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THE WHITE HOUSE

WASHINGTON

April 3, 1984

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Civil Aeronautics Board Decisions
in Eastern Air Lines, Inc. and
Northeastern International Airways, Inc.

This memorandum is addressed to you because of the involvement of Eastern Air Lines in both of the subject decisions.

Richard Darman's office has asked for comments by April 6 on the above-referenced CAB decisions, which were submitted for Presidential review as required by § 801(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 1461(a). Under this section, the President may disapprove, solely on the basis of foreign relations or national defense considerations, CAB actions involving either foreign air carriers or domestic carriers involved in foreign air transportation. If the President wishes to disapprove such CAB actions, he must do so within sixty days of submission (in these cases, by April 24 and May 1 respectively).

The orders here have been reviewed by the appropriate departments and agencies, following the procedures established by Executive Order No. 11920 (1976). OMB recommends that the President not disapprove, and reports that the NSC and the Departments of State, Defense, Justice and Transportation have not identified any foreign relations or national defense reasons for disapproval. Since these orders involve domestic carriers, the proposed letter from the President to the CAB Chairman prepared by OMB includes the standard sentence designed to preserve availability of judicial review.

The Eastern Air Lines order denies a request by that carrier for backup authority between Miami and London, on the basis of the CAB's policy not to grant such backup authority in the absence of special circumstances. The Northeastern International order grants a certificate to that carrier to engage in service on a New York-Miami-Bermuda route. OMB describes these orders as "routine, noncontroversial matters."

A memorandum for Darman is attached for your review and signature. The memorandum notes that Mr. Fielding did not participate in the review of this matter.

Attachment

THE WHITE HOUSE

WASHINGTON

April 3, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision
in Eastern Air Lines, Inc. and
Northeastern International Airways, Inc.

Our office has reviewed the above-referenced CAB decisions and related materials, and has no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(a).

We also have no legal objection to OMB's recommendation that the President not disapprove these orders or to the substance of the letter from the President to the CAB Chairman prepared by OMB.

Mr. Fielding did not participate in the review of this matter.

RAH:JGR:aea 4/3/84

cc: FFFielding/RAHauser/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 3, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Resolution H.J. Res. 443
Student Awareness of Drunk Driving
Month

Richard Darman has asked for comments on the above-referenced enrolled resolution by close of business today. This resolution notes that alcohol-related traffic accidents are the leading cause of death for those in the 15-24 age group, and designates June 1984 as "Student Awareness of Drunk Driving Month" to call attention to the problem. The resolution passed both Houses by voice vote. OMB, Transportation, HHS, and Education recommend approval; Justice has no objection. I have reviewed the memorandum for the President prepared by OMB Acting Assistant Director for Legislative Reference Naomi R. Sweeney, and the resolution itself, and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

April 3, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Resolution H.J. Res. 443
Student Awareness of Drunk Driving
Month

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

FFF:JGR:aea 4/3/84
cc: FFfielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 3, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Draft Proclamation/Student Awareness
of Drunk Driving

Dodie Livingston has asked for comments by April 4 on the above-referenced draft proclamation. The proclamation, authorized and requested by H.J. Res. 443, designates June 1984 as Student Awareness of Drunk Driving Month. It notes the grim statistics on drunk driving and the need to call attention to the problem of student drunk driving as the summer vacation months approach. The proclamation also cites the work of the Presidential Commission on Drunk Driving and various Education Department programs. It was drafted by Education and has been approved by OMB. I have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

April 3, 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/Student Awareness
of Drunk Driving

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

FFF:JGR:aea 4/3/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 3, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Proposed Questionnaire for "Physicians
Financial News"

Richard Darman has asked that comments on the above-referenced candidate questionnaire be sent directly to Mike Baroody by noon, April 5. The draft responses to questions posed by Physicians Financial News discuss the Administration's efforts to ensure the continued viability of the Medicare program, oppose regulating physician's fees for non-federally funded treatment, oppose federal no-fault medical malpractice insurance for doctors treating Medicare patients, and review Administration funding for the National Health Service Corps and aid for medical students. I have reviewed the draft responses and have no legal objections.

