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# WITHDRAWAL SHEET

## Ronald Reagan Library

Collection Name

Withdrawer

File Folder CHRON FILE (06/01/1983 - 06/08/1983)

IGP 8/30/2005

Box Number

FOIA  
F05-139/01

COOK  
18IGP

DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	ROBERTS TO FIELDING RE REMOVAL FROM PROMOTION LIST	1	6/3/1983	B6	477
2	LETTER	FROM FIELDING RE REMOVAL FROM PROMOTION LIST	1	6/3/1983	B6	478
3	MEMO	ROBERTS TO HOLLAND RE AMBASSADOR TO KUWAIT (PARTIAL)	1	6/6/1983	B6	479
4	MEMO	ROBERTS TO FIELDING RE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (PARTIAL)	1	6/7/1983	B6	480
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COPY - Reagan Presidential Record

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

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

E.O. 13233

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

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 1, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Request from Arizona State Senator for  
Review of Arizona Branch of I.R.S.

Senator DeLong of the Arizona Legislature wrote Rich Williamson to request a review by "an outside agency such as GAO or OMB" into the quality of service being rendered by the Arizona branch of the IRS. DeLong stated that he had received constituent complaints in the past, but did not give them much credence until his personal difficulties with the local IRS office. Those difficulties -- involving the Senator's sale of a small business -- are detailed on an accompanying fact sheet provided by the Senator. Rick Neal sent DeLong an interim response and referred the matter to our office.

We obviously should not institute an investigation of the sort requested by Senator DeLong solely on the basis of his personal difficulties. I recommend referring the matter to the IRS Chief Counsel, and advising DeLong that we have done so. Our letter to the IRS should make clear that we are not concerned with the Senator's personal case but rather his broader allegation of inefficiency.

Attachment

THE WHITE HOUSE

WASHINGTON

June 2, 1983

MEMORANDUM FOR JOEL GERBER  
ACTING CHIEF COUNSEL  
INTERNAL REVENUE SERVICE

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Complaint from Senator DeLong

You will see from the attached that Senator DeLong of Arizona has complained about the operations of the Tucson office of the IRS. I am submitting this material for whatever action and direct response you consider appropriate. Our transmittal concerns only the general complaint about the Tucson office and not Senator DeLong's particular case. We have informed the Senator that it would be inappropriate for the White House to become involved in any way in his pending case.

Attachment

FFF:JGR:aw 6/8/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

THE WHITE HOUSE

WASHINGTON

June 2, 1983

MEMORANDUM FOR KENNETH W. GIDEON  
CHIEF COUNSEL  
INTERNAL REVENUE SERVICE

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Complaint from Senator DeLong

You will see from the attached that Senator DeLong of Arizona has complained about the operations of the Tucson office of the IRS. I am submitting this material for whatever action and direct response you consider appropriate. Our transmittal concerns only the general complaint about the Tucson office and not Senator DeLong's particular case. We have informed the Senator that it would be inappropriate for the White House to become involved in any way in his pending case.

Attachment

FFF:JGR:aw 6/2/83

cc: FFfielding  
JGRoberts  
Subj.  
Chron

*not sent*

THE WHITE HOUSE

WASHINGTON

June 2, 1983

Dear Senator DeLong:

The Office of Intergovernmental Affairs has referred your letter of April 29 to this office for appropriate handling. In that letter you noted that you had received constituent complaints concerning the operations of the Tucson branch office of the Internal Revenue Service, and had experienced difficulty yourself in dealing with that office. You requested a review of the quality of service being provided by that office.

Since your complaint involves a regional office of the IRS, it seems that the best approach would be to bring it to the attention of the IRS headquarters here in Washington. I have accordingly sent a copy of your letter to the Chief Counsel of the IRS. I specified in my letter to him that our concern was with your general complaint with the operations of the Tucson branch, and not your specific case. As I am certain you recognize, it would be inappropriate for the White House to become involved in any way in your particular case pending before the IRS.

Thank you for sharing your concerns with us.

