act.

Please be assured that we are well aware of the requirements of the law and will, in this as in every other matter, fully comply with them. With respect to your request that you be apprised of any actions taken concerning new appointments to the Commission, please be advised that any such appointments will be publicly announced, as a matter of course, when made.

Thank you for sharing your concerns with us.

Sincerely,

Fred F. Fielding  
Counsel to the President

The Honorable John D. Dingell  
United States House of Representatives  
Washington, D.C. 20515

FFF:JGR:aw 1/7/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

THE WHITE HOUSE

WASHINGTON

January 7, 1983

MEMORANDUM FOR HELENE VON DAMM  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence from Congressman Dingell  
Concerning Marine Mammal Commission

Attached for your review is a proposed response to the December 10, 1982 correspondence from Congressman Dingell concerning the legal requirements for appointees to the Marine Mammal Commission.

Attachment

FFF:JGR:aw 1/7/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

THE WHITE HOUSE

WASHINGTON

January 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Proposal to Add the President's  
Name to Draft Legislation

Rodney Randy Joseph of Plymouth, Massachusetts has written you about his proposal -- currently styled the "Joseph, Kennedy Welfare Act" -- to put the unemployed and elderly to work selling government surplus products. He indicates that he "would like to add the President's name to this draft."

The Office of Private Sector Initiatives advises that Joseph has submitted his proposal to them. I recommend a short reply to Joseph, stating that the President does not lend his name to proposed legislation, and assuring him that the Office of Private Sector Initiatives will give his proposal appropriate consideration.

THE WHITE HOUSE

WASHINGTON

January 7, 1983

Dear Mr. Joseph:

Thank you for your letter of December 16, 1982, concerning your proposal to reform the welfare system. In that letter you indicated that you would like to add the President's name to the proposed "Joseph, Kennedy Welfare Act."

Quite apart from any consideration of the merits, it would be inappropriate for the President to lend his name to any bill or other legislative proposal, and the President -- like his predecessors -- has adhered to a policy of not doing so. We cannot, therefore, approve the addition of the President's name to your draft proposal.

I understand that you have been in contact with the Office of Private Sector Initiatives at the White House concerning your project. I am confident that they will give your proposal every appropriate consideration. Thank you for sharing your ideas with me.

Sincerely,

Fred F. Fielding  
Counsel to the President

Mr. Rodney Randy Joseph  
President & Chairman  
Creative Life for Humanitary  
Arts Society, Inc.  
RFD #6 White Island  
Plymouth, Massachusetts 02360

FFF:JGR:aw 1/7/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

THE WHITE HOUSE

WASHINGTON

January 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill H.R. 7336 - Education  
Consolidation and Improvement Act  
of 1981 Technical Amendments

Richard Darman has requested comments by close of business today on enrolled bill H.R. 7336, the Education Consolidation and Improvement Act of 1981 Technical Amendments. The bill, however, does more than make technical amendments. Section 17(a)(1) of the bill would make the authorized provision of funds to Bureau of Indian Affairs schools "a fulfillment of a continuing trust responsibility of the Federal Government as it relates to education for Indian students." The President recently vetoed a bill, S. 2623, containing identical language, on the ground that the Federal Government has no such trust responsibility. Recognition of such responsibility could well have serious legal ramifications beyond this particular bill -- indeed, inclusion of the objectionable language in this bill is entirely gratuitous, so its sponsors obviously intend to commit the government to a principle of broader application.

Section 16 of the bill makes the existing legislative veto provision in the Education and Consolidation Improvement Act of 1981 more offensive, by providing that final Education regulations are to be considered "recommendations to the Congress" with no force or effect, pending congressional review. The period for such review is also lengthened.

Education has several policy objections to other so-called "technical" amendments. One of these is a source of concern from a legal perspective. Section 1 of the bill requires that programs for the education of migratory children be based on the definition of "migratory children" in existing Education regulations. The Secretary had proposed new regulations to change the definition. While nothing prevents Congress from legislating a particular definition, including one in existing regulations, such an effort to codify regulations detracts from the Secretary's rulemaking authority.



