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COOK

49IGP

DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	ROBERTS TO HOLLAND RE AMBASSADOR TO CONGO (PARTIAL)	1	3/16/1984	B6	756

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.

THE WHITE HOUSE

WASHINGTON

March 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Jim Coyne

Jim Coyne has asked for guidance from our office concerning his plans to travel to Japan with other Private Sector Initiatives staffers and advisory committee members to establish the Ronald Reagan scholarship program. According to Coyne, the President's Advisory Council on Private Sector Initiatives has recommended that a scholarship program be established to promote the education of American students in Japan, and that the program be called the "Reagan Scholarships." Coyne has been actively attempting to implement this decision. The first step, as Coyne sees it, is to travel to Japan to begin work on the details. Accordingly, he has contacted Pan Am to see if that airline would be willing to donate travel for himself and others to go to Japan. He has not yet received a definite answer, but it occurred to him to raise the matter with our office to see if there could possibly be any legal concerns.

Coyne wants to know if the private sector can provide his travel and that of advisory committee members. If this cannot be done directly, can it be done indirectly, through a 501(c)(3) organization such as the Asian Studies Foundation, on whose board he serves?

I told Coyne that the basic rule was that official travel by Government employees must be paid for by appropriated funds. Any other arrangement presented supplementation of appropriations and/or conflicts problems. Coyne responded that he paid for his official travel to Grenada out of his own pocket.

Reviewing a Coyne proposal is very similar to taking a typical law school torts examination. The fact situation in both instances is filled with countless legal issues and the key is to spot as many as possible. The following occur to me in this case:

1. Although the project seems fairly well advanced, we cannot approve calling any government-sponsored scholarship program the "Reagan Scholarships." You will recall that we

recently advised Mr. Wick that it would not be appropriate to name a government program -- also a "Reagan Scholarships" proposal -- for an incumbent President; that precedent clearly controls this case.

2. Coyne should not have called Pan Am to ask for free travel. Provision of travel by Pan Am would not only be an illegal supplementation of appropriations but would also raise serious appearance and conflicts problems. The same concerns would apply with respect to advisory committee members on official business.

3. In my view, the private sector cannot pay for Coyne's contemplated activities by funneling donations through a 501(c)(3) organization, even if a willing 501(c)(3) organization without the obvious conflict of having Coyne on its board could be found. The statute authorizing 501(c)(3) organizations to pay travel expenses of Government employees authorizes such payment for expenses "incident to attendance at meetings." 5 U.S.C. § 4111. This provision typically applies when government employees attend a meeting sponsored by the organization in question. I have examined the legislative history of 5 U.S.C. § 4111, and while that history sheds little light on the question I think it safe to say that the provision was not intended to authorize 501(c)(3) organizations to fund general travel by government employees. Furthermore, Coyne's proposal would violate the rule in the White House Travel Handbook that payment by a 501(c)(3) organization "shall never be solicited by a staff member."

4. I discussed Coyne's remark about his Grenada travel with Larry Garrett, who reviewed the question when it arose. Larry advised me that Coyne went to Grenada on vacation, only incidentally attempting to further the mission of his office while there. Since the trip was predominantly personal in nature, Coyne was required to pay his own travel expenses. Coyne should be reminded of this fact and told to stop representing that he paid for his own official travel -- a violation of the anti-supplementation rules.

A draft memorandum to Coyne is attached. The memorandum advises Coyne that (1) the contemplated scholarship program cannot be named for the President, (2) his official travel and that of advisory committee members traveling on official business must be paid for out of appropriated funds, (3) a 501(c)(3) organization can reimburse travel expenses only for attendance at meetings sponsored by that organization, and not general official travel, and (4) he should cease stating that he paid for his official travel to Grenada.

Attachment

THE WHITE HOUSE

WASHINGTON

March 16, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: "Ronald Reagan Scholarship Program"
and Related Travel Proposals

You recently raised several questions with this office concerning contemplated travel by you, members of your staff, and members of the President's Advisory Council on Private Sector Initiatives to Japan in connection with the establishment of a scholarship program for United States students to study in Japan. You noted that the program would be known as the "Reagan Scholarships."

As an initial matter I must advise you that it would be inappropriate to name the proposed scholarship program after the President. The White House adheres to a policy of not permitting any government-sponsored or government-endorsed program to be named after the incumbent President, for what I had thought were obvious reasons. Indeed, the White House recently declined a request from another agency to establish a "Reagan Scholarship" program, even though the funds would be provided by private sources. That precedent controls this case.

Travel by you, members of your staff, or members of the Advisory Council on official business may not be donated by private carriers. The White House Travel Handbook is quite explicit on this point: "Whenever you are traveling on official business of the government, traveling to attend a function, or giving a speech as the representative of the White House, or the Administration, all travel-related expenses must be paid from appropriated funds" (emphasis in original). (The one exception to this rule is discussed infra.) Provision of travel by private carriers would violate rules against supplementation of appropriations, and raise serious conflict of interest concerns in light of the significant regulatory role of the CAB, FAA, and other Federal agencies with respect to the activities of private carriers. You should never contact such carriers about

providing free service to you or anyone else, and should terminate any discussions you may have commenced on this topic immediately. The foregoing also applies to lodging and any other travel expenses.

In certain limited circumstances travel expenses may be reimbursed by a 501(c)(3) organization, providing that such reimbursement does not create an actual or apparent conflict of interest. As the White House Travel Handbook makes quite clear, however, such reimbursement "shall never be solicited by a staff member." It is not permissible to inquire of a 501(c)(3) organization concerning the willingness of the organization to pay for official travel. Reimbursement may not be accepted from any organization solicited in violation of this rule.

Furthermore, the statute authorizing payment of official travel expenses by a 501(c)(3) organization does so only for expenses "incident to attendance at meetings." 5 U.S.C. § 4111. The statute does not authorize a 501(c)(3) organization to pay for official travel in general, simply because the organization considers that travel beneficial to its interests. Once again, the White House Travel Handbook is quite explicit: "If you are traveling to attend a training seminar, meeting or conference sponsored by a nonprofit organization granted tax-exempt status under the law (Section 501(c)(3) of the Internal Revenue code), that organization may pay for your normal, reasonable travel expenses under most circumstances unless the acceptance of such expenses creates an actual or apparent conflict of interest with your official duties" (emphasis supplied).

I should note that the rule that official travel must generally be paid for out of appropriated funds prohibits individuals paying for their own official travel. Your comment that you paid for your official travel to Grenada is not accurate. When you raised the question of your travel to Grenada with our office, you stated that you were traveling there for "a Christmas week vacation." The travel was accordingly private, not official.

I recognize that it is the unique mission of your office to promote private sector charitable activities. As the foregoing demonstrates, however, your official duties and those of your staff cannot be funded by the private sector as if those duties were themselves charitable in nature.


FFF:JGR:aea 3/16/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

March 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Southern District of New York
Judgeships

Mike Horowitz called me this morning to register his outrage at the possibility that the President would nominate William Hellerstein for a vacancy on the Southern District (see attached article). Horowitz stated that his friends in New York tell him Hellerstein is an extreme liberal whose predilections have been solidified by his service as head of the Legal Aid appeals office. I told Horowitz I would convey his concerns to the appropriate people in our office, and hereby do so.

Attachment

cc: Sherrie M. Cooksey

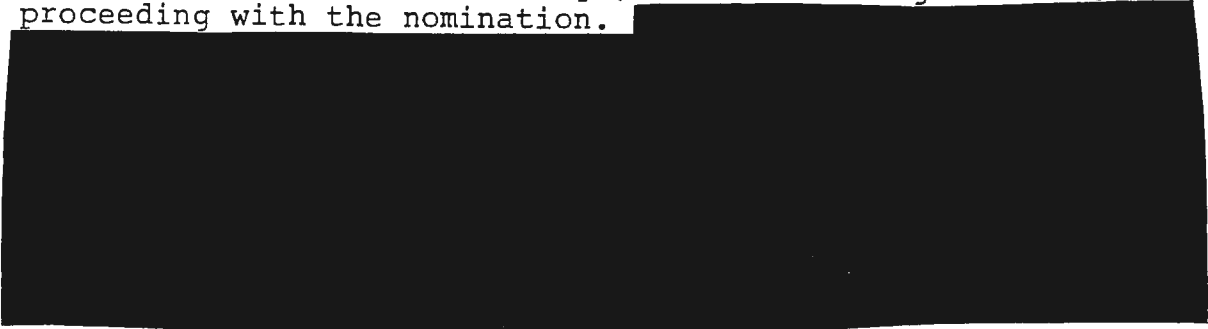
THE WHITE HOUSE
WASHINGTON

March 16, 1984

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS *JGR*
SUBJECT: Nomination of Alan W. Lukens
to be Ambassador to Congo

I have reviewed the SF-278 and related materials submitted by Alan W. Lukens in connection with his prospective nomination to be Ambassador to Congo, and have no objection to proceeding with the nomination.



b6

Attachment

THE WHITE HOUSE

WASHINGTON

March 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Jim Coyne

Jim Coyne has asked for guidance from our office concerning his plans to travel to Japan with other Private Sector Initiatives staffers and advisory committee members to establish the Ronald Reagan scholarship program. According to Coyne, the President's Advisory Council on Private Sector Initiatives has recommended that a scholarship program be established to promote the education of American students in Japan, and that the program be called the "Reagan Scholarships." Coyne has been actively attempting to implement this decision. The first step, as Coyne sees it, is to travel to Japan to begin work on the details. Accordingly, he has contacted Pan Am to see if that airline would be willing to donate travel for himself and others to go to Japan. He has not yet received a definite answer, but it occurred to him to raise the matter with our office to see if there could possibly be any legal concerns.

Coyne wants to know if the private sector can provide his travel and that of advisory committee members. If this cannot be done directly, can it be done indirectly, through a 501(c)(3) organization such as the Asian Studies Foundation, on whose board he serves?

I told Coyne that the basic rule was that official travel by Government employees must be paid for by appropriated funds. Any other arrangement presented supplementation of appropriations and/or conflicts problems. Coyne responded that he paid for his official travel to Grenada out of his own pocket.

Reviewing a Coyne proposal is very similar to taking a typical law school torts examination. The fact situation in both instances is filled with countless legal issues and the key is to spot as many as possible. The following occur to me in this case:

1. Although the project seems fairly well advanced, we cannot approve calling any government-sponsored scholarship program the "Reagan Scholarships." You will recall that we

recently advised Mr. Wick that it would not be appropriate to name a government program -- also a "Reagan Scholarships" proposal -- for an incumbent President; that precedent clearly controls this case.

2. Coyne should not have called Pan Am to ask for free travel. Provision of travel by Pan Am would not only be an illegal supplementation of appropriations but would also raise serious appearance and conflicts problems. The same concerns would apply with respect to advisory committee members on official business.

3. In my view, the private sector cannot pay for Coyne's contemplated activities by funneling donations through a 501(c)(3) organization, even if a willing 501(c)(3) organization without the obvious conflict of having Coyne on its board could be found. The statute authorizing 501(c)(3) organizations to pay travel expenses of Government employees authorizes such payment for expenses "incident to attendance at meetings." 5 U.S.C. § 4111. This provision typically applies when government employees attend a meeting sponsored by the organization in question. I have examined the legislative history of 5 U.S.C. § 4111, and while that history sheds little light on the question I think it safe to say that the provision was not intended to authorize 501(c)(3) organizations to fund general travel by government employees. Furthermore, Coyne's proposal would violate the rule in the White House Travel Handbook that payment by a 501(c)(3) organization "shall never be solicited by a staff member."

4. I discussed Coyne's remark about his Grenada travel with Larry Garrett, who reviewed the question when it arose. Larry advised me that Coyne went to Grenada on vacation, only incidentally attempting to further the mission of his office while there. Since the trip was predominantly personal in nature, Coyne was required to pay his own travel expenses. Coyne should be reminded of this fact and told to stop representing that he paid for his own official travel -- a violation of the anti-supplementation rules.

A draft memorandum to Coyne is attached. The memorandum advises Coyne that (1) the contemplated scholarship program cannot be named for the President, (2) his official travel and that of advisory committee members traveling on official business must be paid for out of appropriated funds, (3) a 501(c)(3) organization can reimburse travel expenses only for attendance at meetings sponsored by that organization, and not general official travel, and (4) he should cease stating that he paid for his official travel to Grenada.

Attachment

THE WHITE HOUSE

WASHINGTON

March 16, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: "Ronald Reagan Scholarship Program"
and Related Travel Proposals

You recently raised several questions with this office concerning contemplated travel by you, members of your staff, and members of the President's Advisory Council on Private Sector Initiatives to Japan in connection with the establishment of a scholarship program for United States students to study in Japan. You noted that the program would be known as the "Reagan Scholarships."

As an initial matter I must advise you that it would be inappropriate to name the proposed scholarship program after the President. The White House adheres to a policy of not permitting any government-sponsored or government-endorsed program to be named after the incumbent President, for what I had thought were obvious reasons. Indeed, the White House recently declined a request from another agency to establish a "Reagan Scholarship" program, even though the funds would be provided by private sources. That precedent controls this case.

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providing free service to you or anyone else, and should terminate any discussions you may have commenced on this topic immediately. The foregoing also applies to lodging and any other travel expenses.

In certain limited circumstances travel expenses may be reimbursed by a 501(c)(3) organization, providing that such reimbursement does not create an actual or apparent conflict of interest. As the White House Travel Handbook makes quite clear, however, such reimbursement "shall never be solicited by a staff member." It is not permissible to inquire of a 501(c)(3) organization concerning the willingness of the organization to pay for official travel. Reimbursement may not be accepted from any organization solicited in violation of this rule.

Furthermore, the statute authorizing payment of official travel expenses by a 501(c)(3) organization does so only for expenses "incident to attendance at meetings." 5 U.S.C. § 4111. The statute does not authorize a 501(c)(3) organization to pay for official travel in general, simply because the organization considers that travel beneficial to its interests. Once again, the White House Travel Handbook is quite explicit: "If you are traveling to attend a training seminar, meeting or conference sponsored by a nonprofit organization granted tax-exempt status under the law (Section 501(c)(3) of the Internal Revenue code), that organization may pay for your normal, reasonable travel expenses under most circumstances unless the acceptance of such expenses creates an actual or apparent conflict of interest with your official duties" (emphasis supplied).

I should note that the rule that official travel must generally be paid for out of appropriated funds prohibits individuals paying for their own official travel. Your comment that you paid for your official travel to Grenada is not accurate. When you raised the question of your travel to Grenada with our office, you stated that you were traveling there for "a Christmas week vacation." The travel was accordingly private, not official.

I recognize that it is the unique mission of your office to promote private sector charitable activities. As the foregoing demonstrates, however, your official duties and those of your staff cannot be funded by the private sector as if those duties were themselves charitable in nature.

FFF:JGR:aea 3/16/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

March 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS 

SUBJECT:

Statement of Samuel T. Currin
Concerning Food Stamp Fraud in
North Carolina

We have been provided with a copy of testimony Samuel T. Currin, the U.S. Attorney for the Eastern District of North Carolina, proposes to deliver before a hearing of the Senate Agriculture Committee on food stamp fraud and abuse. In his well-prepared testimony Currin describes "Operation Stampout," an undercover operation conducted by his office that resulted in a large number of indictments for food stamp abuse. Based on the results of Operation Stampout, Currin concludes that a black market exists for food stamps, with an exchange rate of about \$0.50 for \$1 worth of stamps. Stamps are used to purchase illegal guns, drugs, automobiles, alcohol -- anything that money can buy. Procedures to guard against abuse -- such as the requirement that food stamp users show their eligibility card when using the stamps -- are uniformly ignored. Currin calls for unspecified legislation to address these problems. I have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

March 16, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Samuel T. Currin
Concerning Food Stamp Fraud in
North Carolina

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


FFF:JGR:aea 3/16/84
cc: FFfielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

March 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 
SUBJECT: Southern District of New York
Judgeships

Mike Horowitz called me this morning to register his outrage at the possibility that the President would nominate William Hellerstein for a vacancy on the Southern District (see attached article). Horowitz stated that his friends in New York tell him Hellerstein is an extreme liberal whose predilections have been solidified by his service as head of the Legal Aid appeals office. I told Horowitz I would convey his concerns to the appropriate people in our office, and hereby do so.

Attachment

cc: Sherrie M. Cooksey

THE WHITE HOUSE

WASHINGTON

March 19, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill S. 47 --
Shipping Act of 1984

Richard Darman has asked for comments by noon today on the above-referenced enrolled bill. This major legislation is the product of the Administration's effort to reform regulation of the merchant marine. The bill would increase the authority of the shipping conferences, which set prices and allocate routes and cargoes. The bill would clarify and expand the antitrust immunity enjoyed by the conferences, and expedite review of conference schedules by the Federal Maritime Commission (FMC). Filed schedules will go into effect within 45 days unless blocked by the FMC because they contain specified illegal provisions, such as boycotts. The FMC may sue to block a conference agreement as anticompetitive, but must prove that the effect of the reduction in competition will be an unreasonable reduction in service or increase in cost.

Among the other provisions in the bill of particular interest, section 9 empowers the FMC to suspend tariffs filed by shippers on the ground that they are unjust and unreasonable. Any such order suspending tariffs is to be sent to the President, who has ten days to demand a stay of the order for reasons of national defense or foreign policy, which reasons must be specified. During the stay, the President is to attempt to resolve the matter through negotiations. The contemplated procedure is not unlike Presidential review of CAB orders, and we will want to consider establishing internal procedures for review of FMC orders similar to those in effect for review of CAB orders. If you agree, I will contact the FMC to discuss the matter.

Section 18 of the bill would establish, in 5½ years, an Advisory Commission on Conferences in Ocean Shipping, to review progress under the Act. The Advisory Commission would be composed of a cabinet level officer appointed by the President, 8 members from the private sector appointed by the President, 4 members from the Senate appointed by the President pro tempore, and 4 members from the House appointed by the Speaker. Although the Advisory Commission will have the power to issue subpoenas, its responsibilities are limited to conducting a study and making recommendations.

This mitigates any Appointments Clause problems, and OMB reports that Justice has no objections. Private sector members of the Advisory Commission are exempted from 18 U.S.C. § 208, which underscores the purely advisory nature of the commission.

Transportation has submitted a draft signing statement, praising the bill for removing regulatory burdens and bringing United States shipping practices more in line with those prevailing in the rest of the world. The statement also thanks the members of the pertinent Congressional committees, the broad coalition of supporters from the shipping industry, Drew Lewis and Elizabeth Dole, FMC Chairman Punch Green, and Maritime Administrator Hal Shear. There has been some publicity recently concerning Shear's receipt of a severance payment when he entered government service. Larry Garrett advises me that he, OGE, and Transportation have all reviewed the matter and determined that there was no impropriety. Under the circumstances, I have no objections to including Shear in the list of people responsible for the successful passage of this broad legislative package.

All affected agencies either recommend approval or have no objection. I have reviewed the memorandum for the President submitted by David Stockman, the bill itself, and the draft signing statement, and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

March 19, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 47 --
Shipping Act of 1984

Counsel's Office has reviewed the above-referenced enrolled bill, and the accompanying draft signing statement, and finds no objection to them from a legal perspective.

THE WHITE HOUSE

WASHINGTON

March 20, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Statement of Francis Mullen, Jr. re:
Drug Enforcement Administration in
International Drug Control Efforts

We have been provided with a copy of a brief statement DEA Administrator Bud Mullen proposes to deliver on March 21 at a hearing of the Foreign Relations Committee on the international drug control effort. The three-page statement simply stresses the importance of reducing the availability of drugs and briefly reviews DEA's efforts toward this end in drug source countries. I have reviewed the proposed statement and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

March 20, 1984

MEMORANDUM FOR GREG JONES
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Francis Mullen, Jr., re:
Drug Enforcement Administration in
International Drug Control Efforts

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

THE WHITE HOUSE

WASHINGTON

March 20, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Statement of Frank V. Monastero
on Drug Interdiction Intelligence

We have been provided with a copy of testimony DEA Assistant Administrator Frank Monastero proposes to deliver on March 23 before the Subcommittee on Government Information, Justice and Agriculture of the House Government Operations Committee. The testimony concerns DEA's role in providing intelligence on drug movements to the National Narcotics Border Interdiction System (NNBIS). Monastero reviews the assignment of DEA agents with intelligence responsibilities, and cites several examples of intelligence efforts of particular significance to the interdiction effort (e.g., airstrip inventories, consultations with officials in source countries, etc.). The testimony also discusses the El Paso Intelligence Center (EPIC), which is run by a DEA Special Agent in Charge. I have reviewed the testimony and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

March 20, 1984

MEMORANDUM FOR GREG JONES
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Frank V. Monastero
on Drug Interdiction Intelligence

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

THE WHITE HOUSE

WASHINGTON

March 20, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill S. 820 -- Earthquake
Hazards Reduction Act and Federal Fire
Prevention and Control Act Authorizations

Richard Darman has asked for comments by 5:00 p.m. today on the above-referenced enrolled bill. The bill authorizes appropriations for fiscal years 1984 and 1985 for earthquake hazards reduction programs and fire prevention programs. The amounts authorized exceed the Administration's requests, but no affected agency objects and the 1984 authorizations are, in any event, moot. The bill also expresses the sense of Congress that volunteer fire departments should receive special recognition for their contributions to public safety.

OMB, FEMA, Interior and Defense recommend approval; the National Science Foundation has no objection and Commerce defers. I have reviewed the memorandum for the President prepared by OMB Assistant Director for Legislative Reference James M. Frey, and the bill itself, and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

March 20, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 820 -- Earthquake
Hazards Reduction Act and Federal Fire
Prevention and Control Act Authorizations


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

THE WHITE HOUSE

WASHINGTON

March 21, 1984

MEMORANDUM FOR ROB STEINBERG
SPECIAL ASSISTANT TO THE ATTORNEY GENERAL

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: H.R. 3655

Attached for your information is a copy of the signing statement for H.R. 3655 as delivered by the President. Many thanks for your help in pulling this together.

Attachment

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

March 19, 1984

STATEMENT BY THE PRESIDENT

I am pleased to approve H.R. 3655, a bill that will create seven new judgeships on the Superior Court of the District of Columbia, and also raise the mandatory retirement age from 70 to 74 for judges on that Court and on the District of Columbia Court of Appeals. The Superior Court is a unique Federal Court with important judicial responsibilities in the Nation's Capital. The growing backlog of criminal and civil litigation in the Superior Court is accordingly a matter of both local and Federal concern, and this legislation will help alleviate the backlog. It is my hope that the District of Columbia Judicial Nomination Commission will act promptly in submitting lists of qualified individuals for nomination to these new judgeships, so that the new judges can be in place, reducing the backlog, as soon as possible.

While this legislation will ease the caseload problem in the Superior Court, it does not provide a cure for that problem or the similar problems plaguing most of our Nation's courts. The staggering increase in litigation has strained the capacity of our courts and threatened their ability to settle disputes. One of America's greatest lawyers, Abraham Lincoln, once said: "Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser -- in fees, expenses, and waste of time." We must continue to search for alternative means of settling disputes. If we fail to do so, the costs and delays of litigation in our overcrowded courts will effectively close the courthouse doors to all but the wealthy and those that seek to use delay to their advantage. We must not permit meritorious claims deserving of prompt judicial resolution to become lost in a sea of frivolous suits or disputes that could more quickly and efficiently be resolved in other forums.

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THE WHITE HOUSE

WASHINGTON

March 21, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Statement of Alan Nelson Concerning
Consolidation of Primary Inspections
and Land Patrol Functions for
Immigration on March 22, 1984

We have been provided with a copy of testimony INS Commissioner Alan C. Nelson proposes to deliver on March 22 before the Subcommittee on Immigration, Refugees and International Law of the House Judiciary Committee. The testimony discusses the Administration proposal to reorganize and consolidate certain responsibilities of the INS and the Customs Service. At present INS handles immigration and visa matters and Customs handles inspection and smuggling matters at all border entry points. The Administration proposal would substitute a geographic for the current subject matter allocation of jurisdiction. INS would handle immigration and customs matters at all land border entry points and Customs would handle immigration and customs matters at all air and sea entry points. Nelson's testimony argues that this will make border processing easier and more efficient since one agency will handle all matters at any one point. Nelson contends that the transfer of responsibilities will be conducted with a minimum of personnel disruption, since INS and Customs officers are already extensively cross-trained. I have no objections.

Attachment

THE WHITE HOUSE
WASHINGTON

March 21, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Alan Nelson Concerning
Consolidation of Primary Inspections
and Land Patrol Functions for
Immigration on March 22, 1984

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

FFF:JGR:aea 3/21/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

March 21, 1984

MEMORANDUM FOR FRED F. FIELDING
RICHARD A. HAUSER

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Statement of Irving R. Kaufman
Concerning H.J. Res. 490, Subpoena
Power for Commission on Crime,
March 22, 1984

We have been provided with a copy of testimony Commissioner Kaufman of the President's Commission on Organized Crime proposes to deliver on March 22 before the House Judiciary Subcommittee on Crime. The testimony briefly reviews the establishment and composition of the Commission, as well as the progress of its first two sets of public hearings. In his testimony Kaufman urges favorable consideration of H.J. Res. 490, the resolution introduced by Chairman Rodino -- also a member of the Commission -- at the request of the Department of Justice. This resolution would give the Commission subpoena authority, including the authority to initiate contempt proceedings for failing to comply with subpoenas, and the authority to compel testimony from witnesses invoking the Fifth Amendment.

Kaufman goes beyond H.J. Res. 490, however, and also requests authority to obtain transcripts of wiretaps authorized pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2520. I contacted Tex Lezar, Counselor to the Attorney General, to ensure that this request had been approved by Justice. Lezar advised that Justice approved of the request, noting that access would be limited to closed cases in which disclosure would not affect the integrity of any ongoing investigation or prosecution. Kaufman's testimony reflects this limitation. Lezar also noted that express approval of the Attorney General must be obtained prior to release of any transcripts to the Commission, a protection not reflected in Kaufman's statements. Kaufman simply notes that the Commission "would seek the approval of the appropriate agency on a case by case basis when access or disclosure is sought."

Lezar indicated he would seek to have Kaufman's testimony revised to reflect accurately the agreement with Justice; we should aid in this effort by conditioning our approval of the testimony on such a revision.

Attachment

THE WHITE HOUSE

WASHINGTON

March 21, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Irving R. Kaufman
Concerning H.J. Res. 490, Subpoena
Power for Commission on Crime,
March 22, 1984

Counsel's Office has reviewed the above-referenced proposed testimony. In this testimony Chairman Kaufman of the President's Commission on Organized Crime requests authority for the Commission to have access to transcripts of wiretaps authorized under Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2520. As noted in the testimony, access would be limited to closed cases in which disclosure would not affect the integrity of any ongoing investigation or prosecution.

The testimony fails to note, however, that no Title III material will be released to the Commission without the express approval of the Attorney General. It is our understanding that a condition of the Justice Department support for Kaufman's request for access to Title III material is that such express approval by the Attorney General be required. The testimony should accordingly be revised to reflect this requirement. It is hardly enough to state, as Kaufman does on page 7, that the Commission "would seek the approval of the appropriate agency on a case by case basis when access or disclosure is sought." Express approval by the Attorney General is an added protection against abuse of the highly unusual right of access to sensitive Title III wiretap material, and that protection should be insisted upon and made explicit.

cc: Michael M. Uhlmann
Special Assistant to the President
Assistant Director for Legal Policy
Office of Policy Development

FFF:JGR:aea 3/21/84

bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

March 21, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Enrolled Bill H.R. 2809 -- National Fish and Wildlife Foundation Establishment Act

Richard Darman has asked for comments by 10:00 a.m. March 22 on the above-referenced enrolled bill. We have also received communications from Ted Olson and Bob McConnell conveying Justice's serious reservations about this bill.

H.R. 2809, opposed by the Administration during consideration by Congress, would establish a National Fish and Wildlife Foundation. According to the bill, the Foundation "is a charitable and nonprofit corporation and is not an agency or establishment of the United States." The Foundation is to accept and administer gifts for the benefit of the U.S. Fish and Wildlife Service, and otherwise promote conservation of fish and wildlife. The Secretary of the Interior appoints the nine-member Board of Directors of the Foundation, and the Attorney General is authorized to sue the Foundation to compel it to discharge its statutory obligations.

Justice objects to the hermaphroditic nature of the Foundation, which is neither purely private nor purely governmental in character. Despite the express statement in the bill that the Foundation "is not an agency or establishment of the United States," Olson concludes that it must be regarded as an agency within the Executive branch, because of the manner in which the directors are appointed and the various authorities of and exemptions for the Foundation. If the Foundation is an executive agency, section 7(c), authorizing the Attorney General to sue the Foundation, is constitutionally suspect, since the Executive does not sue itself.

Justice thinks a veto is justified but stops short of insisting on one. As an alternative, Justice proposes a signing statement asserting that the Foundation is an executive agency and that its compliance with the statute will be enforced by removal of the directors rather than suit by the Attorney General. The assertion that the Foundation is an agency is, of course, directly contradicted by the language of the bill itself.

I am not inclined to recommend a veto of the bill on the legal grounds discussed above, particularly since Justice's opposition to the bill is so lukewarm. On the other hand, it must be recognized that the proposed signing statement is exceedingly awkward, since it employs an assumption expressly contradicted by the bill -- that the Foundation is an executive agency -- to read out another express provision of the bill, the authorization of suit by the Attorney General. It would seem more logical to conclude that the Foundation is not a government agency, precisely because the bill specifies that it may be sued by the Attorney General.

I suppose our institutional interests lie on the side of arguing that the Foundation is an executive agency, if the President is going to sign the bill, and accordingly I have no objection to the Justice signing statement. My point is that I doubt the Justice position will prevail if challenged in court. The test would come if the President or the Secretary of the Interior were to attempt to remove directors of the Foundation. I can easily see a court disagreeing with the Justice interpretation and ruling that the directors are not removable, because they are given fixed terms, the bill states that the Foundation "is not an agency or establishment of the United States," and the Attorney General is authorized to sue the Foundation, which would be totally unnecessary were the directors removable by the Executive. In light of the limited responsibilities of the Foundation, however, it seems likely that a serious confrontation can be avoided.

The attached memorandum for Darman notes our dubitante concurrence with Justice's recommended signing statement.

Attachment

THE WHITE HOUSE

WASHINGTON

March 21, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 2809 -- National Fish
and Wildlife Foundation Establishment Act

Counsel's Office has reviewed the above-referenced enrolled bill and proposed signing statement. We agree with the Department of Justice that the ambiguous character of the Foundation raises serious legal concerns. We are less confident than Justice that a court will determine that the governmental character of the Foundation predominates, rendering the directors removable and making unnecessary any resort to the provision authorizing suit by the Attorney General -- a constitutionally suspect provision if the Foundation is an agency. Indeed, it seems at least as probable that a court would determine that the Foundation is not a government agency, as stated in the bill, and that the directors are not removable, precisely because the bill authorizes suit by the Attorney General.

If the President is to sign the bill, however, it is in our institutional interest to resolve the ambiguities in the Foundation's status in favor of it being treated as a government agency. Justice's proposed signing statement does so, putting the best face on what must be conceded to be an awkward argument. Largely because serious confrontations over the Foundation's status seem unlikely, we acquiesce in approval of the bill and issuance of the Justice signing statement.

We recommend adding "I have not done so because the Attorney General has advised that the bill can be given a constitutional construction" at the bottom of the first page of the signing statement. This sentence seems to have been inadvertently dropped from the draft submitted by Justice.

FFF:JGR:aea 3/21/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

March 21, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Draft Proclamation: National
Child Abuse Prevention Month
April 1984

Dodie Livingston has asked for comments on the above-referenced draft proclamation by close of business March 23. The proclamation, requested and authorized by S.J. Res. 161, was submitted by HHS and has been approved by OMB. The proclamation notes that child abuse occurs among all segments of our society, and that solutions must be found at the community level. I have reviewed the draft proclamation, and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

March 21, 1984

MEMORANDUM FOR DODIE LIVINGSTON
SPECIAL ASSISTANT TO THE PRESIDENT
DIRECTOR, SPECIAL PRESIDENTIAL MESSAGES

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Proclamation: National
Child Abuse Prevention Month
April 1984

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

FFF:JGR:aea 3/21/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

March 22, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Address: Independent Insurance Agents
of America (3/22 -- 11:30 a.m. Draft)

Richard Darman has asked that comments on the above-referenced remarks be sent directly to Ben Elliott by 10:00 a.m. tomorrow. The remarks review the progress of the economic recovery, urge passage of the anti-crime package by the House, discuss the need for the defense build-up, and reaffirm the President's continuing commitment to restoring the right to pray in public schools. In the third paragraph on page 1, the President refers by name to his own independent insurance agent, Jim Norris of California. In what may be an excess of caution I recommend deleting the agent's name. There is no reason to give him such free advertising, and deleting specific mention of the name avoids even the appearance of Presidential endorsement of Norris's insurance agency.

At the top of page 3 the President quotes Calvin Coolidge and quips "[n]ow contrary to some reports on my age, Cal didn't tell me that personally." The joke is funny when quoting Washington or Jefferson, but President Reagan was as old as 22 during Coolidge's lifetime. Cal easily could have told him that personally. I recommend deleting the joke.

On page 6, the remarks urge "a constitutional amendment requiring a balanced Federal budget. Thirty-two of the States have this already." No State, of course, has a constitutional amendment requiring a balanced Federal budget. The sentence should read: "Thirty-two of the States already have such a requirement for their own budgets." I am also concerned about the accuracy of the 32 figure. Thirty-two states have filed petitions under Article V calling for a convention to propose a balanced budget amendment to the Federal Constitution. It may be true that the exact same number have balanced budget amendments in their own constitutions, but it would be quite a coincidence. I have asked Research to double-check the figure.

Attachment

THE WHITE HOUSE

WASHINGTON

March 22, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Address: Independent Insurance Agents
of America (3/22 -- 11:30 a.m. Draft)

Counsel's Office has reviewed the above-referenced draft remarks. On page 1, paragraph 3, we recommend deleting specific reference to Jim Norris. This is necessary to avoid the appearance of Presidential endorsement of Norris's insurance agency. In the second line of the paragraph, "Jim Norris" should be deleted, and in the third line, "Jim" should be changed to "him."

At the top of page 3, the joke about the President's age does not ring true in this instance. The quip works well when Washington or Jefferson is quoted, but in fact the President was as old as 22 during Coolidge's lifetime. We recommend deleting the second paragraph on page 3.

The last sentence of the first full paragraph on page 6 is inartfully worded. No State has a constitutional amendment requiring a balanced Federal budget. The sentence should read: "Thirty-two of the States already have such a requirement for their own budgets."

cc: Richard G. Darman

FFF:JGR:aea 3/22/84

bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

March 22, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: S. 1098 as Passed by the House
to Include H.R. 2853 (Establishing
a National Oceans Policy Commission)

OMB has asked for our views by close of business on S. 1098 as passed by the House to include H.R. 2853. S. 1098 is basically an authorization bill for certain activities conducted by the National Oceanic and Atmospheric Administration within the Department of Commerce, and raises no significant legal issues. H.R. 2853, however, tacked on to S. 1098 in the House, would create a National Oceans Policy Commission. The Commission would be comprised of five Cabinet members and 14 members appointed by the President, including three from nonprofit organizations, five from commercial organizations, two Governors from coastal states, two academics, and two individuals chosen "at large." The Speaker of the House and Majority Leader of the Senate are each to submit lists of 14 names, and the President is to choose seven members from each list. The Speaker and Majority Leader are also to select seven members from their respective Houses to serve as "Congressional advisers" to the Commission. The Chairman is to be "jointly selected" by the President, the Speaker, and the Majority Leader.

All of the foregoing would raise serious Constitutional concerns if the members of the Commission were considered officers of the United States. The functions of the Commission appear to be purely advisory, however, so its members would not be officers in the Constitutional sense. Nonetheless, we should still note that the bill should be interpreted as meaning that the President retains ultimate responsibility for his appointments, so that he can require additional lists from the Speaker and Majority Leader if he is dissatisfied with the lists presented to him. On June 27, 1983, the Justice Department sent a letter to the Chairman of the House Committee considering H.R. 2853, making this point and several other less significant ones. I recommend that we advise OMB that we share the concerns raised in that letter, none of which have yet been addressed by Congress. As noted, the purely advisory character of the Commission basically relegates these concerns to the level of policy rather than Constitutional objections.

THE WHITE HOUSE

WASHINGTON

March 22, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: S. 1098 as Passed by the House
to Include H.R. 2853 (Establishing
a National Oceans Policy Commission)

You have asked for our views on S. 1098, as passed by the House to include H.R. 2853. The Administration previously recommended several changes in H.R. 2853 in a June 27, 1983 letter from the Department of Justice to Chairman Jones of the House Committee on Merchant Marine and Fisheries. Those changes have not as yet been made, and they should be reiterated in any expression of Administration views.

FFF:JGR:aea 3/22/84

cc: FFFielding/JGRoberts/Subj/Chron