Sincerely,

Fred F. Fielding  
Counsel to the President

The Honorable William J. DeLong  
State Senator  
State Capitol - Senate Wing  
Phoenix, Arizona 85007

cc: Rick J. Neal

FFF:JGR:aw 6/2/83

cc: FFFielding/JGRoberts/Subj./Chron

THE WHITE HOUSE

WASHINGTON

June 1, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Photograph of the Reagans

The photograph converted to a postcard by Coral-Lee was taken by Michael Evans and released into the public domain on November 18, 1981 by the First Lady's Press Secretary (announcement attached). The photograph, along with two others, was released to show the results of Mrs. Reagan's redecoration of the residence.

When a photograph is in the public domain, the White House Photography Office routinely makes it available to anyone requesting it. Coral-Lee is an individual in California who requests White House photographs with some regularity, and produces a limited number of postcards from the photographs. According to White House Photography Office Director Billie Shaddix, Coral-Lee then distributes the postcards for charitable purposes, to hospitals, prisons, and the like. Michael Evans received no compensation from Coral-Lee.

There are of course limits on the permissible uses of a photograph of this sort, even if it is in the public domain. The photograph cannot be used to suggest Presidential or First Lady endorsement of a commercial product or enterprise. Here the photograph is not being used to suggest endorsement of a product; in essence the photograph itself is the product. Nor do I think we could fairly argue that there is the suggestion of endorsement of the postcard enterprise. Evans and the White House are given credit for the photograph on the back of the postcard, but they should be. It is also made clear that a private firm -- not the White House -- produced and published the postcard.

Producing and selling a postcard such as this is no different from gathering and publishing Presidential remarks released by the Press Office. Both items are in the public domain, and, with the caveats noted above, the public can do with them what it will. The Photo Office could adopt a policy of releasing photographs only to news organizations or for individual use. The fact that we cannot protect the photograph because it is in the public domain does not mean we have to provide copies of it to anyone filing a request.

All that a postcard producer would have to do, however, is obtain a photograph for individual use -- or have someone else do so -- and then use it to create postcards. My own reaction is that restricting distribution of the photographs would create more problems than it would solve, not the least because of the difficulty of devising and administering appropriate criteria governing permitted distribution.

Let me know if you need anything further.

Attachment



THE WHITE HOUSE

WASHINGTON

June 2, 1983

MEMORANDUM FOR ARAM BAKSHIAN, JR.  
DEPUTY ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Remarks: Presentation of Coast Guard  
Gold Lifesaving Medal Posthumously  
to Arland Williams, Jr.

Counsel's Office has reviewed the above-referenced draft remarks, and finds no objection to them from a legal perspective. We do, however, find the last sentence of the first full paragraph on the second page awkward. This awkwardness could be alleviated by changing the second "their" to "your."

cc: Richard G. Darman

FFF:JGR:aw 6/2/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 2, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Remarks: Presentation of Coast Guard  
Gold Lifesaving Medal Posthumously  
to Arland Williams, Jr.

Richard Darman has requested that any comments on the above-referenced remarks be submitted directly to Aram Bakshian by close of business today. Arland Williams, Jr. was the individual who, during the Air Florida tragedy, passed the helicopter rescue line to five others, forsaking his own rescue. When the helicopter returned a sixth time, Williams had disappeared.

I have no legal objection to the brief remarks. The last sentence of the first full paragraph on the second page is awkward, because of the shift from the second person to the third person. This could be corrected by changing the second "their" to "your."

Attachment

THE WHITE HOUSE

WASHINGTON

June 2, 1983

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Appointment of John A. Young  
to the President's Commission  
on Industrial Competitiveness

The President's Commission on Industrial Competitiveness is a new advisory committee to be established by executive order. The purposes of the Commission are to review means of increasing the competitiveness of United States industry, with particular emphasis on high technology, and provide appropriate advice to the President. The Commission was established in such a fashion that its members would not be considered government employees for purposes of the conflicts laws. Thus, members are not paid for their services and "shall represent elements of industry and commerce most affected by high technology, or academic institutions prominent in the field of high technology." Under the contemplated executive order, members must also "have particular knowledge and expertise concerning the technological factors affecting the ability of United States firms to meet international competition at home and abroad."

