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THE WHITE HOUSE

WASHINGTON

February 14, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS 

SUBJECT:

SBA Proposed Report on S. 2084

OMB has asked for our views on the above-referenced proposed report by the Small Business Administration (SBA) on S. 2084. This bill would substantially repeal an SBA regulation, the "opinion molder rule," which precludes the SBA from granting assistance to any applicant engaged in expressing or propogating ideas. 13 C.F.R. § 120.2(d)(4). The rule antedates this Administration, and was designed to avoid the First Amendment concerns raised by Government decisions to fund or terminate the funding of those engaged in the business of expressing ideas. S. 2084 would prohibit the SBA from denying loan guarantee assistance to organizations on this ground unless the aid would be used to (1) advance or inhibit religion, (2) threaten the unlawful overthrow of organized Government, or (3) engage in any illegal activity or the dissemination of obscene materials.

In the second paragraph on page 1, the SBA report states that the opinion molder rule is based on the fear that "censorship could result" from the SBA determining to support some ideas but not others. This strikes me as dangerously imprecise use of loaded terminology. The decision to fund or not to fund the expression of certain ideas may violate the First Amendment, but it is not censorship. The offensive ideas may be freely expressed without government assistance. I suggest deleting the last three sentences in the paragraph -- they are surplusage in any event -- and substituting "The SBA promulgated the opinion molder rule to avoid the potential First Amendment difficulties attendant upon government financial assistance to those engaged in the business of expressing ideas," or something similar.

The SBA draft report concedes that the opinion molder rule has been difficult to administer, and welcomes Congressional guidance. It makes several suggestions for revisions in S. 2084. Two of these raise concerns from the perspective of preserving legal flexibility for the SBA. In the fourth paragraph on page 2, the report objects to the provision permitting denial of assistance to organizations promoting the unlawful overthrow of organized government, in part because "this exception would require SBA to look to the

content of various publications or communications, which is constitutionally proscribed." I do not think this assertion of a constitutional proscription is necessarily accurate, and in any event SBA should not brand as unconstitutional something it may want to do in the future.

The carryover paragraph between pages 2 and 3 objects to the provision permitting denial of assistance to organizations publishing obscene materials, in part on the ground that this "would place SBA in the untenable role of censor." As noted above, SBA should not argue that denial of government assistance is tantamount to censorship.

A memorandum for OMB is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

February 14, 1984

MEMORANDUM FOR WILLIAM A. MAXWELL  
LEGISLATIVE ANALYST  
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: SBA Proposed Report on S. 2084

Counsel's Office has reviewed the above-referenced proposed report. While we express no view on the policy question of whether to support repeal of the opinion molder rule, we do object to several instances in the report in which SBA's legal analysis is either imprecise or unnecessarily definitive.

The last three sentences in the second paragraph on page one suggest that the denial of Federal financial assistance because of the expression of certain ideas could constitute "censorship." While such a practice may, under certain circumstances, violate the First Amendment, it is not censorship. The offensive ideas may still be expressed, only without government funding. We suggest deleting the last three sentences -- their point is more accurately stated in the first sentence of the paragraph in any event -- and substituting "The SBA promulgated the opinion molder rule to avoid the potential First Amendment difficulties attendant upon government financial assistance to those engaged in the business of expressing ideas," or something similar.

In the fourth paragraph on page 2, the report objects to the provision permitting denial of assistance to organizations promoting the unlawful overthrow of organized government, in part because "this exception would require SBA to look to the content of various publications or communications, which is constitutionally proscribed." This legal conclusion is debatable. We recommend changing "is constitutionally proscribed" to "would raise serious First Amendment concerns."

The first full sentence on page 3 repeats the imprecise use of the term "censor" discussed above. We recommend changing "would place SBA in the untenable role of censor and, in addition to possible constitutional problems" to "would raise possible constitutional problems, and."

FFF:JGR:aea 2/14/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON, D.C.

February 14, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Presidential Remarks: Crime Prevention  
Week Ceremony, Wednesday, February 15, 1984

Richard Darman has asked that comments on the above-referenced remarks be sent directly to Ben Elliott by 10:00 a.m. today. The remarks discuss the crime prevention movement in a general way, with specific mention of several neighborhood crime prevention programs, most prominently "Neighborhood Watch." At two different points the President urges House action on the Comprehensive Crime Control Act, which has already passed the Senate.

I have no legal objections. In the second paragraph on page 2, however, the remarks state that the Kansas City Chiefs are participating in a baseball card project. This is not impossible, but unlikely. "Chiefs" should probably be "Royals," or "baseball" should be "football."