Attachment

THE WHITE HOUSE

WASHINGTON

April 3, 1984

MEMORANDUM FOR MICHAEL E. BAROODY
DEPUTY ASSISTANT TO THE PRESIDENT
DIRECTOR, PUBLIC AFFAIRS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Questionnaire for "Physicians
Financial News"

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

cc: Richard G. Darman

FFF:JGR:aea 4/3/84

bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 3, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Elections and Votes

Mrs. Janet Thayer of Minnesota has written the President, objecting to the practice of television networks announcing the winner of Presidential elections before the polls close. She notes that in the last election the result was announced before she voted, even though she arrived at the polls over an hour before closing. She wonders what the result would be if each vote were counted.

The White House has not taken a position on the issue of announcing projected winners before the polls close, although several committees in Congress -- particularly Congressman Wirth's -- are considering legislation to ban the practice. Such legislation would, of course, raise serious First Amendment concerns; indeed, in my view, any such law would probably be unconstitutional. We should thank Mrs. Thayer for her views, and assure her that her vote counts, even if the networks project a winner. Her letter reveals some confusion as to who is announcing the winner, and we should assure her that the announcement is a network projection rather than an official announcement.

Attachment

THE WHITE HOUSE

WASHINGTON

April 3, 1984

Dear Mrs. Thayer:

Thank you for your letter to the President, which was only recently referred to this office for consideration. In that letter you expressed your concern over the announcement of a winner in the last Presidential election before the polls had closed.

The practice of the television networks of projecting the winners of elections before the polls close and the votes have actually been tabulated has engendered some controversy in recent years. The practice has been scrutinized by Congressional committees and has been the subject of lively debate among journalists, those in government, and others interested in the electoral process.

It is important to recognize, however, that the announcement of a winner of an election before the close of the polls is an unofficial projection by the media, and not an official governmental pronouncement. A projection by the media carries no independent legal significance. Media projections are, as you note, based on intricate computer studies, but the official results of an election are based only on a careful tabulation of all the votes. Indeed, in the case of a Presidential election, the truly official result is not known until many weeks after the polls close, when the President of the Senate counts the votes of the Electoral College in the presence of the Senate and House of Representatives, as specified in Article II of the Constitution.

The point is that, in the legal and Constitutional sense, all votes count, even those cast after the media have announced a projected winner. Such projections are little more than calculated guesses as to who the official winner will be. That depends on all the votes actually cast, and accordingly I would urge you to continue to exercise your civic responsibility and vote.

- 2 -

Thank you for sharing your views with us. With best wishes,

Sincerely,

Fred F. Fielding
Counsel to the President

Mrs. Janet Thayer
6908 76th Avenue, North
Brooklyn Park, MN 55428

FFF:JGR:aea 4/3/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 3, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Addition of Professor Stanley I. Kutler
to the USIA "Blacklist"

Your note on my memorandum of March 29 suggested that you would prefer to take a different tack in responding to Mr. Belknap than that taken in my proposed response. I thought -- and think -- it best to send Belknap only a "barebones" response of the sort I prepared on March 29. The White House has not been directly implicated in the USIA blacklist imbroglio, and I see no reason for us to become involved in defending USIA, particularly since the conduct in question may not be defensible. The "ten foot pole" approach to questions about the blacklist struck me as the better part of valor; hence the referral to USIA and the brief, non-substantive acknowledgment to Belknap.

It is true that Belknap used the blacklist episode as a springboard to denounce the Administration for an alleged contemptuous attitude toward the Constitution. Here, however, Belknap's approach did not suggest that extended discourse would be profitable. There is little to say in response to his allegations other than that we are not contemptuous of the Constitution, and I saw no reason to make such a purely defensive statement. The correspondence would have taken on the air of an "am not -- are too" fourth-grade playground debate. Finally, Belknap obviously thinks he has authored a staggering denunciation of the Administration, and it occurred to me that nothing would disappoint him more than receiving a non-plussed, form response.

Assuming you do not share the foregoing views, I have taken a stab at a more elaborate response to Belknap. Under all the circumstances, however, I continue to think less is better in this case, and recommend sending the original proposed response. I have updated it in case you are persuaded.

Attachments

THE WHITE HOUSE

WASHINGTON

April 3, 1984

MEMORANDUM FOR THOMAS E. HARVEY
GENERAL COUNSEL
UNITED STATES INFORMATION AGENCY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Addition of Professor Stanley I. Kutler
to the USIA "Blacklist"

The attached letter to the President, together with a copy of my interim reply, is referred to you for whatever direct reply or other action you consider appropriate.