Mr. Young satisfies these various requirements. As President and Chief Executive Officer of the Hewlett-Packard Company, he is representative of the high technology industry and an expert concerning the technological factors affecting the competitiveness of U.S. industry. His Personal Data Statement reveals numerous affiliations and holdings in high technology firms. Since Mr. Young will serve on the Commission as a representative of high technology industry, these affiliations and holdings are not an impediment to his appointment.

# WITHDRAWAL SHEET

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ROBERTS, JOHN: FILES

*Withdrawer*

IGP 8/3/2005

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1 MEMO

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477

ROBERTS TO FIELDING RE REMOVAL FROM  
PROMOTION LIST

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

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E.O. 13233

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# WITHDRAWAL SHEET

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*pages tions*

*NO Document Description*

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2 LETTER

1 6/3/1983 B6

478

FROM FIELDING RE REMOVAL FROM  
PROMOTION LIST

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

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E.O. 13233

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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 3, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill H.R. 2681 -- Amendments  
of the Securities Exchange Act of 1934

Richard Darman has requested comments by close of business Friday, June 3 on the above-referenced enrolled bill. The bill would amend the Securities Exchange Act of 1934 to:

- ° permit SEC members and employees to accept travel and related expenses from non-government sources for attending securities-related meetings and conferences,
- ° authorize SEC "fellows" to accept relocation expenses from their former employers (as White House fellows may do under a similar exception to the conflicts laws),
- ° establish SEC fees at a uniform rate of 1/50 of 1% of the value of a proposed transaction,
- ° require independent securities dealers to belong to a registered dealer association (the National Association of Securities Dealers is the only such entity), and
- ° provide that an individual is not ineligible to serve on the Municipal Securities Rulemaking Board simply because the insurance company he represents is part of a holding company with a securities-related affiliate.

These amendments were requested by the SEC, and the SEC and OMB recommend approval. OPM and Commerce do not object, Treasury has no comment, and Justice defers. I am not entirely comfortable with the ad hoc exception to the conflicts rules established in the first provision, since the arguments in support of it prove too much and would justify abandoning the general rules as readily as creating an exception. I also share the concern informally expressed by Justice that the securities dealer provision will establish NASD as a monopoly with the potential for abuse. None of these qualms rise to a level that would counsel Presidential disapproval, however, and I have accordingly prepared a no objection memorandum for your signature.

Attachment

THE WHITE HOUSE

WASHINGTON

June 3, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 2681 -- Amendments  
of the Securities Exchange Act of 1934

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

FFF:JGR:aw 6/3/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

THE WHITE HOUSE

WASHINGTON

June 6, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: FOIA Request Concerning Mothers Against  
Drunk Driving Directed to Volunteer

Michael Castine, Deputy Director of the Private Sector Initiatives Office, has asked whether Volunteer, a private non-profit organization, must comply with an FOIA request for a nomination form used to select recipients of the President's Volunteer Action Awards. Volunteer and ACTION jointly select recipients of the Awards. Mothers Against Drunk Driving (MADD) won an Award in 1983, and investigative reporter Sandy Golden (apparently his real name) has filed an FOIA request with Volunteer for the MADD nomination form. There has been considerable media attention concerning the internal affairs of MADD and its founder, Candy Lightner, and Golden plans to write an expose about the organization. One of the media accounts concerned former deputy counsellor [deputy counsel in the account] Robert Garrick, who was added to the MADD board after his client, Anheuser-Busch, pledged \$180,000 to MADD.

Volunteer originally declined to comply with Golden's request, noting that it was not a government agency. Golden replied that ACTION and the White House were, and that the joint operations in connection with the Presidential Awards program subjected Volunteer to FOIA. A Volunteer official has asked Castine if this is true, and Castine directed the inquiry to our office.