Attachment

February 14, 1984

MEMORANDUM FOR BEN BLOTT  
DEPUTY ASSISTANT TO THE PRESIDENT  
DIRECTOR, PRESIDENTIAL SPEECHWRITING OFFICE

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Remarks: Crime Prevention  
Week Ceremony, Wednesday, February 15, 1984

Counsel's Office has reviewed the above-referenced remarks, and finds no objection to them from a legal perspective. In the second paragraph on page 2, however, the remarks state that the Kansas City Chiefs are participating in a baseball card project. This strikes me as odd, since the Chiefs are, of course, a football team. In the penultimate sentence of the remarks, the antecedent for "it" is obscure. We suggest deleting "and make it permanent," or at least making it more clear what "it" is.

cc: Richard G. Darman

FFF:JGR:aea 2/14/84


bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 14, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: H. LAWRENCE GARRETT, 

SUBJECT: Letter From Hilde Howden Regarding the President's Endorsement of John Saxon's Algebra I Textbooks

Ms. Hilde Howden recently wrote the President expressing concern about the John Saxon advertisement which recently appeared in The Mathematics Teacher. This is the same matter which I addressed in my memorandum of February 2, 1984 (copy attached).

Accordingly, the attached proposed reply is submitted for your review and signature.

Attachment

THE WHITE HOUSE

WASHINGTON

February 14, 1984

Dear Ms. Howden:

Your recent letter to the President concerning an advertisement appearing in The Mathematics Teacher has been directed to my office for reply.

Please be advised that, as a matter of long-standing policy in this and previous Administrations, neither the name nor the photograph or likeness of the President should be used in any advertising, promotional, or other commercial activities which in any way suggest a connection between the President and such advertising or promotion. This policy is generally well-known and, as a matter of fact, is set forth in section 236 of the Do's and Don'ts in Advertising Copy, published by the Council of Better Business Bureaus, Inc.

As you discovered, there are times, however, when individuals inadvertently fail to adhere to this policy. Such instances are oftentimes brought to our attention through the efforts of people such as you, thereby enabling us to take appropriate corrective action. In this instance, Mr. Saxon has been apprised of this long-standing policy, and requested to take immediate steps to ensure that the policy is adhered to in the future.

Thank you for bringing this matter to our attention.

With best wishes,

Sincerely,

Fred F. Fielding  
Counsel to the President

Ms. Hilde Howden  
District Mathematics Coordinator  
Albuquerque Public Schools  
725 University Boulevard, S.E.  
Albuquerque, NM 87125-0704

FFF:HLG:aea 2/14/84

bcc: FFFielding/HLGarrett/Subj/Chron




THE WHITE HOUSE

WASHINGTON

February 14, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Taping: American Film Institute  
Dinner Honoring Lillian Gish

Richard Darman has asked that comments on the above-referenced remarks be sent directly to Ben Elliott by noon February 15. The brief remarks praise Lillian Gish and the work of the American Film Institute. I have reviewed the remarks and have no objection to them.

Attachment

THE WHITE HOUSE

WASHINGTON

February 14, 1984

MEMORANDUM FOR BEN ELLIOTT  
DEPUTY ASSISTANT TO THE PRESIDENT  
DIRECTOR, PRESIDENTIAL SPEECHWRITING OFFICE

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Taping: American Film Institute  
Dinner Honoring Lillian Gish

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

cc: Richard G. Darman

FFF:JGR:aea 2/14/84

bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 15, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Television Coverage of the Reagans  
at the Ranch

Mr. Deaver's office would like to know as soon as possible whether the television networks are invading the Reagans' privacy when they film them at the ranch. I contacted Bill Sittmann for further details, but he was unable to provide any. There is apparently no particular incident at issue, simply the long-standing practice of the networks to film the Reagans at the ranch by using telephoto camera equipment located off the ranch.

California courts, like those of most states, recognize the tort of invasion of privacy. The right to privacy, even in California, includes the right to seclusion, free from unwarranted and undesired publicity. Gill v. Curtis Pub. Co., 38 Cal. 2d 273 (1952). The right is limited, however, and in the case of public officials and public figures must yield to the public interest in the dissemination of news and information. Gill v. Hearst Pub. Co., 40 Cal. 2d 224 (1953). Thus, the California courts have limited the privacy rights of public officials and public figures, quite apart from any federal First Amendment privilege the networks may have overriding the tort at state law.

Public officials do not yield all their privacy interests. The right to keep one's image free from unauthorized commercial exploitation, for example, has been held to be included in the right to privacy, and not even the President loses this aspect of the right to privacy. It seems fairly clear, however, that the Reagans have forfeited that aspect of the right to privacy described in California as the right to live in seclusion. Their activities are matters of legitimate public interest, whether they want them publicized or not. I see no hope for the Reagans prevailing in a lawsuit against the networks for filming and broadcasting their activities, conducted in the open at the ranch.

In response to a confidential inquiry, Bruce Fein, General Counsel at the FCC, advises that there are no federal rules restricting the broadcasting of such items on privacy grounds.