Attachment

FFF:JGR:aea 4/3/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 3, 1984

Dear Mr. Belknap:

Your letter of March 8, 1984 to the President, concerning an alleged "blacklist" at the United States Information Agency (USIA), has been referred to the General Counsel of USIA. Thank you for providing us with the benefit of your views.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Michael R. Belknap
The University of Georgia
Department of History
LeConte Hall
Athens, Georgia 30602

FFF:JGR:aea 4/3/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 3, 1984

Dear Mr. Belknap:

This is written in response to your letter of March 8 to the President. In that letter you expressed your outrage over the alleged existence of a "blacklist" at the United States Information Agency (USIA). I have referred your letter to Thomas E. Harvey, General Counsel at USIA, for his review and whatever direct action he deems appropriate. I am certain you will be hearing from Mr. Harvey in the near future.

While Mr. Harvey is best suited to respond to your specific concerns about USIA, I cannot let your more general observations pass without comment. Needless to say, I do not share your view that the Administration is contemptuous of the Constitution. The President has taken a solemn oath to preserve, protect and defend the Constitution, and he and the officials of this Administration -- who have taken a similar oath -- are extremely sensitive to the public trust that has been vested in them. You are of course free to reach whatever conclusions you will concerning the performance of the Administration, but it is unfair and unjust to cloak disagreements you may have in invective about the Administration's supposed contempt for the Constitution.

Your letter concludes with biographical information on yourself, purportedly supplied because of your misguided belief that your letter might somehow result in the initiation of an investigation of you. Please be advised that the only investigations initiated by the White House are background investigations of candidates for high office in the Administration, and then only after obtaining written consent from the candidate.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Michael R. Belknap
The University of Georgia
Department of History
LeConte Hall
Athens, Georgia 30602

FFF:JGR:aea 4/3/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 3, 1984

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Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Michael R. Belknap
The University of Georgia
Department of History
LeConte Hall
Athens, Georgia 30602

FFF:JGR:aea 4/3/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 3, 1984

MEMORANDUM FOR THOMAS E. HARVEY
GENERAL COUNSEL
UNITED STATES INFORMATION AGENCY

FROM: FRED. F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Addition of Professor Stanley I. Kutler
to the USIA "Blacklist"

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FFF:JGR:aea 4/3/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 3, 1984

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Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Michael R. Belknap
The University of Georgia
Department of History
LeConte Hall
Athens, Georgia 30602

FFF:JGR:aea 4/3/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 4, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

National Medal of Science

Richard Darman has asked for our views by April 6 on a memorandum for the President from Science Advisor Jay Keyworth, submitting 19 names for the National Medal of Science. Pursuant to 42 U.S.C. § 1881, the President is authorized to award the National Medal of Science to no more than 20 individuals per year. Recipients must be "deserving of special recognition by reason of their outstanding contributions to knowledge in the physical, biological, mathematical, engineering or social and behavioral sciences," 42 U.S.C. § 1881(a), and must be American citizens or aliens lawfully admitted for permanent residence, 42 U.S.C. § 1881(c). Executive Order 11287 establishes a Committee on the National Medal of Science, charged with submitting recommendations to the President.

Keyworth's memorandum does not state that the listed individuals have been recommended by the Committee, pursuant to the procedures established in the Executive Order, nor does it expressly confirm that the prospective honorees satisfy the citizenship or permanent resident alien requirements of the statute. Accordingly, I contacted Jim Ling of the Office of Science and Technology Policy, who is responsible for this program. Ling confirmed that the list of nominees was submitted by the Committee, pursuant to the Executive Order, and that all of the nominees are American citizens. In light of Ling's representations, I have no legal objections.

Attachment

THE WHITE HOUSE

WASHINGTON

April 4, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: National Medal of Science

Counsel's Office has reviewed the memorandum for the President from Jay Keyworth, recommending 19 individuals for the National Medal of Science. The President is authorized by 42 U.S.C. § 1881 to award this medal to no more than 20 individuals in any calendar year. Recipients must be either American citizens or permanent resident aliens. Based on representations by Jim Ling of the Office of Science and Technology Policy that the 19 individuals were recommended by the President's Committee on the National Medal of Science, pursuant to Executive Order 11287, and that all 19 are American citizens, Counsel's Office has no legal objections to proceeding with the awards.

FFF:JGR:aea 4/4/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 4, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Draft Proclamation: Missing Children Day, 1984

Dodie Livingston has asked for comments on the above-referenced draft proclamation by close of business today. The original March 28 deadline was extended due to the many questions raised by this proclamation. In light of those questions, and because this is hardly a routine proclamation, I thought it best to run our office's response through you rather than responding directly.