The applicability of the FOIA to organizations such as Volunteer -- private organizations engaged in activity with the government -- is a frequently disputed and litigated question. The FOIA itself provides that the term agency as used in the Act "includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency." 5 U.S.C. § 552(e). Courts have nonetheless determined that the role of private organizations must be examined on a case-by-case basis to determine if they should be considered agencies



under the FOIA. Irwin Memorial v. American Red Cross, 640 F.2d 1051, 1054 (9 Cir. 1981). The leading considerations appear to be the extent of government control over the day-to-day operations of the organization, compare Forsham v. Harris, 445 U.S. 169, 180-181 (1980) (recipient of federal grant not an agency "absent extensive, detailed, and virtually day-to-day supervision") with Rocap v. Indiek, 539 F.2d 174, 177 (D.C. Cir. 1976) (Federal Home Loan Mortgage Corporation an agency), and whether the organization has the authority to make final decisions on which the government acts, although the D.C. Circuit recently ruled in a divided opinion that this latter factor is not determinative, Public Citizen Health v. HEW, 668 F.2d 537 (D.C. Cir. 1981). In what may be the case closest to the facts before us the Ninth Circuit ruled that the American Red Cross was not subject to the FOIA. Irwin Memorial v. American Red Cross, supra.

Quite apart from the merits, however, I think we should avoid giving a response to Volunteer. It is a private organization and our office should not as a general matter give legal advice to a private organization. Indeed, our doing so could well affect the merits, by making Volunteer appear subject to federal government advice and legal guidance.

I do not know why Golden does not simply file a request with ACTION for the form, or indeed why Volunteer does not give him the form voluntarily. The form contains nothing unusual or controversial.

Attachment

THE WHITE HOUSE

WASHINGTON

June 6, 1983

MEMORANDUM FOR MICHAEL P. CASTINE  
DEPUTY DIRECTOR  
PRIVATE SECTOR INITIATIVES

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Inquiry from Volunteer Concerning  
Applicability of the Freedom of  
Information Act

You have asked for our guidance in responding to an inquiry from Volunteer concerning whether it is subject to the Freedom of Information Act (FOIA). In particular, Volunteer has been presented with a FOIA request for the nomination form of Mothers Against Drunk Driving for the President's Volunteer Action Award.

While I suspect Volunteer would not be considered an agency subject to the FOIA, the matter is not entirely free from doubt, and similar questions have been the subject of litigation in the past. I do not, however, think it advisable for the White House to offer Volunteer guidance concerning its legal rights and responsibilities. Volunteer is a private organization and as a general matter we avoid becoming involved in private legal disputes. Here the dispute concerns a document in Volunteer's possession used in selecting recipients of a Presidential award, but nothing about that document justifies or counsels our intervention. Indeed, under existing precedents the mere fact of our intervention might affect the merits of the question whether Volunteer is subject to FOIA.