A memorandum to Deaver is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

February 15, 1984

MEMORANDUM FOR MICHAEL K. DEEVER  
ASSISTANT TO THE PRESIDENT  
DEPUTY CHIEF OF STAFF

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Television Coverage of the Reagans  
at the Ranch

You have asked for a response from this office as soon as possible to the question whether the television networks invade the Reagans' privacy when they film them at the ranch, using telephoto equipment located off the ranch. An expedited review of the question leads me to conclude that this practice of the networks does not violate any legal right of the President and First Lady.

California, like most states, recognizes the tort of invasion of privacy. The legal right to privacy includes the right to live one's life in seclusion, free from unwarranted and undesired publicity. The California courts have held, however, that this right generally does not apply to public officials or public figures. In the case of such individuals, the right to privacy must yield to the public interest in the dissemination of news and information, and courts are likely to consider any activity of the Reagans -- even relaxation at the ranch -- to constitute "news." Quite apart from this public official/public figure limitation on the right to privacy as recognized in California, the media could raise constitutional defenses based on the First Amendment to any tort action for invasion of privacy brought by the Reagans.

The network practice of using telephoto equipment to film the Reagans' activities at the ranch, from a location off the ranch, may violate norms of common decency and consideration. The practice does not, however, violate any legal rights, and I hold no hope that the Reagans would prevail in any legal action against the networks.

FFF:JGR:aea 2/15/84  
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 15, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Gift of Book Entitled "Fluoride:  
The Aging Factor"

John Yiamouyiannis, Ph.D., Acting Executive Director of the National Health Action Committee, has sent the President two copies of his book Fluoride: The Aging Factor. In his cover letter Dr. Yiamouyiannis claims that the fluoridation of public water supplies is a serious health hazard "which is currently resulting in the deaths of tens of thousands of American civilians and which is chronically poisoning over half of the population of the United States." He also claims that the U.S. Public Health Service personnel are "responsible for promoting this atrocity."

Dr. Yiamouyiannis attaches a list of 33 people who have paid him to send the President his book. He has advised the 33 that the President or a member of the White House staff will respond to them "with a serious and meaningful appraisal" of the charges made in the book.

I do not think Yiamouyiannis's letter and book raise any legal problems appropriate for the attention of this office. The gift of the two books is of nominal value and has been recorded by the Gift Unit. Yiamouyiannis's decision not to send 33 books to the President but to send the excess to other leaders does not strike me as objectionable, nor, even if it were, our office's business. Yiamouyiannis vehemently objects to a referral to the Public Health Service, so I recommend sending his letter to the President's Science Advisor, George A. Keyworth, II. The book deals with scientific questions and accordingly the problem is within Keyworth's province.

Attachment

cc: Claudia McMurray

THE WHITE HOUSE

WASHINGTON

February 15, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Suggestion to Mrs. Reagan Concerning  
Presidential Warrants

Stephen L. Mathis of Los Angeles wrote the First Lady in November, suggesting that the President issue "warrants" or endorsements to companies, in exchange for contributions to charitable endeavors. Mathis's idea would be for the President to do what the U.S. Olympic Committee has done, viz., sell endorsements to raise funds for a laudable purpose. The First Lady's Office never responded to Mathis's sincere if misguided letter, and Mathis wrote again on February 1, asking for a response. Sheryl Eberly has now referred both letters to you, asking that you respond.

What Mathis is suggesting is precisely what we generally try to avoid in handling the numerous requests we receive for Presidential participation in charitable fundraising. Selling the prestige of the office -- even for a noble cause -- is demeaning to the Presidency and should not be countenanced. It would also be unfair for the President to annoint one company over its competitors, simply because that company gave money to a charity favored by the President. And it would be similarly unfair for the President to use his office to prefer one charity over others equally worthy.

The attached draft reply to Mathis thanks him for the idea but explains why we do not think it appropriate.

Attachment

THE WHITE HOUSE

WASHINGTON

February 15, 1984

Dear Mr. Mathis:

Your letters of November 18, 1983 and February 1, 1984 to the First Lady have been referred to this office for consideration and response. In those letters you suggested that the President issue "warrants" or endorsements to deserving companies in exchange for charitable contributions.

We appreciate the laudable motive of increasing charitable contributions underlying your idea, and thank you for sharing the idea with us. After careful consideration, however, we have concluded that it would not be appropriate for the President to endorse products in exchange for charitable contributions.

Such a practice would raise fairness concerns, both with respect to the selection of a company to endorse and with respect to the selection of a charity to receive any funds raised by the endorsement. In our free market economy it would be inappropriate for the President to endorse and thereby promote the products of one company over those of competitors, solely on the basis of charitable contributions by that company.

It also strikes us as generally inappropriate for the President to use his office to favor in a systematic way particular charities over others that are equally worthy. While any President and First Lady will have specific charitable causes in which they are interested, and while it is perfectly appropriate -- indeed, desirable -- for them to promote charitable activity, the Office of the Presidency itself should not be used as a fundraising vehicle for specific charitable organizations.

