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DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions		
1	MEMO	ROBERTS TO FILE RE FBI REPORT (PARTIAL)	1	4/13/1983	B6	B7(C)	446
2	MEMO	ROBERTS TO FILE RE FBI REPORT (PARTIAL)	1	4/13/1983	B6	B7(C)	447
3	FORM	RE APPOINTMENT PROCESS PERSONAL INTERVIEW RECORD (PARTIAL)	1	4/15/1983	B6		1287

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

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 13, 1983

FOR: FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Proposal to Charge Applicant Fees for White House Press Passes

Larry Speakes has raised for consideration the idea of charging an application fee for White House press passes, with the proceeds being used to fund the necessary processing of the applications. Speakes believes such a fee will make "fringe" news organizations "think twice" before applying for a press pass. Speakes would like to assemble a group to discuss the issue.

The leading case on the issuance of White House press passes is Sherrill v. Knight, 569 F. 2d 124 (D.C. Cir. 1977). In its opinion in that case the court ruled that a refusal to grant bona fide Washington journalists a White House press pass must be based on a "compelling governmental interest." Id., at 130. The court recognized protection of the President as a compelling interest, but ruled that the standard used in making decisions on issuance of passes must be published and that certain procedural protections must be afforded those denied passes. Id., at 130-131.

The pertinence of Sherrill v. Knight to the proposal raised by Speakes is not immediately apparent. Charging a fee to cover the costs associated with processing press pass applications does not deny anyone a White House press pass. It is tolerably well-established that individuals and organizations can be made to bear the incidental costs associated with their exercise of First Amendment freedoms. Nothing in the Constitution requires the taxpayers to fund the exercise of free speech by anyone. If you hold a demonstration and litter the street, you can be made to pay to clean it up. By the same token it would seem that if you demand a White House press pass you can be made to pay for the cost of its issuance. See, e.g., Cox v. New Hampshire, 312 U.S. 569, 576-577 (1941) (upholding fee for policing demonstration); Murdock v. Pennsylvania, 319 U.S. 105, 113-114 (1943) (upholding "a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question"). The burden will be on the government to demonstrate that any fees were necessary to cover the reasonable costs of the licensing system. See, e.g., Milwaukee, etc. v. Milwaukee County Park Commission, 477 F. Supp. 1210, 1222 (D.Wis. 1979).

The fees cannot be used as a guise for restricting First Amendment rights. In this case, the fees may not go beyond the identifiable costs of issuing the press passes and regulating their issuance as permitted by law. It is unfortunate in this respect that the Speakes memorandum refers to the fees as a means of cutting back on the number of requests for press passes. Funding the cost of the process is by itself a sufficient justification for fees; limiting requests for the passes is not.

Apart from the legal authority to impose a user fee on press passes, I think it would be a terrible idea. The Administration, however unfairly, is acquiring the image of being opposed to press freedoms, based on such initiatives as FOIA reform, the new classification order, and the anti-leak policy. Striking the press corps close to home as Speakes envisions would simply provide a focal point for editorials and reportage on this theme.

I have not drafted a reply to Speakes since I did not know if you wanted to give legal advice at this stage, or simply participate (or have someone else participate) in the discussion contemplated by the Speakes memorandum.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 13, 1983

FOR: THE FILES

FROM: JOHN G. ROBERTS JGR

SUBJECT: FBI Report on [redacted] b6

On April 8, 1983, I was present when Senator Gorton reviewed a copy of the FBI report on [redacted] b6

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 13, 1983

FOR: THE FILES

FROM: JOHN G. ROBERTS JGR

SUBJECT: FBI Report on [redacted] b6

On April 5, 1983, I was present when Senator Ford reviewed a copy of the FBI report on [redacted] b6

On April 8, 1983, I was present when Senator Gorton reviewed a copy of the FBI report on [redacted] b6

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 13, 1983

FOR: FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Inquiry from Daniel Leonard

Daniel Leonard, Deputy Director of the Drug Abuse Policy Office, has asked for an opinion on the legality of accepting an invitation to serve as a member of the Advisory Committee for International Policy of the International Association of Chiefs of Police (IACP). The invitation, from IACP President Leo Callahan, asked Leonard to participate actively in the important work of the Committee. Leonard indicates that he believes his membership will further the goals of his office.