The draft proclamation would designate May 25 as Missing Children Day. On that day in 1979, Etan Patz, one of the more widely known missing children, disappeared from his home in New York City. This proclamation is neither traditional nor has it been requested by joint resolution. A similar proclamation was issued last year, because Senator Hawkins cornered the President when they were flying to Florida together and got him to promise to issue it. It was not my understanding at that time that the proclamation would become an annual event.

This year the OMB memorandum simply notes that the proclamation was requested by the White House Office. Livingston's office has been unable to locate the source precisely; all that Jack Wells of that office can say is that he thinks it came from Faith Whittlesey's shop. I think we should note that this proclamation violates our established policy that such proclamations be issued only if traditional or requested by joint resolution. The fact that a similar proclamation was issued last year, under unusual circumstances, hardly brings this proclamation into the "traditional" category.

Even if it is decided to issue a Missing Children's Day proclamation, this draft is unacceptable. The proclamation is essentially a verbatim repeat of last year's proclamation. In the case of recurring proclamations, however, the White House generally goes to the trouble of drafting fresh language; simply changing the date improperly diminishes the significance of a Presidential proclamation.

THE WHITE HOUSE

WASHINGTON

April 4, 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: Missing
Children Day, 1984

You have asked for our comments on the above-referenced draft proclamation. This proposed proclamation is neither traditional nor has it been requested by joint resolution of Congress, and accordingly its issuance would contravene established White House policy. As you know, proclamations are limited to these two categories to forestall a flood of requests to the White House for proclamations, and to prevent the cheapening of the significance of Presidential proclamations that would occur were they issued in a less discriminating fashion. We do not issue Presidential proclamations simply to promote a desirable cause.

A Missing Children Day proclamation was issued last year, because the President expressly agreed to do so in response to a request from a senator. It was not understood at the time that this would become an annual event. As a strictly legal matter the proclamation may be issued, but we do not recommend departing from the established White House policy against doing so, in the absence of compelling circumstances. No such compelling circumstances have as yet been presented to us.

Finally, if it is decided to proceed with a Missing Children Day proclamation, the present draft is unacceptable. The draft is essentially a verbatim repeat of last year's proclamation. Simply changing the date on a previous year's proclamation improperly diminishes the significance of a Presidential proclamation. If we are to issue this proclamation we should at least go to the trouble of drafting fresh language.

cc: Richard G. Darman

FFF:JGR:aea 4/4/84

bcc: FFfielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 5, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Revised Presidential Message and
Republican High Technology Task
Force Report

On March 23 Richard Darman asked for our comments on a proposed Presidential message, to be used as a preface to the Republican Agenda for U.S. Technological Leadership and Industrial Competitiveness. You will recall that the Agenda is a report prepared by House Republicans. By memorandum dated March 27 we objected that the proposed message constituted a "blank check" of Presidential support to those issuing the report, and recommended various changes in the draft to cure this problem. Darman has now asked for comments by April 9 on a revised message, purportedly responding to our concerns and those of others.

The revised draft does in fact respond to our concerns. It now applauds those responsible for the report for their initiative and efforts, and cannot fairly be read as a blanket endorsement of every specific proposal in the report. I have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

April 5, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Revised Presidential Message and
Republican High Technology Task
Force Report

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

FFF:JGR:aea 4/5/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 5, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Correspondence From Lloyd S. Ard
Expressing Concern About Nuclear War

Some time ago you received a note from a concerned citizen, enclosing a mimeograph on the horrors of nuclear war and asking what you, Fred F. Fielding, were doing to prevent it. You asked that the letter be referred out for a draft response that you could send. We have now received such a draft response from Joseph Lehman, Director of Public Affairs at the Arms Control and Disarmament Agency. I have edited the draft slightly, and it is ready for your review and signature.

Attachment

THE WHITE HOUSE

WASHINGTON

April 6, 1984

Dear Mr. Ard:

This is in response to your letter and the enclosure on thermonuclear war.

We fully share your concern about the risk of nuclear war and are committed to doing everything possible to reduce that risk. Since the invention of nuclear weapons every American President has sought to prevent conflict, reduce the risk of war and ensure a lasting peace with freedom. But keeping the peace and preventing war require more than good intentions. They require a concerted effort to maintain our own strength and to seek, wherever possible, to reduce nuclear and conventional arsenals and resolve international differences peacefully. This dual policy of deterrence and dialogue has helped to prevent major war for almost forty years.

In addition to maintaining our military strength, the US has proposed a number of new initiatives to substantially reduce nuclear and conventional arsenals and to reduce the risk of war by accident or miscalculation.

For example, in the Strategic Arms Reduction Talks, the US proposed substantial reductions in ballistic missile warheads, deployed missiles, and in other measures of strategic capability. These proposals would reduce the number of deployed warheads by more than one-third; the bulk of reductions would be in the most dangerous and destabilizing type of warheads. In October 1983, President Reagan outlined a new US initiative for a mutual guaranteed build-down of nuclear forces whereby a larger number of old nuclear weapons would be removed for each new weapon introduced in a manner that would encourage movement to smaller and more stabilizing nuclear forces.

Ambassador Nitze, our Intermediate-range Nuclear Forces (INF) negotiator, and his team worked very long and hard at Geneva in an effort to reach agreement with the Soviet Union on either global elimination or deep reductions of land-based, intermediate-range nuclear missiles of the US and Soviet Union. The delivery/deployment of the Pershing II and Ground-launched Cruise Missile (GLCM) to Europe is designed to counterbalance a Soviet monopoly in this missile class. (Since 1976, the Soviets have deployed over 370 new SS-20 missiles -- each with three separate nuclear warheads -- for a total of over 1000 new warheads in this class

alone.) However, we are prepared to resume the Geneva Intermediate-range Nuclear Forces (INF) negotiations with the Soviets at any time and to halt, reduce or reverse our deployments in accordance with an eventual agreement.

In addition, the US has also proposed a series of confidence-building measures -- such as advance notification of ballistic missile tests, expanded exchange of information and improvements in communication -- to stimulate greater mutual understanding and thus reduce the risk of war by accident or miscalculation.

We recognize that the nuclear freeze proposal represents a desire to achieve rapid progress in arms control, and we share that goal. However, a freeze at current levels is not an effective or sound approach to arms control. Such a freeze would seriously handicap our efforts to negotiate major arms reductions because it would perpetuate existing Soviet military advantages, while preventing us from carrying out necessary modernization of our nuclear forces. It would thus reduce Soviet incentives to negotiate seriously on the proposals for substantial cuts in nuclear arsenals that we have offered in the START and INF negotiations.

Although a freeze appears simple, it would require extensive and lengthy negotiations to agree on the terms and guarantees, particularly verification measures, thus detracting from the more important and immediate task of seeking reductions. In addition, important aspects of a freeze would be virtually impossible to verify.

We can and must do better than a freeze, and in some ways we have already gone beyond the concept of a freeze in persuading the Soviet Union of the merits of negotiating for actual reductions in nuclear arsenals. In the START negotiations, for example, the Soviets publicly indicated a willingness to consider reductions of 25 percent in strategic nuclear delivery vehicles below the SALT II levels. Although this is still not as far as we believe both sides can go, it is nevertheless a step in the right direction.

We are determined to spare no effort to reach equitable, stabilizing and effectively verifiable agreements with the Soviet Union to reduce nuclear arsenals and the risk of war. However, it takes two to reach an agreement, and the Soviet Union has so far not shown comparable flexibility at the negotiating table. In fact, the Soviets have chosen to interrupt the arms reduction negotiations in Geneva and have so far been unwilling to agree on a date for their resumption.

We remain ready to resume the negotiations at any time, and we hope the Soviet Union will reconsider its actions and decide to return to the negotiation table as soon as possible.

Our far-reaching arms reduction proposals, coupled with a firm resolve to maintain America's deterrent strength, have provided incentives for the Soviet Union to negotiate for arms reductions. Achieving agreements on such reductions will not be easy. It requires patience and determination. It also requires the understanding and unity of the US and our Allies behind the goals we all share -- to reduce the risk of war, and the growth in nuclear arsenals.

Thank you for sharing your views with us.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Lloyd S. Ard
Post Office Box 2281
Austin, TX 78768

FFF:JGR:aea 4/5/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 5, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Article by the President
for "National Forum"

You will recall that Mark Cannon, the Chief Justice's factotum and guest editor of the upcoming issue of National Forum on the bicentennial of the Constitution, has written both you and Mr. Deaver to ask that the President author an article for the issue on the Presidency. Mr. Deaver has asked for our approval of a letter to Cannon, accepting the offer and noting that Mike Baroody will be handling the staff work. As we have discussed, the nature of the contemplated article makes it more appropriate that our office rather than Baroody's draft it, and accordingly I have revised Deaver's letter to state that you will be coordinating the preparation of the article. I have also prepared a letter for your signature to Cannon, noting that you are looking forward to working with him on the article. Unless you object, I will begin drafting the article as well.

Attachment

THE WHITE HOUSE

WASHINGTON

April 5, 1984

Dear Mark:

The President would be delighted to author an article for National Forum's special symposium on the Bicentennial of the Constitution.

The outline of the special issue is very impressive and I certainly agree that its publication will mark a major contribution to the celebration of the Bicentennial of the Constitution.

Counsel to the President Fred F. Fielding will coordinate the staff work for the President on this article. Fred will be in touch with you shortly to discuss the details.

Sincerely,

MICHAEL K. DEEVER
Assistant to the President
and Deputy Chief of Staff

Mr. Mark W. Cannon
Guest Editor
National Forum
Box 19420A
East Tennessee State University
Johnson City, Tennessee 37614
MKD:FFF:JGR:aea 4/5/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 5, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Article by the President
for "National Forum"

You have asked for our views on a proposed reply to a letter from Mark Cannon, guest editor of the upcoming issue of National Forum on the bicentennial of the Constitution. Cannon has asked that the President author the article on the Presidency for the issue. Your draft reply accepts the invitation for the President and advises Cannon that Mike Baroody will be coordinating the staff work on the article.

Cannon has discussed this matter with me in the past. I have no legal objections to the President agreeing to author the article, but think that, in light of the contemplated nature of the article, it would be more appropriate for my office to prepare the draft. Accordingly, I have attached a revised response for your signature, advising Cannon that I will be coordinating the staff work on the article. I will also write Cannon directly for details and begin the process of preparing the article.

FFF:JGR:aea 4/5/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 5, 1984

Dear Mark:

Thank you for the additional information on the special symposium issue of National Forum on the Bicentennial of the Constitution. I understand that Mr. Deaver has advised you that the President will be delighted to author the article on the Presidency, and that I will be coordinating the staff work for the President on the article. I am looking forward to working with you on this project, as I am confident that the publication of the issue will be one of the highlights of the bicentennial celebration.

We have begun preliminary work on the article, and would appreciate whatever details as to length, timing, and so on are necessary to guide our preliminary work.

With best wishes,

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Mark W. Cannon
Guest Editor
National Forum
Box 19420A
East Tennessee State University
Johnson City, Tennessee 37614
FFF:JGR:aea 4/5/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 5, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Revised Draft Presidential Letter
to Fortune 1000 Members

On February 27, 1984, Richard Darman asked for comments by February 28 on a draft Presidential letter to Fortune 1000 CEO's, urging them to do business with minority financial institutions. We reviewed the letter to ensure its consistency with the executive order and policy statement previously issued on the minority business enterprise development program, and by memorandum dated February 28 you advised Darman that we had no legal objections. On March 6 Darman circulated a revised draft, again asking for comments by the next day. The revised draft did not focus on minority financial institutions but rather minority businesses more generally. By memorandum dated March 7 you advised Darman that we had no objection to the revised draft.

Now Darman has circulated yet another revised draft of the same letter, asking for comments by tomorrow, April 6. This third circulated draft solomonically mentions both minority businesses in general and minority financial institutions in particular. It is an amalgam of the first two drafts, and, like those drafts, is legally unobjectionable.

Attachment

THE WHITE HOUSE

WASHINGTON

April 5, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Revised Draft Presidential Letter
to Fortune 1000 Members

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

FFF:JGR:aea 4/5/84
cc: FFfielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 4, 1984

Dear Mr. Belknap:

Your letter of March 8, 1984 to the President, concerning an alleged "blacklist" at the United States Information Agency (USIA), has been referred to the General Counsel of USIA.

Your letter concludes with biographical information on yourself, purportedly supplied because of your misguided belief that your letter might somehow result in the initiation of an investigation of you. Please be advised that the only investigations initiated by the White House, except for possible criminal referrals, are background investigations of candidates for high office in the Administration, and then only after obtaining written consent from the candidate.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Michael R. Belknap
The University of Georgia
Department of History
LeConte Hall
Athens, Georgia 30602

FFF:JGR:aea 4/4/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 4, 1984

MEMORANDUM FOR THOMAS E. HARVEY
GENERAL COUNSEL
UNITED STATES INFORMATION AGENCY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Addition of Professor Stanley I. Kutler
to the USIA "Blacklist"

The attached letter to the President, together with a copy of my interim reply, is referred to you for whatever direct reply or other action you consider appropriate.

Attachment

FFF:JGR:aea 4/4/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 6, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Draft Proclamation: National Mental
Health Counselors Week, 1984

Dodie Livingston has asked for telephone comments as soon as possible on the above-referenced draft proclamation. The proclamation, authorized and requested by S.J. Res. 203, designates the week beginning on Sunday as National Mental Health Counselors Week, 1984. The proclamation praises the work of mental health counselors to reduce human suffering. It was drafted by HHS and has been approved by OMB. I have no legal objections.

In light of the need for immediate action and the noncontroversial nature of the proclamation, I have taken the liberty of advising Livingston that we have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

April 6, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: S.J. Res. 203 -- National
Mental Health Counselors Week

Richard Darman asked for our views on the above-referenced enrolled resolution by 10:00 a.m. today. This resolution praises the contributions of mental health counselors and designates next week in their honor. It passed both Houses by voice vote. OMB and HHS recommend approval. I have reviewed the memorandum for the President prepared by OMB Acting Assistant Director for Legislative Reference Naomi R. Sweeney, and the resolution itself, and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

April 6, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: S.J. Res. 203 -- National
Mental Health Counselors Week

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

FFF:JGR:aea 4/6/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 6, 1984

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS 

SUBJECT: Jack Courtemanche Confirmation

Attached, as we have discussed, is a draft memorandum alerting Jack Courtemanche to the Nixon files controversy, and providing a proposed answer to any questions that might be raised on the controversy at his confirmation hearings.

Attachment

THE WHITE HOUSE

WASHINGTON

April 9, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Remarks: Ford Claycomo Assembly Plant

Richard Darman has asked that comments on the above-referenced remarks be sent directly to Ben Elliott by 3:00 p.m. today. The remarks discuss the progress of the economic recovery, with particular attention to the auto industry. The remarks reject protectionist solutions, arguing instead that a revitalized American auto industry can compete with any other country's products. At the conclusion of his remarks the President presents an award to Barney Maxon, who has worked for Ford for fifty years.

The first full paragraph on page 4 praises the quality of Ford products, concluding with the Ford slogan, "Quality is Job 1." I have no objection to the President playing to his audience in this fashion. I do not think those hearing the remarks will take them to be a commercial endorsement of Ford, as opposed to General Motors or Chrysler, but simply graciousness by the President to his hosts.

Attachment

THE WHITE HOUSE

WASHINGTON

April 9, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Dade County Set Aside Case

Brad Reynolds has copied you on a memorandum he wrote to Craig Fuller, explaining the consistency between the Justice Department brief in the Dade County set aside case and the Administration's minority business enterprise program. On January 27, 1984, a panel of the United States Court of Appeals for the Eleventh Circuit issued its opinion in South Florida Chapter of the Associated General Contractors of America v. Metropolitan Dade County. That opinion upheld a 100 percent set aside for black prime contractors and a 50 percent black subcontractor "goal" on a Dade County construction project. The Civil Rights Division filed an amicus curiae brief supporting appellant's suggestion for rehearing en banc, arguing that the Dade County set aside program violated the Equal Protection rights of non-minority contractors.

In his memorandum to Fuller, Reynolds states that the Division's filing in no way undermines the President's minority business enterprise program, principally set forth in Executive Order 12432. Reynolds notes that the federal program encourages awards of contracts to disadvantaged contractors -- rather than those of a particular race -- and does not approach the extremity of a 100 percent set aside or 50 percent goal. Reynolds states that the Division fully endorses and supports Executive Order 12432, and notes that the Division is developing guidelines to advise Dade County and others on how to develop constitutionally acceptable minority business enterprise programs.

Two weeks ago, the Eleventh Circuit unceremoniously denied the suggestion for en banc review. It is not known at this time whether the appellants will seek certiorari. If they do, the Justice Department will have to decide whether to participate in that round. My sense is that, should the issue arise, Justice will not participate any further. I believe Reynolds and company recognize now that they do not have the votes on the Supreme Court to prevail in a race case such as this one.

There is no need for any action on our part at this time.

THE WHITE HOUSE

WASHINGTON

April 9, 1984

MEMORANDUM FOR H. P. GOLDFIELD
DEPUTY ASSISTANT SECRETARY
FOR TRADE DEVELOPMENT
U.S. DEPARTMENT OF COMMERCE

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

SUBJECT: Forest Rose Correspondence

Our review of the attached suggests that, contrary to the representation in your memorandum of March 30, it was sent to you qua you, rather than in your capacity as Associate Counsel to the President. It appears that Mr. Rose is concerned to raise his points with H.P. Goldfield, wherever Mr. Goldfield may be, rather than with just any Associate Counsel to the President. Accordingly, we are returning this to you for action as you deem appropriate.

Many thanks!

Attachment

THE WHITE HOUSE

WASHINGTON

April 9, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Presidential Remarks for Signing
Ceremony for Fair Housing Month

Richard Darman has requested your comments on the above-referenced remarks by 1:00 p.m. today. The remarks praise the passage of the first fair housing law -- Title VIII of the Civil Rights Act of 1968, review Administration efforts to promote fair housing, and urge passage of the Administration's proposed amendments to toughen the fair housing laws.

The first sentence refers to the right to fair housing as a "fundamental" right. I would change this to "basic" right, since "fundamental right" is a legal term of art in constitutional analysis, and the right to fair housing is not such a "fundamental right."

At the bottom of page 1, the remarks quote the opening section of Title VIII, 42 U.S.C. § 3601: "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." The remarks introduce this quotation by stating: "The words of Title VIII were simple, but profound." That may be true of the opening section, but it is hardly true of Title VIII, an exceedingly complicated regulatory statute. I would insert "opening" between "The" and "words."

The first full sentence on page 2 compounds this error by stating "From Maine to California, those few words made it unlawful to discriminate in housing on the basis of race, color, religion, or national origin." Those "few words" did nothing of the sort; indeed, such a statement of policy makes nothing unlawful. I would change "those few words" to "Title VIII." Title VIII applies to Alaska and Hawaii as well as the continental United States; I would suggest changing "From Maine to California" to "From Maine to Hawaii."

The last sentence of the carryover paragraph at the top of page 2 states: "And the law soon became crucial in protecting the rights not only of black Americans, but of all minorities -- including single mothers, the elderly, and the

handicapped." This is untrue. Title VIII was amended in 1974 to cover gender discrimination, but has never covered age discrimination or discrimination on the basis of handicap. Indeed, one of the Administration's proposals pending before Congress is to extend the law to cover the handicapped. I would change this sentence to read: "And the law was soon amended to prohibit discrimination on the basis of sex as well."

In the last paragraph on page 2, the remarks state that our proposals "would impose civil penalties of \$50,000 for a first conviction of housing discrimination and of \$100,000 for a second conviction." This should be changed to "would impose civil penalties of up to \$50,000 for a first offense of housing discrimination and of up to \$100,000 for a second offense."

Attachment

THE WHITE HOUSE

WASHINGTON

April 9, 1984

MEMORANDUM FOR BEN ELLIOTT
DEPUTY ASSISTANT TO THE PRESIDENT
AND DIRECTOR OF SPEECHWRITING

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Remarks for Signing
Ceremony for Fair Housing Month

Counsel's Office has reviewed the above-referenced draft remarks. In the first sentence, we recommend changing "fundamental" to "basic," to avoid using the legal term of art "fundamental right."

On page 1, line 23, we recommend inserting "opening" between "The" and "words." The quoted language is only the opening section of Title VIII; Title VIII as a whole is an exceedingly complex regulatory statute that can hardly be characterized as "simple."

On page 2, line 2, we suggest changing "From Maine to California" to "From Maine to Hawaii," and changing "those few words" to "Title VIII." The law applies to Hawaii and Alaska as well as the continental United States, and it is Title VIII as a whole -- not "those few words" that are quoted -- that makes housing discrimination unlawful.

We would change the second full sentence on page 2 to read: "And the law was soon amended to prohibit discrimination on the basis of sex as well." Title VIII was amended in 1974 to cover sex discrimination in housing, but does not by its terms cover age discrimination or discrimination on the basis of handicap. Indeed, there is pending an Administration proposal to extend the law to cover the handicapped.

On page 2, line 18 and line 19, "up to" should be inserted before the monetary figures, and "conviction" should be changed to "offense."

cc: Richard G. Darman