At a more basic level, we could not countenance the granting of Presidential endorsements in exchange for charitable contributions, because such activity would essentially be selling the prestige of the Office. That would be demeaning to the Presidency, no matter how laudable the motive. The President has, on frequent occasions, urged Americans to



support charitable endeavors and charitable organizations of their choice. The President will continue to promote the typically American spirit of voluntarism and caring, but we will not diminish the prestige of the Office of the Presidency by auctioning it off for contributions.

Let me emphasize again that we share your sincere desire to promote charitable contributions, and appreciate having the benefit of your views on this topic.

Sincerely,

Fred F. Fielding  
Counsel to the President

: =

Mr. Stephen L. Mathis  
8667 Holloway Plaza Drive  
Los Angeles, CA 90069

FFF:JGR:aea 2/15/84  
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 15, 1984

MEMORANDUM FOR SHERYL L. EBERLY  
DEPUTY DIRECTOR OF PROJECTS  
OFFICE OF THE FIRST LADY

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Suggestion to Mrs. Reagan Concerning  
Presidential Warrants

By memorandum dated February 6, 1984, you asked this office to respond to letters to the First Lady from Stephen L. Mathis. Those letters suggested that the President grant endorsements to certain products in exchange for charitable contributions from the companies marketing those products. A copy of my reply is attached. The reply thanks Mathis for his interest but declines to adopt his suggestion, noting that it would be unfair to companies and charities not favored by the President, and that selling the prestige of the Presidency to obtain charitable donations would be demeaning to the Office, no matter how laudable the purpose.

Attachment  
FFF:JGR:aea 2/15/84  
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 15, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Requests a Copy of the President's  
Seal for a Constituent to Use in a  
Classroom Bulletin Board Display

Congressman George M. O'Brien (R-IL) has written to ask for a copy of the Seal of the President for a constituent who plans to use it in a bulletin board display in her classroom. Such use is permitted by subsection 1(c) of Executive Order 11649, which authorizes use of the Seal "in libraries, museums, or educational facilities incident to descriptions or exhibits relating to seals, coats of arms, heraldry, or the Presidency or Vice Presidency."

I recommend sending a copy of the statute and Executive Order to O'Brien along with the Seal, for his constituent's information and as a precaution against any misuse of the Seal. A draft is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

February 15, 1984

Dear Congressman O'Brien:

Thank you for your letter of February 8, requesting a copy of the Seal of the President for a constituent who plans to use it in a bulletin board display in her classroom.

The permitted uses of the Seal of the President are limited by law. Title 18 of the United States Code, section 713, generally prohibits use of the Seal except in accordance with regulations promulgated by the President. Those regulations are embodied in Executive Order 11649, as amended.

The Executive Order permits use of the Seal in educational facilities in exhibits relating to seals or the Presidency. Your constituent's contemplated use of the Seal in a classroom bulletin board display appears to fall within this category of permitted uses, and accordingly I am happy to send along a copy of the Seal for this purpose. I have also enclosed, for your constituent's information, a copy of the statute and Executive Order governing use of the Seal.

With best wishes,

Sincerely,

Fred F. Fielding  
Counsel to the President

The Honorable George M. O'Brien  
House of Representatives  
Washington, D.C. 20515

FFF:JGR:aea 2/15/84  
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 15, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Taping: Radio Information Center  
for the Blind

Richard Darman has asked that comments on the above-referenced remarks be sent directly to Ben Elliott by noon today. The remarks are addressed to blind listeners, and generally stress the Administration's commitment to promoting independence and opportunity for the handicapped rather than paternalistic welfare. The remarks cite three initiatives announced by the President last fall: a new HHS program to improve private sector employment opportunities for the handicapped, an Education/HHS program to assist in the transition from special education to job placement, and a national information and referral system.

I have reviewed the remarks and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

February 15, 1984

MEMORANDUM FOR BEN ELLIOTT  
DEPUTY ASSISTANT TO THE PRESIDENT  
DIRECTOR, PRESIDENTIAL SPEECHWRITING OFFICE

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Taping: Radio Information Center  
for the Blind

Counsel's Office has reviewed the above-referenced remarks, and finds no objection to them from a legal perspective. On page 1, line 12, "make" should be: "makes."

cc: Richard G. Darman

FFF:JGR:aea 2/15/84

bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 15, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Proposed Justice Report on S. 139  
(Anti-Busing Bill)

OMB has asked for our views by close of business today on the above-referenced proposed Justice Department report. The 26-page letter to Strom Thurmond was prepared by the Office of Legal Counsel. It outlines the concerns of the Department with respect to S. 139, the "Public School Civil Rights Act of 1983," an anti-busing bill. S. 139 contains numerous Congressional findings concerning the pernicious effects of busing, prohibits lower federal courts from ordering busing, and permits reopening of previously-entered busing decrees, which are to be overturned unless the court makes several findings concerning currently existing intentional segregation. The bill states that it is based on Congress's Article III authority over the inferior federal courts and its power pursuant to § 5 of the Fourteenth Amendment.