OMB, Education and Interior recommend disapproval; Justice recommends objecting to the legislative veto provision. OMB has submitted a composite memorandum of disapproval, focusing on the Indian trust section, the legislative veto section, and the migratory children section. I recommend disapproval, and have no legal objection to the proposed memorandum.

Attachment

THE WHITE HOUSE

WASHINGTON

January 7, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 7336 - Education  
Consolidation and Improvement Act  
of 1981 Technical Amendments

Counsel's Office agrees with the recommendation of the Departments of Education and Interior and the Office of Management and Budget that the President not approve the above-referenced enrolled bill. Despite its title, the bill goes beyond technical amendments in the Education Consolidation and Improvement Act of 1981.

Section 17 of the bill is legally objectionable, because it describes the provision of funds to Indian schools as "fulfillment of a continuing trust responsibility of the Federal Government." No such responsibility has yet been recognized. The language is gratuitous in the bill and clearly an effort to commit the Federal Government to legal responsibilities beyond the purview of the bill. The President recently disapproved S. 2623 primarily because it contained identical language, and the objections raised in the memorandum of disapproval for that bill are equally applicable to this one.

Section 16 of the bill is also legally objectionable, because it accentuates the existing constitutionally offensive legislative veto provision in the General Education Provisions Act. While this objection alone would not bar approval, it may appropriately be cited if the bill is disapproved. The provision in section 1 of the bill codifying the existing regulatory definition of "migratory children" is also objectionable as a restriction on the rulemaking authority of the Secretary of Education. Congress may legally codify such definitions, but as a policy matter the Executive should not easily relinquish regulatory flexibility.

We have no legal objections to the proposed memorandum of disapproval.

FFF:JGR:aw 1/7/83  
cc: FFFielding/JGRoberts/Subj./Chron

THE WHITE HOUSE

WASHINGTON

January 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill H.R. 7154 - Federal Rules  
of Civil Procedure Amendments Act of 1982

Richard Darman has requested comments by close of business January 7 on enrolled bill H.R. 7154, which amends the Federal Rules of Civil Procedure on service of process. Under the bill, service of a summons and complaint may be effected by first-class mail, with acknowledged receipt. If receipt is not acknowledged within twenty days, service must be made by personal delivery, but the party served will be required to pay the costs of service, unless he can justify failure to acknowledge the attempted service by mail. The bill would essentially relieve U.S. Marshals of service of process obligations in civil cases. An unrelated provision of the bill raises the fine for foreign agents who act in the United States without notifying the government. OMB, Justice, and the Administrative Office of U.S. Courts recommend approval; other affected agencies have no objection.

I have reviewed the memorandum for the President from James Frey, Assistant Director of OMB for Legislative Reference, and the bill itself. The bill differs from the Supreme Court's proposal, which would have simply permitted service by registered or certified mail, but provides an adequate substitute. I see no legal objections.

Attachment

THE WHITE HOUSE

WASHINGTON

January 7, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 7154 - Federal Rules  
of Civil Procedure Amendments Act of 1982

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

FFF:JGR:aw 1/6/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

THE WHITE HOUSE

WASHINGTON

January 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill H.R. 7378 - Codification  
of Laws Pertaining to Money and Finance

Richard Darman has requested comments by close of business January 7 on enrolled bill H.R. 7378, which enacts as positive law portions of Title 31 of the United States Code. This is part of the continuing work of the Office of the Law Revision Counsel of the House of Representatives. The bill contains the necessary boilerplate stating that no substantive change is intended by the codification itself, location in U.S.C., or caption titles. OMB, Treasury, and Defense recommend approval, the TVA and SBA (affected by the substantive provisions) have no objection, and Justice defers to the other agencies.

I have reviewed the memorandum to the President from James Frey, Assistant Director of OMB for Legislative Reference, and the bill itself. I see no legal objections.