I would advise Leonard against accepting the invitation. The IACP is, of course, a fine organization, and generally supportive of Administration policy, but it may adopt positions contrary to those of the Administration in the area of drug enforcement policy. The invitation clearly contemplates an active role for Leonard, and I do not think he should put himself in the position of wearing two hats, one as Deputy Director of the Drug Abuse Policy Office and another as an IACP Advisory Committee member.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 13, 1983

FOR: DANIEL LEONARD
DEPUTY DIRECTOR
DRUG ABUSE POLICY OFFICE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Invitation to Serve
on IACP Advisory Committee

You have requested our views on whether it would be appropriate for you to accept an invitation to serve as a member of the Advisory Committee for International Policy of the International Association of Chiefs of Police while serving in your current position of Deputy Director of the Drug Abuse Policy Office. Consistent with established White House policy, we must advise you not to accept the invitation.

As a general matter we adhere to a policy of not approving service by White House staff members on outside advisory committees or organizations. Such service may place the staff member in a difficult position should the outside organization and the Administration adopt conflicting positions, and may also be viewed as undermining the impartiality of the staff member as he confronts issues in his official capacity that affect the outside organization. I recognize that the IACP has generally been supportive of our efforts, but, nonetheless, do not believe that we can discount these concerns.

Thank you for bringing the matter to our attention.

chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 13, 1983

FOR: DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS JGR

SUBJECT: Appointments of Julie P. Montgomery, Millicent Monks and Joy S. Burns as Members of the John F. Kennedy Center for the Performing Arts Advisory Committee

I have reviewed the Personal Data Statements submitted by the above-referenced individuals for appointment as members of the Kennedy Center Advisory Committee. With Mr. Fielding's approval the individuals were not required to answer questions 2-7.

Appointments to the Kennedy Center Advisory Committee are authorized by Public Law 85-874 § 2(c). Appointees "shall be persons who are recognized for their knowledge of, or experience or interest in, one or more of the arts in the fields covered by the [Kennedy Center]." Id. Mrs. Montgomery is recognized for her interest in arts in the Atlanta area, where she is involved with the Atlanta Arts Alliance and the Forward Arts Foundation. Mrs. Monks is involved with the Portland Center for the Performing Arts and founded the Plum Island Dance Company. Mrs. Burns is a member of the Central City Opera House Association and the Denver Center for the Performing Arts. Based on my review of the Personal Data Statements submitted by the individuals, I see no reason to object to their appointments.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 14, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Proposed State Department Letter on S. 651, a Bill to Regulate Nomination of Ambassadors

OMB has asked for our review of a proposed letter from Powell Moore, Assistant Secretary of State for Congressional Relations, to Chairman Percy of the Senate Committee on Foreign Relations. The letter responds to the Chairman's request for State Department views on S. 651, which provides that "[a]t any time, not less than 85 per centum of the total number of positions of chiefs of mission which are occupied shall be held by career members of the [Foreign] Service."

Moore's letter opposes the bill, noting that the Constitution already provides the advice and consent mechanism through which the Senate can act to ensure the quality of ambassadors. Moore also cites existing § 304 of the Foreign Service Act (22 U.S.C. § 3944), which specifies that chiefs of mission should normally be career foreign service members and should possess enumerated qualities. Of particular significance, Moore notes that S. 651 could be considered an infringement on the President's constitutional appointment powers, Art. II, § 2, and that "any attempt to place an arbitrary limit on the authority of the President to forward to the Senate a nomination of his own choosing is unconstitutional."

NSC has approved the proposed letter, and I have determined that Justice (OLC) has also advised OMB that it approves. I see no objections. The letter correctly highlights the serious constitutional concern and lays the groundwork for a veto should that become necessary.

Attachment

THE WHITE HOUSE

WASHINGTON

April 14, 1983

MEMORANDUM FOR JAMES M. FREY
ASSISTANT DIRECTOR FOR LEGISLATIVE REFERENCE
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: State Department Report on S. 651

Counsel's Office has reviewed the proposed State Department report on S. 651. We have no legal objection to the report.

FFF:JGR:aw 4/14/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 14, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Draft Proclamation Designating the Week of April 10, 1983 as National Mental Health Week, 1983

Dodie Livingston has requested comments by noon today on the above-referenced draft proclamation. The proclamation designates this week as National Mental Health Week, and is only now being submitted because the resolution requesting it passed April 12. The proclamation was prepared by the National Institute of Mental Health, and approved by OMB. It points out that 35 million people suffer from mental disorders, and that "incapacitation . . . may result from severe depression, crippling anxieties, or other manifestations of mental disorders, all of which are beyond the control of victims."

The focus of this Administration's insanity defense reform proposals is distinguishing between mental disorders that are beyond the control of victims and those that are not, yet the proclamation blandly states all such disorders are uncontrollable. I would delete "all of which are beyond the control of victims."