FFF:JGR:aw 6/6/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

THE WHITE HOUSE  
WASHINGTON

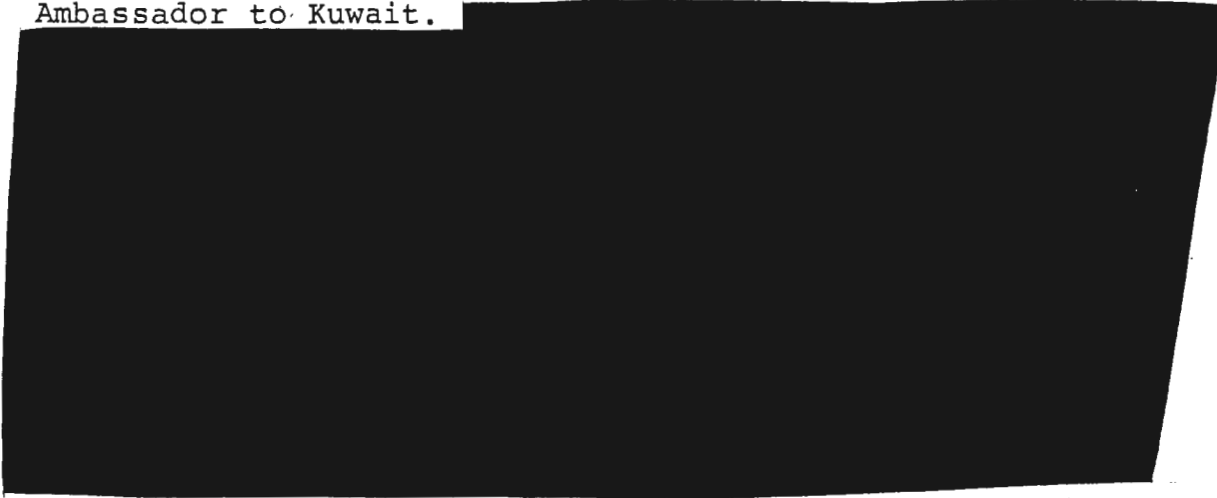
June 6, 1983

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Nomination of Brandon H. Grove  
to be Ambassador to Kuwait

I have reviewed the material submitted by Brandon H. Grove,  
and see nothing that would preclude his nomination to be  
Ambassador to Kuwait.



*blp*

THE WHITE HOUSE

WASHINGTON

June 6, 1983

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Nomination of David M. Abshire  
to be U.S. Representative to  
USNATO, with Rank of Ambassador

I have reviewed the material submitted by Dr. Abshire in connection with his prospective nomination to be U.S. Representative to USNATO, with rank of ambassador, and see nothing that would preclude his nomination. Dr. Abshire will be on leave of absence from Georgetown University during his service. On June 6 I telephoned Dr. Abshire to question him about this arrangement. He affirmed that he would receive no benefits of any kind from the University while he was on leave of absence.

THE WHITE HOUSE

WASHINGTON

June 6, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Presidential Response to Letter  
from Jesse Jackson

On May 23, 1983, Jesse Jackson wrote the President to protest the President's recent actions to replace certain personnel at the Civil Rights Commission. Late Friday, June 3, Mel Bradley advised our office that he wanted to clear a proposed Presidential reply by close of business. Richard Hauser and I edited the draft reply, which had been prepared by Mike Uhlmann, as indicated, and approved the reply as edited. The original draft was incorrect in stating that under the Administration bill the Commission would be an independent agency, and that the Commissioners would no longer serve at the pleasure of the President.


Attachment

THE WHITE HOUSE

WASHINGTON

June 7, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS 

SUBJECT: CAB Decisions: Air Specialities Corp.,  
Tampa-London Service Proceeding,  
Braniff-South American Route Transfer  
Case and Trans World Airlines

---

This memorandum is addressed to you because Eastern Air Lines, Inc., is involved in one of the subject orders.

Richard Darman's office has asked for comments by close of business Friday, June 10, 1983 on the above-referenced CAB decisions, which were submitted for Presidential review as required by § 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 these cases, by June 17, 20, 26, and July 3, respectively).

The orders here 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 these orders involve domestic carriers, judicial review is theoretically available. Hence, the proposed letter from the President to the CAB Chairman prepared by OMB includes the standard sentence designed to preserve availability of judicial review, as contemplated by the Executive Order for cases involving domestic airlines.

The Air Specialties order authorizes new service by that carrier and the order in the Tampa-London proceeding authorizes primary service on that route by Arrow Air and backup service by Air Florida. The Braniff order authorizes

Eastern to service Braniff's South American routes, while the TWA order denies a request for renewal of backup authority on the ground that it is no longer needed.

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

Attachment

THE WHITE HOUSE

WASHINGTON

June 7, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: RICHARD A. HAUSER  
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: CAB Decisions: Air Specialities Corp.,  
Tampa-London Service Proceeding,  
Braniff-South American Route Transfer  
Case and Trans World Airlines

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.

Fred F. Fielding did not participate in this matter.