Attachment

THE WHITE HOUSE

WASHINGTON

January 7, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 7378 - Codification  
of Laws Pertaining to Money and Finance

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

FFF:JGR:aw 1/7/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

THE WHITE HOUSE

WASHINGTON

January 10, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill H.R. 5470 - Miscellaneous  
Amendments of the Internal Revenue Code and  
the Employee Retirement Income Security Act

Richard Darman has requested comments by close of business today on enrolled bill H.R. 5470. This bill would make miscellaneous amendments to the Internal Revenue Code and ERISA. The bill would clarify the law by providing that periodic personal injury payments are excludable from gross income, exclude from gross income "difficulty of care" payments to those caring for handicapped foster children, provide that Indian tribal governments may be treated as states for most tax purposes, and authorize the Department of Labor to certify which multiple employer trusts are covered by ERISA and which are not, thereby clarifying the application of state law to such trusts. Treasury objects to the exclusion of difficulty of care payments, because they are compensation (beyond expenses) and should be taxed as such, but does not recommend disapproval. I view treating Indian tribal governments as states as objectionable as a policy matter, but it is consistent with the equally objectionable (but well established) non-integrationist policy with respect to Indians. OMB, HHS, Interior, and Labor recommend approval; other affected agencies have no objection, except for the above-noted objection of Treasury.

I have reviewed the memorandum for the President from James Frey, Assistant Director of OMB for Legislative Reference, and the bill itself. I see no legal objections.

Attachment

THE WHITE HOUSE

WASHINGTON

January 10, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 5470 - Miscellaneous  
Amendments of the Internal Revenue Code and  
the Employee Retirement Income Security Act

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

FFF:JGR:aw 1/10/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron



MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 10, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Customs Declaration Package

Attached is a proposed memorandum to the Chief Counsel of the Customs Service on the advertising package containing greetings from the President.

Attachment

THE WHITE HOUSE

WASHINGTON

January 10, 1983

MEMORANDUM FOR RICHARD H. ABBEY  
CHIEF COUNSEL  
U.S. CUSTOMS SERVICE

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Customs Declaration Package

It has come to my attention that a private firm will soon begin distribution of advertising packages containing the customs declaration form and, among other materials, a message from the President to foreign travelers. The White House adheres to a policy of not approving the use of the name, signature, photograph, or likeness of the President in any fashion which does or might suggest endorsement by the President of a commercial product or venture. Reprinting the message from the President in the customs declaration and advertising package conveys the misleading impression that the President has endorsed the commercial venture issuing the package as well as the products advertised in it. The juxtaposition of an official-looking greeting from the President and commercial advertising in the package strikes me as particularly demeaning to the Office of the Presidency. Whatever rights the private firm marketing the package may have to reprint non-copyrighted public documents, it has no right to benefit from the appearance of Presidential endorsement of its venture or of its advertisers' products.

Ameliorative action must be taken to correct the false impression of Presidential endorsement. Ideally, the greeting will be removed from the advertising packages; at the very least it should be accompanied by appropriate disclaimers indicating that the greeting is reprinted from a public document, that the package is not an official government publication, and whatever else is necessary completely to disassociate the President from the advertising package and the products appearing in it.

I think the best course of action would be for the appropriate officials at the Customs Service to approach the individuals involved with the advertising package venture and alert them to the need to correct the misleading impression of Presidential endorsement. I look forward to hearing from you on the steps that have been taken to disassociate the President from this commercial venture.

FFF:JGR:aw 1/10/83  
cc: FFFielding/JGRoberts/Subj./Chron

THE WHITE HOUSE

WASHINGTON

January 11, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Correspondence from H.F. Kimmel  
to the President

H.F. Kimmel of Texas has sent numerous legal-looking documents to the President, asserting several things, most prominently that the Sixteenth Amendment, authorizing taxation without apportionment, is invalid (would that it were so) and that William Howard Taft, who held office during the ratification of the Sixteenth Amendment, was improperly inaugurated President. Taft was born in a state from the Old Northwest Territory, whose constituent elements, according to Kimmel, were improperly admitted as States, and Taft was therefore never a citizen of the United States.

I recommend no response.

Attachments

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 11, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Reappointment of Claims Court Judges

This responds to your request for an analysis of the controversy which has arisen over the nominations of Judges Yock, Merow, and Colaianni for reappointment to full 15-year terms on the Claims Court. The act which transformed the old Court of Claims into the Claims Court provided that existing Court of Claims commissioners would automatically become judges in the Claims Court, for terms with staggered expiration dates (see Tab 1 of Rose memorandum, attached). Under this scheme seven vacancies would arise before the November 1984 election, nine thereafter. The Department of Justice determined, however, that under the act the "grandfathered" judges could resign prior to the expiration of their foreshortened terms and be reappointed to full 15-year terms. The terms of Yock, Merow, and Colaianni expire after 1984, so the Democrats may have expected the winner of the 1984 Presidential election to appoint judges to fill their seats. By resigning and being renominated by President Reagan, these three have given the President seats to fill that otherwise may have been filled by a Democrat.

When the three names were sent up, Congressman Kastenmeier, Chairman of the House Subcommittee on Courts, Civil Liberties and the Administration of Justice, objected to Senator Dole, Chairman of the Senate Subcommittee on Courts, that the resignation-reappointment procedure violated a congressional understanding, embodied in the staggered expiration dates, that "half of the new judges would be appointed after 1984." Dole thereupon wrote Senator Thurmond, objecting to further consideration of the three nominees (Tab 2 of Rose memorandum). Congressman McClory thereupon wrote to Thurmond (Tab 3 of Rose memorandum), objecting to Dole's view that any understanding existed on an appointment split. McClory wrote that he was aware of no such agreement and that in any event the expiration dates led to a 7-9, not 8-8 split. Kastenmeier responded to Dole, reiterating his view that a "legislative understanding" existed (Tab 3 of Rose memorandum). McClory then responded directly to Kastenmeier (with a blind copy and note to you),

refuting Kastenmeier's arguments. McClory pointed out that the resignation-reappointment procedure promoted stability on the Claims Court -- an objective of the grandfathering provision -- and that the statute specifically provided that the transition judges would serve "until a successor is sworn or until reappointed."

It is clear that nothing in the statute or legislative history bars the resignation-reappointment procedure. As McClory points out, the grandfathered judges serve "until a successor is sworn or until reappointed." Furthermore, there is only tenuous support for the supposed "legislative understanding." Thurmond, McClory, and Railsback were unaware of it. The Court of Claims bar -- involved in the legislative process -- formally recommended immediate reappointment of all the grandfathered judges. According to a memorandum from Assistant Attorney General Jon Rose to the Attorney General on this subject (attached), neither Dole nor his staffer Peter Velde were even aware of the "understanding," until recognition of it served their interests in negotiations with Kastenmeier over a bankruptcy courts bill. Kastenmeier and Dole themselves both misstate the understanding as an 8-8 split, when the expiration dates actually result in a 7-9 split. Staggered expiration dates serve the articulated purpose of giving some stability to the new court -- a purpose promoted by the resignation-reappointment procedure -- so there is a reason for staggered expiration dates other than the one alleged by Kastenmeier. Finally, if in fact the draftsmen had agreed to split the appointments, that result could have easily been achieved through a common legislative device: providing that any appointments to fill vacancies in a transition term be only for the unexpired remainder of that term.

Kastenmeier's asserted understanding, therefore, was:  
(1) not reflected in the statute, (2) not reflected in the legislative history, (3) not generally understood, and  
(4) could easily have been included in the statute -- but was not. I would strongly oppose any efforts to infringe upon the President's appointment powers out of deference to such unsubstantiated legislative "understandings."

THE WHITE HOUSE

WASHINGTON

January 12, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Correspondence from Mrs. W.H. Wynne

Mrs. W.H. Wynne has written you (again) requesting government action in response to her allegations of stock forgery and fraud in the administration of her deceased husband's estate. Her allegations, while considered, read like something out of Dickens' Bleak House. In her latest letter, Mrs. Wynne asserts that the Fourteenth Amendment authorizes the unspecified government action she requests.

I have drafted a response reiterating the previously articulated response to Mrs. Wynne that the White House has no jurisdiction over her concerns.

Attachment

THE WHITE HOUSE

WASHINGTON

January 12, 1983

Dear Mrs. Wynne:

Thank you for your letter of December 8, 1982. Please be assured that the materials which you submitted along with that letter have been carefully reviewed. On the basis of that review, I must reiterate that the White House cannot become involved in the matters discussed in your correspondence. If you are interested in pursuing those matters, you should contact private counsel, with respect to possible actions that may be instituted on your behalf, or local law enforcement and prosecutorial authorities, with respect to possible violations of the law. I am certain you will recognize that it would be inappropriate for the White House to intervene in private civil disputes or the investigation of allegations of possible criminal conduct.