Attachment

THE WHITE HOUSE

WASHINGTON

April 14, 1983

MEMORANDUM FOR DODIE LIVINGSTON

FROM: FRED F. FIELDING

SUBJECT: Draft Proclamation Designating the Week of April 10, 1983 as National Mental Health Week, 1983

Counsel's Office has reviewed the above-referenced draft proclamation. We recommend that the clause "all of which are beyond the control of victims" in the second sentence of the second paragraph be deleted. The Administration is currently seeking reform of the insanity defense to draw a better distinction, in terms of legal effect, between controllable and uncontrollable mental disorders, so it will hardly do to proclaim that they are "all beyond the control of victims."

FFF:JGR:aw 4/14/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 15, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Inquiry From R. Gamble Baldwin on Procedures for Implementation of an Oil Tariff

R. Gamble Baldwin, Vice President of Equity Research for the First Boston Corporation, has written inquiring about the procedures to be followed should the Administration decide to sponsor or implement an oil tariff. Baldwin notes that President Nixon did this without need for Congressional approval in 1973, but President Carter's similar effort in 1980 was rebuffed by Congress. Baldwin predicts natural gas and oil developments for First Boston.

When President Nixon imposed an oil tariff on April 18, 1973, Proclamation 3279, the pertinent statutory authority -- 19 U.S.C. § 1862 -- did not contain a legislative disapproval provision. When Congress passed the windfall profits tax in 1980, Pub. Law No. 96-223, it added subsection (e) to 19 U.S.C. § 1862. This subsection provides that Presidential action to impose an oil tariff shall cease to be effective upon passage of a joint resolution, subject to a veto. (There are no legislative veto problems with this procedure.) President Carter imposed an oil tariff on April 2, 1980, Proclamation 4744, but Congress exercised its new authority under 19 U.S.C. § 1862(e) and repealed the tariff, Pub. Law No. 96-264.

Obviously, we should not give an advisory opinion to a private consultant on procedures the President might follow in imposing an oil tariff, although I see no reason to suppose they would be any different than those followed in Proclamations 3279 and 4744. My draft letter to Baldwin notes that we cannot give him an advisory opinion of any sort, but also sketches the purely historical basis for the difference he perceived in the Nixon and Carter actions.

Attachment

THE WHITE HOUSE

WASHINGTON

April 15, 1983

Dear Mr. Baldwin:

Thank you for your letter of March 30, 1983, requesting information on procedures to be followed in the event of a decision to impose an oil tariff. In your letter you noted that President Nixon imposed such a tariff in 1973 without need for Congressional approval, but President Carter's effort in 1980 to impose a tariff was rejected by Congress.

I am sorry that I cannot respond to your inquiry. It would be inappropriate for me to provide advice for use in private commercial analyses concerning procedures which might be followed by the President with respect to hypothetical events or decisions. I am certain you will understand why this is so. If you need specific guidance of the sort requested in your letter, I can only recommend that you present your inquiry to private counsel for examination of the pertinent authorities and precedents.

I can, however, explain the difference you discerned in President Nixon's imposition of an oil tariff in 1973 and President Carter's attempt in 1980. In 1980 Congress enacted what is now 19 U.S.C. § 1862(e), which provides that Congress may pass a joint resolution disapproving Presidential action under 19 U.S.C. § 1862(b) to adjust imports of petroleum or petroleum products.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. R. Gamble Baldwin
Vice President, Equity Research
The First Boston Corporation
Park Avenue Plaza
New York, New York 10055

FFF:JGR:aw 4/15/83

cc: FFFielding/JGRoberts/Subj./Chron

THE WHITE HOUSE

WASHINGTON

April 15, 1983

APPOINTMENT PROCESS PERSONAL INTERVIEW RECORD

DATE OF INTERVIEW: April 13 & 14, 1983 (by telephone)
CANDIDATE: Paul I. Enns
POSITION: Member, Federal Farm Credit Board
INTERVIEWER: John G. Roberts

Comments

Paul I. Enns is to be nominated for the Federal Farm Credit Board, pursuant to 12 U.S.C. § 2242(a). Under 12 U.S.C. § 2242(b), the President, in making appointments to the Board, is to have due regard to a fair representation of the public interest, the welfare of farmers and the types of institutions comprising the Farm Credit System, "with special consideration to persons who are experienced in cooperative agricultural credit, taking into consideration the lists of nominees proposed by the Farm Credit System." Enns is a farmer with a record of long service on the Eleventh District Farm Credit Board, and he advised that he was the nominee of the district pursuant to 12 U.S.C. § 2242(f). He thus easily satisfies 12 U.S.C. § 2242(b). Under 12 U.S.C. § 2242(c) nominees for the Board must have resided in the district from which they are appointed for at least ten years, and must not have been a salaried officer or employee of the Farm Credit Administration or institution of the Farm Credit System within one year preceding commencement of their term. Enns affirmed that he met these requirements.

Mr. Enns earns the bulk of his income from farming. [redacted]

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