RAH:JGR:aw 6/7/83

cc: Richard A. Hauser  
JGRoberts  
Subj.  
Chron



MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

June 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Correspondence from [REDACTED]

His EEOC Case

b6

[REDACTED] the President to advise him that the EEOC has ruled in his favor, after a fourteen month delay. [REDACTED]

b6

[REDACTED] The letter states that [REDACTED] wrote the President about the case "some time ago." Central Files has no record of such a letter, although [REDACTED] writes the President frequently about whatever is on his mind. In his current letter, [REDACTED] states that the EEOC is "un-American" and that he will hold the President to his promise to get rid of it.

Rick Neal sent [REDACTED] an interim response and forwarded the incoming to Mike Uhlmann, who adroitly passed it to us. I see no reason to bother the EEOC about this matter. According to [REDACTED] the matter was resolved in his favor in 14 months -- not at all a lengthy period for an EEOC complaint. I have been unable to confirm that the President promised to abolish the EEOC. We should ignore that assertion in any event, as well as the assertion that the EEOC is "un-American," the truth of the matter notwithstanding. I have drafted a deliberately bland response for your signature.

b6

Attachment

THE WHITE HOUSE

WASHINGTON

June 7, 1983

Dear  *bb*


Thank you for your letter to the President concerning your case before the Equal Employment Opportunity Commission. In that letter you noted that you obtained a favorable decision, but only after a delay of fourteen months.

As a general matter, the White House adheres to a policy of not becoming involved in or commenting upon particular matters before an agency that performs regulatory or adjudicative functions, such as the EEOC. This policy preserves the independence and integrity of the Commission's processes. I trust you will appreciate the need for us to adhere to this policy, and to refrain from comment upon your specific case.

We do, however, appreciate having the benefit of your more general views on the EEOC. They will be given every appropriate consideration.

Sincerely,

Fred F. Fielding  
Counsel to the President

 *bb*  
FFF:JGR:aw 6/7/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

THE WHITE HOUSE

WASHINGTON

June 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: H.R. 2912 as Reported (Report Number 98-181)  
the "Department of Justice Appropriation  
Authorization Act, Fiscal Year 1984"

James Murr of OMB has asked for our views by close of business June 10, 1983 on sections 11 and 13 of H.R. 2912, the Department of Justice Appropriation Authorization Act for Fiscal Year 1984. The bill has been reported out of the House Judiciary Committee.

Section 11 requires the Attorney General to report to Congress whenever he decides either to refrain from enforcing an act of Congress on the ground that it is unconstitutional, or to contest or refrain from defending the constitutionality of an act of Congress. In addition, section 11(c) provides that in the latter circumstance the Attorney General shall proceed not in the name of the United States but only in the name of the department on whose behalf he appears, or in the President's name if he appears on behalf of the President. Section 13 would suspend the effectiveness of the new FBI Guidelines until January 1, 1984.

The requirement that the Attorney General advise Congress when he takes action or declines to take action on the ground that an act of Congress is unconstitutional does not strike me as objectionable. The Committees report notes that such a requirement has been added as a floor amendment to the Justice authorization bill "each year." Section 11(c) is unprecedented, however, and highly objectionable. Whenever the Attorney General appears in court, he represents the United States, regardless of whether the Congress agrees with his position. Part of the Attorney General's representation of the United States involves the exercise of the independent prerogative of the Chief Executive to determine that a given act is unconstitutional.

Although the impact of section 11(c) would be largely symbolic, we should nonetheless be loath to accept any infringement of the related principles that the chief legal

officer of the United States acts for the United States -- not just the executive branch -- and that he so acts even when deciding that an act of Congress is unconstitutional.

Section 13 would suspend the new FBI Domestic Security, Informant, and Undercover Guidelines until January 1, 1984. The Committee report states that the purpose of the delay is to permit consultation between the Committee and the Department on the new guidelines. In fact, such consultation took place prior to announcement of the new guidelines and again after their promulgation. The new guidelines are the result of a painstaking process, and reverting to the old guidelines for a "consultation period" would cause confusion in the field and demoralize the agents.

I have drafted a memorandum to Murr registering our objections to subsection 11(c) and section 13.