The Justice report concludes that courts would defer to the legislative findings of fact, but would not defer to conclusions of law expressed as findings of fact in the bill. With respect to the prohibition on federal busing orders, the Department concludes that Congress only possesses power to impose such a limitation if effective alternative remedies for unconstitutional segregation exist. If a court in a particular case determines that busing is necessary to remedy intentional racial segregation, it will strike down the prohibition in the bill preventing it from ordering such relief. The report objects to the authorization to reopen existing busing decrees on policy grounds, and concludes that this provision is unconstitutional to the extent it authorizes state courts to re-examine federal court orders.

The analysis in the Justice report is largely based on the even lengthier May 6, 1982 letter sent by the Attorney General to Representative Rodino, concerning a similar bill. I spent several months in my previous incarnation disputing Ted Olson's approach to these issues; the May 6 Attorney General letter signalled Olson's victory in the extended internal debate. Olson reads the early busing decisions as

holding that busing may in some circumstances be constitutionally required, and accordingly concludes that Congress may not flatly prohibit busing. To do so would prevent federal courts from remedying a constitutional violation.

I do not agree with his reading of the early cases. The holdings of those cases stand for the proposition that busing is permissible, and that state statutes limiting the authority of federal courts to order busing are unconstitutional. A far different question is presented when Congress attempts to limit the authority of the federal courts. Congress has authority under § 5 to enforce the Fourteenth Amendment, and can conclude -- the evidence supports this -- that busing promotes segregation rather than remedying it, by precipitating white flight. Even if Olson's reading of the 13-year old early busing cases is correct, we have now had over a decade of experience with busing. If that experience demonstrates that busing is not an effective remedy, Congress can legislate on the basis of that experience. Olson's analysis treats stray dicta in the old cases as binding despite experience to the contrary. I would conclude that it is within Congress's authority to determine that busing is counterproductive and to prohibit federal courts from ordering it. Our own litigation policy is based on such a view, and it strikes me as more than passing strange for us to tell Congress it cannot pass a law preventing courts from ordering busing when our own Justice Department invariably urges this policy on the courts.

As noted, however, Olson's view has already gone forward as the Administration view, and it would probably not be fruitful to reopen the issues at this point.

Attachment



THE WHITE HOUSE

WASHINGTON

February 15, 1984

MEMORANDUM FOR BRANDEN BLUM  
LEGISLATIVE ATTORNEY  
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Justice Report on S. 139  
(Anti-Busing Bill)

Counsel's Office has reviewed the above-referenced proposed testimony. We have no objection to sending it to the Hill.

FFF:JGR:aea 2/15/84

cc: FFFielding/JGRoberts/Bubj/Chron

THE WHITE HOUSE

WASHINGTON

February 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Presidential Radio Talk: Crime

Richard Darman has asked that comments on the above-referenced remarks be sent directly to Ben Elliott by noon today. This draft is a slightly revised version of the draft you cleared by memorandum dated February 9. No substantive changes have been made, and the revised draft responded to the minor changes suggested by our office. I have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

February 16, 1984

MEMORANDUM FOR BEN ELLIOTT  
DEPUTY ASSISTANT TO THE PRESIDENT  
DIRECTOR, PRESIDENTIAL SPEECHWRITING OFFICE

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Radio Talk: Crime

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

cc: Richard G. Darman

FFF:JGR:aea 2/16/84

bcc: FFFieldng/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

H.R. 2898 -- Utah Paiute Trust Lands  
and Economic Development Act

Richard Darman has asked for comments by close of business today on the above-referenced enrolled bill. This bill would transfer 4,770 acres of Federal land to the Utah Paiute Tribe, and establish a \$2.5 million fund for the economic development of the Tribe. Public Law 96-227, enacted in April of 1980, authorized the transfer of 15,000 acres to the Tribe. Problems have arisen with that contemplated transfer, and this bill authorizes an alternative acceptable to all interested parties. The bill specifies that the 4,770 acres and \$2.5 million "shall be in complete fulfillment of the provisions of Public Law 96-227."

Of the miscellaneous provisions in the bill the only one raising legal issues is section 3(a), designed to preserve rights of the Paiute to use the land in question for religious purposes. The provision precludes the Secretary of Agriculture from denying the Paiutes the right to use the land on a nonexclusive basis for religious ceremonies, and on an exclusive basis for such purposes during four specified weeks. Under the Supreme Court's misguided and confused Establishment Clause jurisprudence, I can see someone articulating a credible challenge to this provision. For four weeks each year Federal law would deny to others possible use of the national forest land, for the explicit purpose of permitting religious rites to take place. I do not think such a challenge should succeed, in light of the special status of Indian trust lands, and in any event section 3(a) is probably severable from the remainder of the Act.

The bill passed both Houses by voice vote. OMB, Interior, and Agriculture recommend approval, Treasury has no objection, and Justice defers to Interior. I have reviewed the memorandum for the President prepared by OMB Assistant Director for Legislative Reference James Frey, and the bill itself, and have no objection to the President approving the bill.

THE WHITE HOUSE

WASHINGTON

February 16, 1984

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: H.R. 2898 -- Utah Paiute Trust Lands  
and Economic Development Act

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

FFF:JGR:aea 2/16/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Proposed Executive Order Entitled  
"Reimbursement of Federal Employee  
Relocation Expenses"

Richard Darman has asked for our views by 4:00 p.m. February 21 on the above-referenced proposed Executive Order. This Executive Order amends Executive Order 11609 (July 22, 1971) to delegate to the Administrator of GSA the President's authority to issue regulations concerning reimbursement of taxes incurred by federal employees for moving expenses provided by the Government, and the President's authority to issue guidelines for agencies entering into contracts for provision of relocation services. Public Law 98-151 recently authorized the President to issue these regulations and guidelines.

The Executive Order was proposed by GSA. It has been approved by OMB and, as to form and legality, by the Office of Legal Counsel. No affected agency objects. I have reviewed the draft Executive Order and the accompanying materials and have no objection.

Attachment

THE WHITE HOUSE

WASHINGTON

February 16, 1984

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Executive Order Entitled  
"Reimbursement of Federal Employee  
Relocation Expenses"

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

FFF:JGR:aea 2/16/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Statement of Francis M. Mullen, Jr.  
Regarding Cuban Government Involvement  
in Drug Trafficking, February 21, 1984

We have been provided with a copy of testimony DEA Administrator Bud Mullen proposes to deliver on February 21 before the Task Force on International Narcotics Control of the House Foreign Affairs Committee. Mullen cites several instances indicating a Cuban role in facilitating drug smuggling into the United States, although he does note that the overall effect of any such assistance is small. He concludes that "the Cuban Government still sanctions the use of Cuba as a transit point for drugs destined for the United States."

I have no objection.

Attachment



THE WHITE HOUSE

WASHINGTON

February 16, 1984

MEMORANDUM FOR GREGORY JONES  
LEGISLATIVE ATTORNEY  
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Francis M. Mullen, Jr.  
Regarding Cuban Government Involvement  
in Drug Trafficking, February 21, 1984

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

FFF:JGR:aea 2/16/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 16, 1984

MEMORANDUM FOR GREGORY JONES  
LEGISLATIVE ATTORNEY  
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS *JGR*  
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Statement of James I.K. Knapp Concerning  
H.R. 3974 and H.R. 2944 -- Pharmacy  
Robbery, February 22, 1984

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

THE WHITE HOUSE

WASHINGTON

February 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Draft Response to Congressman Dan Daniel  
Regarding Olympic Parchments

You will recall that on February 13 you advised B Oglesby that we had no legal objection to having the President and the First Lady sign ceremonial pledges of support for the 1984 Olympics and the U.S. Olympic Team. Congressman Daniel requested the signatures at the behest of M & M Mars, an Olympics sponsor and the company behind the plan to obtain millions of signatures to such pledges from across the country. Your memorandum insisted that Daniel be reminded in writing that the documents or the fact that the Reagans signed them may not be used in any promotional activity by M & M Mars.

Oglesby has now submitted a draft letter to Daniel, containing the caveat required by our memorandum. I have no objection; a draft to Oglesby is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

February 16, 1984

MEMORANDUM FOR M. B. OGLESBY  
ASSISTANT TO THE PRESIDENT  
FOR LEGISLATIVE AFFAIRS

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Response to Congressman Dan Daniel  
Regarding Olympic Parchments

Counsel's Office has reviewed your draft letter to Congressman Daniel, transmitting the Olympics pledges signed by the Reagans. We have no legal objections.

FFF:JGR:aea 2/16/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Proposed Executive Order Entitled  
"Nuclear Cooperation With Euratom"

Richard Darman has requested comments by February 22 on the above-referenced proposed executive order and the accompanying proposed letter to the Congress. The Atomic Energy Act prohibits nuclear cooperation with any country that does not give the United States a right of approval over reprocessing of U.S.-supplied nuclear material. 42 U.S.C. § 2156(5). The U.S. has been cooperating with EURATOM, the European nuclear organization, for over two decades. The agreements which form the basis for this cooperation do not recognize the required U.S. right of approval. The Act nonetheless permits year-by-year continuation of this cooperation if the President (1) determines that failure to extend cooperation would be seriously prejudicial to non-proliferation objectives or otherwise harm defense interests, (2) notifies Congress of this determination, and (3) issues an appropriate executive order. 42 U.S.C. § 2155(a)(2). President Carter extended the period of cooperation in 1980, and President Reagan did so in 1981, 1982, and 1983.

The Department of State prepared the attached executive order and letter to Congress. They have been approved by OMB and, as to form and legality, by the Office of Legal Counsel. I see no legal objections.

Attachment

THE WHITE HOUSE

WASHINGTON

February 16, 1984

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Executive Order Entitled  
"Nuclear Cooperation With Euratom"

Counsel's Office has reviewed the above-referenced proposed executive order, and the accompanying draft letter to Congress, and finds no objection to them from a legal perspective.

FFF:JGR:aea 2/16/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 16, 1984

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: H.R. 1492 (Christopher Columbus  
Quincentenary Jubilee Act)

No action is necessary by our office on this item at this time. In light of the pre-staffing confusion that resulted in our missing the February 10 deadline for comments, I telephoned Bill Maxwell to discuss possible problems with the bill. It turns out that those problems have been resolved. Our office's sole objection concerned the designation of the Secretary of the Smithsonian Institution as an ex officio member of the Commission. Since the Secretary is not appointed by the President, his service on the Commission would raise serious concerns with respect to the Appointments Clause. On February 1, 1984, the Senate, in a rare display of statesmanship, amended the bill to remove the Secretary from the Commission. The Christopher Columbus Quincentenary bill should have clear sailing from now on.

Attachment

THE WHITE HOUSE

WASHINGTON

February 20, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Follow-Up Letter Regarding Use of the  
Presidential Seal on a Book Titled  
"The Look-It-Up Book of Presidents"

You will recall that Ms. Marshall of Random House wrote seeking permission to use the Seal of the President on the cover of the upcoming Look-It-Up Book of Presidents. By letter dated January 30, you advised Marshall that this use was acceptable under the regulations and 18 U.S.C. § 713(b), and sent her a copy of the Seal. You warned, however, that the Seal should not be used in a manner that suggests sponsorship or approval of the book by the Government in violation of 18 U.S.C. § 713(a). Marshall has now written again, stating that the Seal will not be used in such a manner, and that it will appear on the cover, along with the title, the author, and the publisher. She asks if any of this presents a problem.

I see no difficulties with the planned cover. The fact that "Random House, Inc." will appear on the cover does much to dissipate any possible perception that the book is a Government publication. Nor do I object to advising Marshall that her contemplated use, as described, does not appear to present problems under 18 U.S.C. § 713(a). As I noted in my memorandum on Marshall's first letter, I do not think we should review book covers as a matter of course for compliance with 18 U.S.C. § 713(a), which, as distinct from 18 U.S.C. § 713(b), contemplates no advisory or regulatory role for our office. Here, however, Marshall has volunteered the information, and an appropriately circumspect reply can avoid the problem -- largely theoretical in this area -- of giving definitive advice concerning compliance with a criminal statute. A draft is attached..

Attachment



THE WHITE HOUSE

WASHINGTON

February 20, 1984

Dear General Graham:

It has come to our attention that fundraising solicitations for High Frontier recently sent out by you contained copies of the President's letter of June 3, 1983, thanking you for dedicating your book to him.

The President adheres to a policy of generally not endorsing particular fundraising projects, no matter how laudable the objectives of the organizations benefitting from the fundraising. This policy is necessary in light of the vast number of requests the President receives, and because the White House is unable to monitor such fundraising activities, which would be necessary were the President to lend his name to them. The inclusion of the President's letter in the solicitation for High Frontier, however, is likely to be construed by recipients as an endorsement of the fundraising, in violation of this policy. The letter was not written for use in fundraising and should not be used for that purpose.

I hope you will recognize the reasons we must adhere to this policy, and understand that it is in no sense intended as an adverse reflection on you or High Frontier. Now that you have been alerted to our concerns in this area, I trust that you will refrain from using the President's letter in any future fundraising activities.

Sincerely,

Fred F. Fielding  
Counsel to the President

Lt. General Daniel O. Graham, USA, Ret.  
High Frontier  
Suite 1000  
1010 Vermont Avenue, N.W.  
Washington, D.C. 20005

FFF:JGR:aea 2/20/84


cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 20, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: James Coyne Request for Guidance Concerning  
Reply to Letter From David T. Willard  
Regarding Tuition Tax Credits

Jim Coyne has asked for our comments on an impertinent letter to the President from David T. Willard, Superintendent of Schools of Elementary School District No. 96 in Illinois. Willard's letter was in response to a letter the President wrote praising Providence-St. Mel High School in Chicago, the private, inner-city "hard-work high school" frequently visited by the President. That letter, used in fundraising for Providence-St. Mel, was sent over our office's objections. Willard's letter disputes some facts in the President's letter, and generally objects to the President's education policies. The letter is very sarcastic, although Willard inadvertently proves our point about the quality of public education by incorrectly using "affect" for "effect."

The letter does not raise legal questions and I do not know why Coyne routed it to us. The facts Willard disputes were provided by Coyne's office in the original letter they proposed that the President send; Ed Wilson's redraft for this office simply muted somewhat the fundraising aspects of that letter. I recommend sending the letter back to Coyne for a substantive response.

Attachment

THE WHITE HOUSE

WASHINGTON

February 20, 1984

MEMORANDUM FOR JAMES K. COYNE  
SPECIAL ASSISTANT TO THE PRESIDENT  
DIRECTOR OF PRIVATE SECTOR INITIATIVES

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Your Request for Guidance Concerning  
Reply to Letter From David T. Willard  
Regarding Tuition Tax Credits

You have asked for our views on the hostile letter to the President from David T. Willard, Superintendent of Schools, written in response to the President's July 28 letter on behalf of Providence - St. Mel High School. In his letter Willard disputes certain facts in the President's letter and generally objects to the Administration's education policies. The letter raises policy rather than legal questions, and accordingly I am returning it to you for a substantive response. (The one-third figure disputed by Willard appeared in materials submitted by your office, so I assume you can substantiate it in response to Willard.)

FFF:JGR:aea 2/20/84  
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 20, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Nancy Risque Request for Guidance on Letter From Congresswomen Snowe, Schneider, Johnson Regarding Recent Court Decision in Washington on Comparable Worth and Discrimination Against Women

Republican female Representatives Olympia Snowe (Maine), Claudine Schneider (Rhode Island), and Nancy Johnson (Connecticut) have written Mr. Deaver, urging that the Administration not intervene in the comparable worth case. Deaver sent the letter to Nancy Risque, who solicited our guidance. You assigned to Peter, but Peter, aware that I was working on the comparable worth case, sent it to me.

As to substance, the Snowe-Schneider-Johnson letter supports the comparable worth decision, quite frankly stating that equal pay for equal work is not enough. The letter contends that more is required because women still earn only \$0.60 for every \$1 earned by men, ignoring the factors that explain that apparent disparity, such as seniority, the fact that many women frequently leave the workforce for extended periods of time, etc. The letter contends that women stand to gain substantially from Judge Tanner's decision, which is doubtless true as a conclusion but unavailing as an argument. I honestly find it troubling that three Republican representatives are so quick to embrace such a radical redistributive concept. Their slogan may as well be "From each according to his ability, to each according to her gender."

In any event, the question is still under review at Justice. I believe Reynolds is going to recommend to the Solicitor General that the Department intervene before the Ninth Circuit. At this point I think we should only thank Mesdames Snowe, Schneider, and Johnson for their views. A memorandum to Risque is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

February 20, 1984

MEMORANDUM FOR NANCY J. RISQUE  
SPECIAL ASSISTANT TO THE PRESIDENT  
FOR LEGISLATIVE AFFAIRS

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Your Request for Guidance on Letter  
From Congresswomen Snowe, Schneider, Johnson  
Regarding Recent Court Decision in Washington  
on Comparable Worth and Discrimination  
Against Women

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You have asked for our views on a letter to Mr. Deaver from Congresswomen Snowe, Schneider, and Johnson, urging that the Administration not intervene in the appeal of the comparable worth case. The question is currently under review at the Department of Justice, and accordingly the most we can do in response to the letter is thank the Congresswomen for their views and assure them that they will receive every appropriate consideration.

FFF:JGR:aea 2/20/84  
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 20, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Presidential Remarks: Dropby Briefing  
for Asian and Pacific American Leaders  
Thursday, February 23, 1984

Richard Darman has asked that comments on the above-referenced remarks be sent directly to Ben Elliott by 5:30 p.m. today. The remarks briefly discuss the economic recovery, our heritage as a nation of immigrants, the contributions of Asian and Pacific Americans, and our relations with the nations of the Pacific basin. With respect to the last item, the President discusses our positive and expanding ties with the Peoples Republic of China, but notes that we maintain economic and cultural ties with Taiwan and "will continue to support their needs and requirements in accordance with the 1974 Taiwan Relations Act." The Taiwan Relations Act, Public Law 96-8, 22 U.S.C. §§ 3301-3316, was passed in 1979, not 1974. I have no other objections.

Attachment

THE WHITE HOUSE

WASHINGTON

February 20, 1984

MEMORANDUM FOR BEN ELLIOTT  
DEPUTY ASSISTANT TO THE PRESIDENT  
DIRECTOR, PRESIDENTIAL SPEECHWRITING OFFICE

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Remarks: Dropby Briefing  
for Asian and Pacific American Leaders  
Thursday, February 23, 1984

Counsel's Office has reviewed the above-referenced draft remarks. On page 3, line 19, "1974" should be "1979."

cc: Richard G. Darman

FFF:JGR:aea 2/20/84

bcc: FFFielding/JGRoberts/Subj/Chron