I am sorry that we cannot be more responsive, but the matters you raise are simply ones over which the White House has no jurisdiction.

Sincerely,

Fred F. Fielding  
Counsel to the President

Mrs. W.H. Wynne  
Box 3735  
1215 - 31st Street, NW  
Washington, D.C. 20007

FFF:JGR:aw 1/12/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

THE WHITE HOUSE

WASHINGTON

January 12, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Correspondence from Morris Harrell,  
President of the American Bar Association,  
to the President

Morris Harrell, new President of the ABA, has written to the President requesting his views on appropriate items for the ABA's long-term planning agenda. He notes that similar letters have been sent to the Chief Justice and Attorney General. I recommend sending the letter to the Justice Department for development of a substantive response. The Department has several areas of ongoing relations with the ABA, and I think a coordinated response to both letters could be helpful in advancing our relations with the ABA. I have attached a proposed memorandum to the Deputy Attorney General, transmitting the correspondence.

Attachment



THE WHITE HOUSE

WASHINGTON

January 12, 1983

MEMORANDUM FOR EDWARD C. SCHMULTS  
DEPUTY ATTORNEY GENERAL

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence from Morris Harrell,  
President of the American Bar Association,  
to the President

The President has received the attached letter from Morris Harrell, soliciting his views on the appropriate items for A.B.A. consideration in the upcoming years. Rather than dashing off an innocuous reply, I thought I would send it over to the Justice Department for development of a more substantive reply -- perhaps for the President's signature. I know that Harrell has sent a similar letter to the Attorney General, and a coordinated and thoughtful response to both letters could go far in advancing our relations with the A.B.A.

Attachment

FFF:JGR:aw 1/12/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

THE WHITE HOUSE

WASHINGTON

January 12, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Transmission to the Congress of  
Amendments to International Regula-  
tions on Collisions at Sea (NSC 8750)

Richard Darman has requested clearance of proposed letters to the House and Senate from the President, transmitting amendments to the International Regulations for Preventing Collisions at Sea of 1972 (known as 72 COLREGS). Under the terms of the Convention on the International Regulations for Preventing Collisions at Sea, 33 U.S.C. foll. § 1602, the Inter-Governmental Maritime Consultative Organization (IMCO) may propose amendments to the 72 COLREGS and submit them to signatory countries. Under the International Navigational Rules Act of 1977, 33 U.S.C. § 1602(d)(1), proposed amendments are to be transmitted by the President to Congress. If Congress passes a concurrent resolution disapproving the amendments within sixty days, the President is to notify IMCO that the United States objects.

According to the attached memorandum for William P. Clark from L. Paul Bremer, III, Executive Secretary, Department of State, the proposed amendments clarify existing rules and have the support of the marine industry and Coast Guard. The statutory scheme established for consideration of such amendments, however, contains an unconstitutional legislative veto. Indeed, when he signed the International Navigational Rules Act of 1977, President Carter specifically noted constitutional reservations concerning 33 U.S.C. § 1602(d), because the concurrent resolution of disapproval would not be presented to the President for approval or veto. The proposed transmittal letters to Congress are legally objectionable because they track the language of the unconstitutional legislative veto provision, going as far as stating that if Congress does pass a concurrent resolution of disapproval, an objection by the United States will be deposited with IMCO. This is inconsistent with the Administration position on legislative veto. I have no objection to the President transmitting the amendments to Congress, consistent with (not pursuant to) the Act, and no objection to his waiting sixty days to proclaim the effectiveness of

the amendments. The letter, however, should in no way concede the effectiveness of the legislative veto provision, and should advise Congress (tactfully) that if it disapproves of the amendments it may pass appropriate legislation and submit it to the President.

I have prepared a memorandum to Darman noting necessary changes in the transmittal letter.

Attachment

THE WHITE HOUSE

WASHINGTON

January 12, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Transmission to the Congress of  
Amendments to International Regula-  
tions on Collisions at Sea (NSC 8750)

Counsel's Office has a legal objection to the proposed letters from the President transmitting to Congress amendments to the International Regulations for Preventing Collisions at Sea of 1972. Consistent with articulated Administration policy and the advice of the Department of Justice, it is our view that section 3(d) of the International Navigational Rules Act of 1977, 33 U.S.C. § 1602(d), is unconstitutional. That section permits Congress to disapprove proposed amendments to the Convention on the International Regulations for Preventing Collisions at Sea by concurrent resolution, without submission to the President for veto or approval, and therefore is an unconstitutional "legislative veto" provision. The draft transmittal letters are objectionable because they track the unconstitutional legislative veto provision and concede the effectiveness of a concurrent resolution of disapproval by Congress.

Consistent with Administration policy with respect to legislative vetoes, the President may transmit the amendments to Congress, and may wait sixty days before proclaiming the effectiveness of the amendments. The letter of transmittal should not, however, concede the effectiveness of the legislative veto provision, but should rather advise Congress that if it objects to the amendments it should submit appropriate legislation to the President.

I suggest the following changes in the transmittal letter:

1. In the first line, change "In accordance with" to "Consistent with."

2. Delete the second sentence. (This necessitates spelling out "International Maritime Organization" in the third sentence.)

3. Delete the last paragraph and substitute the following:

"In the absence of a duly enacted law to the contrary, I will proclaim that the amendments will enter into force for the United States on June 1, 1983."

FFF:JGR:aw 1/12/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

THE WHITE HOUSE

WASHINGTON

January 12, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Resolution H.J. Res. 635 --  
Budget and Economic Report Submission Dates

Richard Darman has requested comments by close of business today on enrolled resolution H.J. Res. 635. This amends the statutory deadlines for the President's submission of the Budget (from any time during the first fifteen days of the regular session of Congress to January 31) and of the Economic Report (from January 20 to January 31). The resolution also changes the deadline for two other economic reports. OMB recommends approval, and the Council of Economic Advisers has no objection.

In his memorandum for the President, David Stockman notes that normally the Economic Report is transmitted a few days after the Budget, and that current plans call for the Budget to be submitted on January 31 and the Economic Report on February 3. Stockman states that he has received "informal assurances" that there is no "substantial objection" to submission of the Economic Report after January 31.

If Congress passes and the President signs a joint resolution mandating transmittal of the Economic Report by January 31, I think the President should transmit the Economic Report by that date, regardless of "normal practice" or "informal assurances." I see no legal objections to the joint resolution, but I do object to the drift of the last paragraph of Stockman's memorandum, and recommend noting this objection in your memorandum to Darman. A proposed draft is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

January 12, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Resolution H.J. Res. 635 --  
Budget and Economic Report Submission Dates

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

I would point out, however, that the joint resolution requires transmittal of both the Budget and Economic Report by January 31, 1983. I would not regard "informal assurances" from congressional staff members -- or, indeed, formal assurances from legislators themselves -- as adequate justification for departure from the legally mandated deadline.

FFF:JGR:aw 1/12/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 13, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Letter from E.F.W. Wildermuth  
to the President

E.F.W. Wildermuth, Esq., of New York, wrote the President on December 13 to urge him to reply to a New York Times editorial critical of the maneuvering over the Legal Services Corporation nominations. Mr. Wildermuth, a learned octogenerian, seems to be a loyal supporter of the President, although his reason for objecting to the editorial -- that the Senate cannot confirm nominations because the Seventeenth Amendment (direct election of Senators) is invalid -- is a bit far-fetched. Anyone who can quote inspiring passages from Plato and Webster, however, and use a word like "slumgullion," deserves a reply, and I have drafted one for your signature.

Attachment



THE WHITE HOUSE

WASHINGTON

January 14, 1983

Dear Mr. Wildermuth:

I am writing in response to your December 13, 1982 letter to the President. In that letter you objected to an editorial which appeared in the New York Times on the Legal Services Corporation nominations, and urged the President to reply in public to the assertions in that editorial.

While we do not accept the charges in the editorial in question any more than you do, I think you will agree that it is not always productive to devote time and resources to responding to the media. There is an old adage that one should never get into a writing contest with people who buy their ink by the barrel. In any event, the President prefers to go about the business of governing the country without being unduly distracted by media barbs, confident that he has the support of thoughtful citizens such as yourself.

Thank you for giving us the benefit of your views.

With best wishes,

Sincerely,

Fred F. Fielding  
Counsel to the President

E.F.W. Wildermuth, Esq.  
181-23 Dalny Road  
Jamaica Estates, New York 11432

FFF:JGR:aw 1/14/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

THE WHITE HOUSE

WASHINGTON

January 13, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Memorandum of Disapproval for H.R. 3963 -  
Miscellaneous Criminal Justice Amendments

Counsel's Office has the following suggestions concerning the proposed memorandum of disapproval for H.R. 3963:

1. The second full paragraph on page 2, objecting to the creation of the Office of the Director of National and International Drug Operations and Policy, does not point out the positive steps already taken by the Administration to improve coordination of the drug control effort. These steps include creation of the Working Group on Drug Supply Reduction of the Cabinet Council on Legal Policy, creation of the Working Group on the Health Aspects of Drug Abuse of the Cabinet Council on Human Resources, the new arrangement between the Federal Bureau of Investigation and the Drug Enforcement Administration, the efforts of Dr. Carlton Turner, Director of the Drug Abuse Policy Office in the White House, and the new Law Enforcement Coordinating Committees (coordinating federal, state, and local law enforcement), in addition to the new task force program mentioned in the draft. These efforts should be highlighted to demonstrate that there is no need for the new office mandated by the bill. We suggest the following version of the paragraph:

The Act would also create within the Executive Branch an unnecessary new drug director, with an accompanying new bureaucracy. The creation of such an Office -- another layer of bureaucracy -- would produce unneeded friction, disrupt effective law enforcement, and threaten the integrity of criminal investigations and prosecutions. Furthermore, significant steps have already been taken to improve coordination of drug control efforts. We have established working groups within the Cabinet

Council on Legal Policy and the Cabinet Council on Human Resources to harmonize inter-agency efforts in both law enforcement and prevention. There already exists within the White House a Director of the Drug Abuse Policy Office, who is charged with coordinating the drug abuse functions of executive agencies. On the law enforcement side, the Federal Bureau of Investigation and the Drug Enforcement Administration are embarked on a highly successful new cooperative arrangement. The new Law Enforcement Coordinating Committees established across the country by our U.S. Attorneys are coordinating federal, state and local drug investigations and prosecutions. And just last fall we announced a new inter-agency task force initiative to attack organized criminal enterprises that deal in drugs. Creation of a new drug director and a new bureaucracy would seriously undermine all these ongoing efforts.

2. We recommend that the first full paragraph on page 3 be deleted. The objections in this paragraph are somewhat technical and are far less serious than the objections in the rest of the statement. The presence of a paragraph devoted to such technical objections breaks the flow of the statement and thereby mutes its impact.

FFF:JGR:aw 1/13/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

THE WHITE HOUSE

WASHINGTON

January 13, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Draft Fact Sheet Re: Indian Policy Statement

Richard Darman has requested comments by close of business today on a Draft Fact Sheet prepared by the Office of Policy Development, covering Indian policy. OPD would like the Fact Sheet and an Executive Order (not yet submitted to us) to be presented to the President along with enrolled bill H.R. 5470. You noted no legal objection to that bill (memorandum of January 10), which, in pertinent part, accords tribal governments the same tax status as states.

The proposed fact sheet stresses the Administration policy of removing obstacles to tribal self-government and promoting healthy reservation economies. The fact sheet notes various initiatives to advance this policy, and any statements in the fact sheet on legal issues are broad and amorphous enough to be innocuous. The fact sheet does state that the President has established an Advisory Committee on Indian Reservation Economies. This presumably is the subject of the as yet unseen Executive Order.

Attachment

THE WHITE HOUSE

WASHINGTON

January 13, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Fact Sheet Re: Indian Policy Statement

Counsel's Office finds no objection from a legal perspective to the draft Indian Policy Statement Fact Sheet, or to the proposal that it accompany H.R. 5470. We have not, however, yet seen the proposed Executive Order referred to in the transmittal memorandum.

FFF:JGR:aw 1/13/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

# WITHDRAWAL SHEET

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2 MEMO	1	1/14/1983	B6	422
JOHN ROBERTS TO DIANA HOLLAND RE REMOVAL FROM PROMOTION LIST				

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**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.