Attachment

THE WHITE HOUSE

WASHINGTON

June 7, 1983

MEMORANDUM FOR JAMES C. MURR  
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: H.R. 2912 as Reported (Report Number 98-181)  
the "Department of Justice Appropriation  
Authorization Act, Fiscal Year 1984"

You have asked for our views on sections 11 and 13 of the above-referenced reported bill. Subsections 11(a) and 11(b) would require that the Attorney General file reports with Congress in the event that he takes certain action or declines to take certain action on the ground that an Act of Congress is unconstitutional. We have no serious objection to these provisions.

Subsection 11(c) provides that under certain specified circumstances the Attorney General shall not proceed in the name of the United States but only in the name of the department or agency on whose behalf he appears, or the President if he appears on behalf of the President. Under our system of separated powers, however, whenever the Attorney General appears in court, he appears on behalf of the United States, even if he exercises the independent prerogative of the Chief Executive to determine that an Act of Congress is unconstitutional. We object to subsection 11(c) as an infringement on the principle that part of the Executive's authority and responsibility to enforce the law on behalf of the United States includes the authority to assess the constitutionality of legislation.

While we defer to the Department of Justice with respect to section 13, it is our understanding that the department has already had extensive consultations with the Committee with respect to the new FBI Guidelines. It is difficult to see what purpose would be served by delay in implementing the new rules, and any such delay could have the adverse effect of confusing and demoralizing agents in the field.

FFF:JGR:aw 6/7/83

cc: FFFielding/JGRoberts/Subj./Chron

MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

June 7, 1983

FOR: FRED F. FIELDING  
FROM: JOHN G. ROBERTS *JGR*  
SUBJECT: Proposed Statement by Deputy  
Assistant Attorney General  
Vance on Section 213 of H.R. 2797

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

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

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 8, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Letter to Allen R. Jones  
for PROMOTE: America Campaign

Allen Jones of Michael Baybak and Company, Inc., a public relations firm, is promoting a national campaign against pessimism called "Promote: America." Jones asks businessmen to buy radio time and deliver up-beat editorial messages on the economic recovery. Jones organized a pilot program for his project in Chattanooga, and the Chattanooga radio station manager received a positive letter from the President on the program. Jones has now asked the President to send a letter to 5 million businessmen asking them to participate in Promote: America.

The Correspondence and Private Sector Initiatives offices have collaborated on a response to Jones, not to the 5 million businessmen. The response stresses the optimistic spirit of Americans, commends those participating in Promote: America, and expresses hope for its success. I see no legal objection to the letter. It is bland and does not commit the President to anything. Jones will doubtless use the letter to advance his project, but the Office of Private Sector Initiatives has decided that Promote: America is worthy of the President's support, and I see no reason to second-guess that judgment. I also suspect that Jones contemplates using Promote: America to help his P.R. business, but nothing in the President's letter does so.

Attachment

THE WHITE HOUSE

WASHINGTON

June 8, 1983

MEMORANDUM FOR ANNE HIGGINS  
MICHAEL P. CASTINE

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Letter from the President to  
Allen R. Jones Concerning "Promote: America"

Counsel's Office has reviewed the above-referenced proposed letter, and finds no objection to it from a legal perspective. Our determination assumes that the Office of Private Sector Initiatives has reviewed the "Promote: America" project and has concluded that it is worthy of the President's commendation.

FFF:JGR:aw 6/8/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron



THE WHITE HOUSE

WASHINGTON

June 8, 1983

MEMORANDUM FOR ROBERT C. HILL

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Request for Photo of the President

If available, I would appreciate having a photograph of the President signed for Robert & Jamie Knauss. Please forward to me in Room 112/OEOB.

Many thanks!

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 8, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Welbilt and the Economic  
Development Administration

Craig Fuller has inquired if our office can communicate with the Department of Commerce to expedite review of a proposal by Welbilt Electronic Die Corporation pending before the Economic Development Administration (EDA). Jim Jenkins brought the matter to Fuller's attention. Welbilt is a minority enterprise in the Bronx and has benefitted in the past from EDA loans and various programs designed to favor minority businesses. Fuller states that Welbilt "has attracted the interest and support of the community and the administration." The nature of Welbilt's application before EDA is not clear from the material provided by Fuller and Jenkins, but Jenkins asserts that Welbilt needs an answer by Friday from EDA or it may not be able to meet its payroll obligations.

We should not, of course, attempt to persuade EDA concerning the merits of Welbilt's application. Nor should we urge EDA to expedite processing of Welbilt's request. Welbilt has made the urgency of its request known to EDA, and EDA can evaluate that urgency pursuant to its usual procedures and criteria. The most that we can appropriately do is advise EDA, through Commerce, that Welbilt has told the White House that it must have a decision by Friday, and EDA can do with that information whatever is appropriate. Since EDA already knows time is of the essence, nothing will be served by such White House action, and the action could easily be misinterpreted by Commerce and EDA, and misperceived by others, as White House pressure on the merits of the loan or the merits of the expedition request. Accordingly, I recommend no action, and have prepared a memorandum to Fuller so advising him.

Attachment

THE WHITE HOUSE

WASHINGTON

June 8, 1983

MEMORANDUM FOR CRAIG L. FULLER  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Welbilt Electronic Die Corporation

You have advised this office that Welbilt Electronic Die Corporation requires a decision on its Economic Development Administration application by Friday, and inquired whether it would be appropriate for us to suggest to EDA, through the Department of Commerce, that the Welbilt application be reviewed on an expedited basis. Under the circumstances I do not believe such intervention by the White House would be appropriate. The most we could do would be to communicate Welbilt's concerns to EDA, but it is my understanding that Welbilt has already made clear to EDA the need for expedited consideration. Any communication from the White House could thus be misinterpreted by EDA and/or misperceived by the public as untoward and inappropriate interference, either on the loan decision or the decision to expedite, both of which are EDA's to make.

FFF:JGR:aw 6/8/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 8, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Draft Presidential Taping:  
National Confectioners Association

Richard Darman has requested that comments on the above-referenced proposed remarks be submitted directly to Aram Bakshian by noon today. The remarks, to be taped, note the contributions of confectioners to the economy, such as the provision of over 70,000 jobs (presumably not including dentists). The remarks then review the progress of the recovery.

At one point the President would state: "You know from running your businesses that what you spend must not exceed what you take in. I need your help in explaining that to the Congress. And while you're at it, I wish you'd also make clear that you think the Government is already taking in plenty." I do not think this raises a problem under the anti-lobbying provisions, since the President does not refer to any specific legislation. Simply advising people to urge Congress to spend and tax less should not be viewed as prohibited lobbying. I read the language in question to Larry Simms of OLC, who agreed that it was not covered by the anti-lobbying provisions.

There is one editing error in the draft, which I have noted in the proposed memorandum to Bakshian.

Attachment

THE WHITE HOUSE

WASHINGTON

June 8, 1983

MEMORANDUM FOR ARAM BAKSHIAN, JR.  
DEPUTY ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Presidential Taping:  
National Confectioners Association

Counsel's Office has reviewed the above-referenced draft remarks, and finds no objection to them from a legal perspective. On page 2, line 6, "we" should be deleted.

cc: Richard G. Darman

FFF:JGR:aw 6/8/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 8, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Remarks: Luncheon with President's  
Roundtable on Capital Formation

Richard Darman has requested that comments on the above-referenced proposed remarks be sent directly to Aram Bakshian by noon today. The brief remarks are innocuous, reviewing Administration efforts to promote capital formation and asking for the Roundtable's views on further measures. I see no legal objections.

Attachment

THE WHITE HOUSE

WASHINGTON

June 8, 1983

MEMORANDUM FOR ARAM BAKSHIAN, JR.  
DEPUTY ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Remarks: Luncheon with President's  
Roundtable on Capital Formation

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

cc: Richard G. Darman

FFF:JGR:aw 6/8/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron