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DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	ROBERTS TO HOLLAND RE U.S. COURT OF MILITARY APPEALS (PARTIAL)	1	5/1/1984	B6	764
2	MEMO	ROBERTS TO FIELDING RE T. WILSON CORRESPONDENCE (PARTIAL)	1	5/1/1984	B6	766
3	MEMO	ROBERTS TO FIELDING RE U.S. COURT OF MILITARY APPEALS (PARTIAL)	1	5/3/1984	B6	767
4	MEMO	ROBERTS TO D. LOWELL JENSEN RE LETTER REQUESTING HELP OBTAINING A TRANSFER FOR A US MARSHAL (PARTIAL)	1	5/4/1984	B6	1296

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

May 1, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Proposed Award to Michael Jackson

Jim Coyne has asked for our views on a proposed award to entertainer Michael Jackson, for his contributions to the campaign against teenage drunk driving. Coyne would like to have the President present the unspecified award to Jackson on May 11 in the Rose Garden. Coyne has asked whether the award should be from the White House or the Transportation Department, whether the award may bear the Seal of the President, and whether we object to his suggested language for the award. You have indicated that you object to any award to Jackson involving the President.

I share your view that this is a poor idea. A Presidential award to Jackson would be perceived as a shallow effort by the President to exploit the constant publicity surrounding Jackson, particularly since other celebrities have done as much for worthy causes as Jackson but have not been singled out by the President. The whole episode would, in my view, be demeaning to the President. Coyne's proposed text for the award is also problematic, since it lauds Jackson for his commercial success as well as his charitable endeavors.

The attached memorandum for Coyne objects to any Presidential involvement and to his proposed text. I also recommend copying Darman so that our objections are generally known.

Attachment

THE WHITE HOUSE

WASHINGTON

May 1, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Award to Michael Jackson

You have asked for our views on a proposed award to entertainer Michael Jackson in recognition of his contribution to the national campaign against teenage drunk driving. Specifically, you have asked whether the contemplated award should be a White House award or a Department of Transportation award, whether the award may bear the Seal of the President, and whether we had any objections to your suggested text for the award.

I must advise you that I object to any Presidential involvement in the presentation of an award to Mr. Jackson. Whatever Mr. Jackson's contributions to the campaign against teenage drunk driving, and whatever his merit as a chanteur, I think any ceremony involving the President and Mr. Jackson would be perceived as an effort by the President to bask in the reflected glow of the inordinate publicity surrounding Mr. Jackson. This perception, which would be demeaning to the President, would derive in large part from the fact that other celebrities have done at least as much as Mr. Jackson for worthy causes, but have not been singled out for special praise by the President.

To answer your specific questions, if any award is given it should not be a White House award. The award accordingly may not bear the Seal of the President. Finally, I do object to the suggested text for the award. If there is an award citation it should not praise Mr. Jackson for his commercial successes, as your proposed text does, but be limited to praising his charitable activities.

Thank you for raising this matter with us.

cc: Richard G. Darman

FFF:JGR:aea 5/1/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

May 1, 1984

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS

SUBJECT: Appointment of Walter Thompson Cox III to the U.S. Court of Military Appeals

The United States Court of Military Appeals is an Article I tribunal established by 10 U.S.C. § 867. It consists of three judges appointed by the President, by and with the advice and consent of the Senate, from civil life for 15 year terms. Appointees must be members of the bar of a Federal court or the highest court of a State; no more than two judges may be appointed from the same political party. 10 U.S.C. § 867(a)(1).

Cox served in the Judge Advocate General's Corps from the time he entered Law school in 1964 until 1972. He was in private practice from 1973-1978, and has been a state trial judge since 1978. The requirement that appointees to the court be from "civil life" is not defined in the statute. The provision is generally understood to prohibit appointment of currently active military officers, and I do not see Cox's prior, discontinued military service as a bar to his appointment. Cox satisfies the bar membership requirement.

b6

[redacted]

I have reviewed Cox's PDS (but not his SF-278), and have no objection to proceeding with his nomination.

THE WHITE HOUSE

WASHINGTON

May 1, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: H.R. 3689, H.R. 3690, H.R. 3691, H.R. 3692, H.R. 3693 and Draft Justice Report on the Preceding Bills Related to Restricting or Abolishing Federal Diversity Jurisdiction

OMB has asked for our views by May 4 on a proposed report from the Department of Justice concerning H.R. 3689-H.R. 3693, bills to restrict or abolish Federal diversity jurisdiction. The report -- a 25-page letter from Assistant Attorney General McConnell -- supports the complete abolition approach of H.R. 3689, and expresses support for the restriction of diversity jurisdiction in the other bills if it is not possible to secure complete abolition. The report supports the creation of a mass tort action, proposed in H.R. 3690, to ensure a Federal forum for airplane crashes and the like. Opponents of abolition of diversity frequently cite such cases as ones that should be in Federal court but would not be were diversity abolished; providing a Federal forum for such cases removes one of the leading arguments against abolition. The report supports an increase in the jurisdictional amount in diversity cases, and abstention in certain diversity cases, the approach of H.R. 3691. The report also supports the general notion behind H.R. 3692, which would require arbitration in diversity cases. The cases could be tried de novo after arbitration, but parties would be penalized if they insisted on this right and won a substantially less favorable result in court than that awarded them in arbitration. Finally, the report supports H.R. 3693, which would correct an historic anomaly in American law by eliminating the right of in-state plaintiffs to bring diversity suits in Federal court. The historic justification for diversity jurisdiction -- the potential hostility of state courts to out-of-state litigants -- is of course inapplicable when the person seeking a Federal forum is a resident of the state in question.

The proposed report goes on to suggest other diversity-related reforms not raised by the pending bills, such as discretionary appellate review, requiring a particularized showing of bias in the state forum (similar to the required

showing in change of venue cases), and expanding the concept of a corporation's citizenship so as to defeat diversity in a greater number of cases. The report also suggests (pp. 22-23) charging the party filing a diversity case a "user's fee" to cover the cost of having the Federal judicial system adjudicate the claim, including a portion of the judge's and support personnels' salaries, cost of maintaining the courtroom, overhead, etc. The report notes that there may be problems with such an approach, but generally suggests the idea is worth pursuing. In my view the idea is ludicrous. The additional administrative burden of calculating the entire cost of hearing any particular diversity case would far outweigh any gain in reduction of such cases filed. I recommend noting in our memorandum to OMB that we are not persuaded that this idea even merits consideration.

I have no other objections. The Administration is clearly on record as supporting abolition or restriction of diversity jurisdiction. There is a caseload crisis in the lower Federal courts, and it is almost unconscionable to permit diversity cases to crowd out cases that truly belong in Federal court.

Attachment

THE WHITE HOUSE

WASHINGTON

May 1, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: H.R. 3689, H.R. 3690, H.R. 3691, H.R. 3692, H.R. 3693 and Draft Justice Report on the Preceding Bills Related to Restricting or Abolishing Federal Diversity Jurisdiction

Counsel's Office has reviewed the above-referenced proposed Department of Justice report. I am not persuaded that the idea of "charging a user's fee," suggested at pages 22-23 of the proposed report, merits sufficient consideration to be included in the report. I cannot envision how such a system would work, and it seems probable that the administrative and other costs associated with calculating and assessing a fair "user's fee" would easily outweigh any benefit in reduction of diversity cases. Including such a poor idea in the report inevitably detracts from the other good suggestions.

FFF:JGR:aea 5/1/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

May 1, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Statement of John C. Lawn on Bulgarian Involvement in Narcotics Trafficking

We have been provided with a copy of testimony DEA Acting Deputy Administrator John C. Lawn proposes to deliver on May 3 before the House Foreign Affairs Committee Task Force on International Narcotics Control. The testimony details DEA's belief that the Government of Bulgaria is directly involved in narcotics trafficking through its official import/export agency, Kintex. According to the testimony, Kintex facilitates the supply of arms to insurgents throughout Europe and the Middle East (such as Turkish Kurds) in exchange for opium and heroin. The opium and heroin is then resold at a profit in the West, providing Bulgaria with much-needed Western currency.

On page 2 of his proposed testimony Lawn begins his case by citing magazine articles that appeared in Newsday, Time, and Reader's Digest. I think it is more than passing strange for a DEA official testifying before Congress to rely on media accounts, and recommend that we at least object to the prominence given the press stories in the testimony. I would hope DEA has better intelligence than what it reads in the papers. We should also make certain that the testimony has been reviewed by State and NSC. Finally, the memorandum to OMB notes several technical errors characteristic of all DEA testimony.

Attachment

THE WHITE HOUSE

WASHINGTON

May 1, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of John C. Lawn on Bulgarian Involvement in Narcotics Trafficking

Counsel's Office has reviewed the above-referenced proposed testimony. I object to the prominence given media accounts on page 2 of the proposed testimony. The testimony suggests that such media accounts are a prime source of DEA intelligence, which I would hope is not the case.

Due to the sensitive subject matter of the testimony, it should be reviewed by the Department of State and the National Security Council, if it has not been already.

On page 3, line 16, should "licitly" be "illicitly?" On page 7, the abbreviation "TIR" should be explained the first time it is used, not the third.

FFF:JGR:aea 5/1/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

May 1, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: T. Wilson Correspondence

T. Wilson is the [redacted] proprietor of "Appleseed Enterprises." You may recall that he wrote to Mr. Baker in March requesting that Mr. Baker convey letters containing investment instructions to [redacted] You returned the correspondence to Mr. Wilson, noting that it would be improper to fulfill his request. [redacted]

b6

Attachment

THE WHITE HOUSE

WASHINGTON

May 1, 1984

Dear Mr. Wilson:

This is written in response to your recent letter to me, requesting that I convey an enclosed letter dated January 12, 1984, from you to Mr. Peter V. Uberroth. The letter contains instructions for investing in what appears to be a commercial project.

Your letter to me is the latest in a series of letters you have written to various individuals at the White House, requesting that they convey enclosed letters from you to other individuals. As you have been advised in the past, the various officials to whom you have written are not involved in any way with your business activities; regardless of that, it would be inappropriate for them to act as intermediaries for you in connection with those activities. In each instance we have explained this to you and returned your correspondence, noting that no one at the White House had taken any action to contact individuals on your behalf.

I am following that same course with respect to your latest letter. Please do not persist in attempting to convey your correspondence to third parties through members of the White House staff. Any future attempts to do so will be ignored.

Sincerely,

/s/

John G. Roberts
Associate Counsel to the President

Mr. Thomas D. Wilson
Appleseed Enterprises
1919 Calvert Street, N.W.
Washington, D.C. 20009

THE WHITE HOUSE

WASHINGTON

May 1, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Alan Hepworth Complaint Regarding Lack of Response to His Letters to Administration Officials in Which He Requests Investigation into Violation of his Civil Rights

Alan Hepworth of Miami Beach has written Mr. Baker to complain about the lack of response to his many letters concerning an alleged violation of his rights. It is unclear from Mr. Hepworth's numerous letters precisely what he is complaining about, but it is clear that he regards William P. Tyson, Director of the Executive Office of U.S. Attorneys, as the villain of the piece. Tyson made what in retrospect can only be regarded as the mistake of innocently responding to Mr. Hepworth in August of 1983. This latest letter should be referred to Justice for whatever action they deem appropriate; we certainly do not want to respond directly from the White House. An appropriate memorandum is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

May 1, 1984

MEMORANDUM FOR D. LOWELL JENSEN
ACTING DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Alan Hepworth Complaint Regarding Lack of Response to His Letters to Administration Officials in Which He Requests Investigation into Violation of his Civil Rights

The attached letter to James A. Baker, III, White House Chief of Staff, is referred for whatever action you consider appropriate. We have no continuing interest in this matter.

Many thanks.

cc: James A. Baker, III

FFF:JGR:aea 5/1/84
bcc: FFFielding/JGRoberts/Subj/Chron

ID # 218449 CU

FG017

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Alan Hepworth

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Complaints re: lack of response to his letters to Administration officials in which he requests for investigation into violation of his civil rights

ROUTE TO: Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Completion Code	Completion Date YY/MM/DD
CW Holland	ORIGINATOR	84/04/27			1 1
CWAT 18	Referral Note:		Cont. corresp.		
	D	DD 84/04/28		S	84/05/08
	Referral Note:				
		1 1			1 1
	Referral Note:				
		1 1			1 1
	Referral Note:				
		1 1			1 1
	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

THE WHITE HOUSE

WASHINGTON

May 1, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Draft Testimony for Lowell Jensen Concerning Criminal Law, Bill S. 804

OMB has asked for our views on testimony Lowell Jensen proposes to deliver before the Senate Subcommittee on Criminal Law on May 2 concerning S. 804. That bill, developed partly in response to Abscam, would limit Federal undercover operations and greatly expand the entrapment defense. Jensen's proposed testimony acquiesces in the first part of the bill, which specifically authorizes undercover operations subject to Attorney General guidelines. As Jensen points out, this provision is unnecessary, but since it simply reflects existing practice he does not object. Jensen also supports the second part of the bill, clarifying the authority of undercover operations to enter contracts, maintain bank accounts, etc.

Jensen strongly opposes the remainder of the bill, which would limit the circumstances under which an undercover investigation could be initiated, make the United States strictly liable for the torts of those participating in an undercover operation (even if the tortfeasor violated the instructions of his "employer," the Government), and require the filing of reports with Congress on undercover operations, including some that are still ongoing. Finally, the testimony notes the Administration's firm opposition to the provisions in the bill that would substitute an "objective" entrapment defense for the current, court-developed "subjective" defense. Current entrapment law is based on an assessment of whether the particular defendant was predisposed to commit the crime when provided the opportunity to do so by government undercover agents. S. 804 would have the defense turn on whether the government's methods "more likely than not would cause a normally law-abiding citizen to commit a similar offense." This "objective test" has been consistently rejected by the courts. The objective test would hobble large-scale drug investigations, where the typical, astronomical amounts of cash involved would cause many jurors to conclude that the objective test was satisfied.

I have no objections to the thoughtful testimony.

THE WHITE HOUSE

WASHINGTON

May 1, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Testimony for Lowell Jensen
Concerning Criminal Law, Bill S. 804

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

FFF:JGR:aea 5/1/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

May 2, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Draft OMB Report on S. 919, a Bill to Reauthorize the Equal Access to Justice Act and for Other Purposes

OMB has asked for our views as soon as possible on a proposed OMB report on S. 919, a bill to reauthorize and amend the Equal Access to Justice Act. The brief OMB report reiterates points made in the more elaborate Justice Department report on S. 919, which we cleared several weeks ago. The report expresses support for a reauthorization of the Equal Access to Justice Act, but objects to provisions in S. 919 that would change the current law. Specifically, the report objects to a provision defining the position of the United States that must be "substantially justified" to avoid shifting legal fees as the underlying agency action rather than the position argued in court. This provision would greatly expand the inquiry under the Act and require courts to go beyond the position argued in court and scrutinize previous agency arguments, even though the agency abandoned them. The OMB report also opposes extending the Act to non-adversary Social Security Act hearings, and to de novo review of agency determinations not to award fees under the Act.

This report is consistent with the previously-cleared Justice report, and I have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

May 2, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft OMB Report on S. 919, a Bill to Reauthorize the Equal Access to Justice Act and for Other Purposes

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

FFF:JGR:aea 5/2/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

May 2, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Draft CIA Report on H.R. 5164, a Bill to Provide FOIA Relief to the CIA

OMB has asked for our views by May 7 on a draft CIA report on H.R. 5164, a bill to provide the CIA partial relief from the Freedom of Information Act. The Administration has supported this bill on several occasions; most recently, the Department of Justice submitted a detailed report reviewing the bill's provisions. You will recall that the bill generally exempts CIA operational files from the search requirements of FOIA, on the ground that the vast majority of the documents in the files are already exempt from the disclosure requirements. The instant CIA report simply reiterates Administration support for the bill. I have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

May 2, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft CIA Report on H.R. 5164, a Bill to Provide FOIA Relief to the CIA

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

FFF:JGR:aea 5/2/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

May 3, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Response to Your Letter With Regard to Use of the Presidential Seal for Presidential Yacht Memorabilia

Commodore Skinner of Presidential Yacht Charters, Inc., has responded to your letter of April 19. That letter (copy attached) demanded that Skinner cease using the Seal of the President on "Presidential Yacht memorabilia" distributed to those purchasing his charter services, and also advised Skinner to revise his brochure touting the charter and memorabilia in order to avoid the false impression that the Federal Government was in some fashion connected with his operation. You requested that Skinner advise you of the steps taken to comply with the law on the use of the Seal and to correct the false impression of association with the Government.

Skinner temporizes in his reply, asking for guidance on the extent to which the prohibitions governing use of the Seal apply to the Presidential Yacht Trust, a non-profit entity he formed in 1981 to restore and preserve the Sequoia. The question is, of course, completely irrelevant so far as the marketing of the memorabilia bearing the Seal is concerned. The rules on use of the Seal are of general applicability and apply to the Presidential Yacht Trust as they apply to any other private entity. The Executive Order does permit use of the Seal on monuments to former Presidents, and I can readily conceive of our office approving the use of the Seal in an historically accurate manner on a restored Sequoia operated by a non-profit entity. The Presidential Yacht Trust could not, however, have general permission to use the Seal, on its stationery, in fundraising, or in other ways.

This view is consistent with the advice we have given to those heading the 501(c)(3) organization established to restore and operate FDR's yacht, the Potomac. You will recall that we denied a request made on behalf of that organization to use the Seal in fundraising, but noted that it was possible the Seal could be used in historically accurate ways on the restored vessel itself (copy of letter attached).

The attached draft reply to Skinner notes that the Seal rules do apply to the Presidential Yacht Trust, that the Trust cannot generally use the Seal, but that specific instances of use of the Seal in historically accurate fashion on the yacht itself may be acceptable after review by this office. The letter also points out that this has nothing to do with the use of the Seal on souvenirs given to those who charter the yacht.

Attachment

THE WHITE HOUSE

WASHINGTON

May 3, 1984

Dear Commodore Skinner:

Thank you for your letter of April 27, 1984. That letter was written in response to mine of April 19, which advised you that use of the Seal of the President on your "Presidential Yacht memorabilia" violated 18 U.S.C. § 713, and the regulations promulgated thereunder, and also recommended that the brochure issued by Presidential Yacht Charters, Inc., be revised to avoid conveying the false impression of association with the Federal Government. Your letter in response asked for guidance on the extent to which the law governing use of the Seal applied to the Presidential Yacht Trust.

The criminal statute governing use of the Seal is of general applicability, and applies to the Presidential Yacht Trust as it applies to any private entity or individual. There may be discrete instances in which it would be permissible, after review by this office, to use the Seal in an historically accurate manner on the restored yacht itself, pursuant to the provision in Executive Order 11649 authorizing use of the Seal on monuments to former Presidents. The Presidential Yacht Trust may not, however, generally use the Seal, and in no sense is exempt from the applicable legal provisions. This advice is, incidentally, fully in accord with that I have given to the Association for the Restoration of the Presidential Yacht Potomac when the question was raised in connection with that organization's efforts to restore and maintain FDR's yacht.

In any event, I must reiterate my advice that use of the Seal on the Presidential Yacht memorabilia constitutes a violation of 18 U.S.C. § 713 and must cease immediately. I would be happy to review any specific questions you might have about other uses of the Seal by the Presidential Yacht Trust. I look forward to your further reply to my letter of April 19.

Sincerely,

Fred F. Fielding
Counsel to the President

Commodore Ed Skinner
Presidential Yacht Charters, Inc.
Box 32241
Washington, D.C. 20007

FFF:JGR:aea 5/3/84
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

May 3, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Additional Information Concerning the Prospective Appointment of Walter T. Cox to the U.S. Court of Military Appeals

By memorandum dated May 1, 1984, I advised Dianna G. Holland that I had no objection to proceeding with the nomination of Walter T. Cox III to the Court of Military Appeals.

[redacted]

b6

THE WHITE HOUSE

WASHINGTON

May 3, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Proposed Executive Order Entitled "The President's Commission on Executive Exchange"

Mike Horowitz has copied you on his letter circulating for agency comment a proposed Executive Order submitted by June G. Walker, Executive Director of the President's Commission on Executive Exchange. Walker's proposed order would supersede Executive Order 12136 (May 15, 1979), which established the Commission. The major changes in the new Executive Order are:

-- Greater specificity concerning whom the President may appoint to the Commission. E.O. 12136 provides that the Commission consist of "such officials in the Executive agencies and such persons from the private sector as the President may from time to time appoint." The new order would put a ceiling of 36 on Commission membership, specify that "[a]t least seventy-five percent of the Commission membership will be Chief Executive Officers, Chief Operating Officers, Chairmen, or Senior Partners of corporations or firms, of which category of membership not more than one-third shall be Chairmen or Senior Partners," and also designate seven Executive branch officials to serve on the Commission, in addition to any others appointed by the President.

-- Delete authorization of travel expenses and per diem for private sector Commission members.

-- Greater specificity concerning the placement of Exchange Executives. E.O. 12136 provides that participants should be placed in positions in the other sector that "offer significant challenge, responsibility, and regular and continuing contact with senior officials." The proposed order would specify that those moving into the public sector be placed in SES positions reporting to high ranking Presidential appointees.

-- Specifically authorize the international embassy assignments aspect of the program, under which private sector executives are assigned for a year as aides to ambassadors.

-- Provide for revolving funds to cover the expenses of the program. Public Law 98-224 already authorizes such a fund for participation fees from corporations sponsoring private sector executives. The proposed order would also establish such a fund for participation fees from Government agencies sponsoring exchange executives.

-- Provide that the Office of Administration in the White House provide support, administrative services, and facilities to the Commission on a reimbursable basis. E.O. 12136 specifies that OPM provide such services.

-- Specify that the staff of the Commission serves at the pleasure of the Executive Director, and that no more than one-third may be career civil service employees.

It should be apparent that the proposed Executive Order is a poor idea. The order would limit the President's discretion in making appointments to the Commission, and I think we should seek to maximize the President's freedom of action whenever possible. By the same token, the proposed order would specify particular assignments for participants, which would limit flexibility in conducting the program. Lastly, the provision concerning staff, a reaction to disputes at the Commission between career bureaucrats and Administration appointees, seems particularly ill-advised and suited only to call attention to a sensitive problem.

I suspect that my reaction to the proposed order will be widely shared by the agencies asked to comment, and accordingly I see no need for us to be "out front" in opposing the order. We should try to preserve cordial relations with Mrs. Walker, who has often looked to our office for guidance in the past. Accordingly, if you approve, I will simply advise Horowitz's office that we will comment after reviewing the reactions of the affected agencies.

Attachment

THE WHITE HOUSE

WASHINGTON

May 3, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Request for Assistance in Obtaining FCC Review of Television Interference Due to Use of High-Powered CB Radios

Mary L. Hogan, a city council member from Thomaston, Georgia, wrote the President requesting his help in having the Federal Communications Commission (FCC) investigate an electrical interference problem in Thomaston. The problem has prevented residents in one section of Thomaston from watching television. Hogan notes that 60 percent of the residents of Thomaston are senior citizens, many of whom have little contact with the outside would other than through television and cannot afford cable to avoid the problem. The FCC has not been responsive, arguing that they do not have enough people to send someone to Thomaston.

Lee Verstandig sent Hogan an interim response, noting that he had referred the matter to our office for review and that he would write Hogan directly after receiving our assessment. The FCC is an independent regulatory agency and accordingly we must advise Hogan that the President cannot interfere in its affairs. I do not know if there is any agency within the Executive branch that can assist Hogan, although we should alert Verstandig to that possibility and suggest that his office pursue it. A draft memorandum for Verstandig is attached for your review and signature. You will note that the memorandum suggests that you respond to Hogan on the FCC matter directly, and refer her letter to the FCC. The question of relations between the White House and independent agencies should be handled exclusively by our office, to avoid potential confusion. Our letter to Hogan can advise that we have sent her letter back to Verstandig for further consideration.

Attachment

THE WHITE HOUSE

WASHINGTON

May 3, 1984

MEMORANDUM FOR BRUCE FEIN
GENERAL COUNSEL
FEDERAL COMMUNICATIONS COMMISSION

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Request for Assistance in Obtaining FCC Review of Television Interference Due to Use of High-Powered CB Radios

Attached are copies of a letter to the President from Mary L. Hogan, a member of the city council of Thomaston, Georgia, and my reply. As my reply makes clear, this correspondence is referred to you for your information and whatever action you consider appropriate. The White House is not, of course, attempting to interfere in any way with the activities of the Commission, and no response to this office is needed or desired.

Attachments

FFF:JGR:aea 5/3/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

May 3, 1984

MEMORANDUM FOR LEE L. VERSTANDIG
ASSISTANT TO THE PRESIDENT
FOR INTERGOVERNMENTAL AFFAIRS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Request for Assistance in Obtaining FCC Review of Television Interference Due to Use of High-Powered CB Radios

You have asked for our guidance concerning a February 22, 1984 letter to the President from Mary L. Hogan, a member of the city council of Thomaston, Georgia. In her letter Ms. Hogan requested help from the President in obtaining assistance from the Federal Communications Commission (FCC) in investigating a television interference problem affecting a section of Thomaston. You sent an interim reply to Ms. Hogan on April 23, noting that you would respond further to her after receiving an assessment from this office.

The FCC is an independent regulatory agency. In order to preserve public confidence in the impartial administration of our laws, neither the President nor members of the White House staff attempt to influence the Commission's activities with respect to private parties coming before it. This policy extends to the investigative as well as deliberate activities of the FCC. Accordingly, we cannot grant Ms. Hogan's request that the President help obtain FCC review of the interference problem in Thomaston.

The normal practice in cases such as this is for the Counsel's Office to respond directly to the correspondent, advise the correspondent of the policy, and refer the incoming to the General Counsel of the FCC for whatever review or action the FCC considers appropriate. We make clear in the referral that we are not seeking to influence the Commission in any way, and the General Counsel of the FCC is aware of this. This approach implements the policy discussed above, but also serves to present the correspondent's concerns to the agency with authority to act upon them, as it sees fit.

In light of the sensitive nature of contacts between the White House and independent regulatory agencies, it is important that such referrals be from the White House Counsel's Office to the general counsel of the pertinent

agency. Your interim reply to Ms. Hogan indicated that you would respond directly to her after receiving our assessment. This would be cumbersome for two reasons: First, we include a copy of our reply to the correspondent with our referral to the FCC, so it is clear to the FCC that we have advised the correspondent that we cannot interfere. Second, your office may want to consider if there are agencies other than the FCC, within the Executive Branch, that could be of assistance to Ms. Hogan. There would be no reason to share any such discussion of these possibilities in a reply to Hogan with the FCC.

Accordingly, I recommend that I send the attached reply to Hogan and referral to the FCC, disposing of her request that the President help obtain assistance from the FCC. My reply to Hogan notes that I have returned her correspondence to you in order that your office may consider whether there are any sources of assistance other than the FCC.

If you agree, I will send the letter and memorandum.

Attachments

FFF:JGR:aea 5/3/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

May 3, 1984

Dear Ms. Hogan:

Assistant to the President Lee L. Verstandig has referred your letter to the President to me for review. In that letter you requested that the President help you obtain assistance from the Federal Communications Commission (FCC) with respect to a television interference problem in Thomaston, Georgia.

I must advise you that the FCC is an independent regulatory agency. In order to preserve public confidence in the impartial administration of our laws, neither the President nor members of the White House staff attempt to influence the Commission's activities with respect to private parties coming before it. This policy extends to the investigative as well as deliberate activities of the FCC. Accordingly, we cannot grant your request that the President help obtain FCC review of the television interference problem in Thomaston.

I have, however, taken the liberty of referring your correspondence to the FCC General Counsel, for whatever review and action the FCC deems appropriate. I have also returned your correspondence to Mr. Verstandig's office, in order that they may consider whether there is any other agency, within the Executive Branch, that might be of assistance to you.

Thank you for sharing your concerns with us.

Sincerely,

Fred F. Fielding
Counsel to the President

Ms. Mary L. Hogan
601 Peachtree Drive
Thomaston, Georgia 30286

FFF:JGR:aea 5/3/84
bcc: FFFielding/JGRoberts/Subj/chron

THE WHITE HOUSE

WASHINGTON

May 4, 1984

MEMORANDUM FOR D. LOWELL JENSEN
ACTING DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Letter From [redacted] Requesting Help in Obtaining a Transfer for [redacted] From the Marshal's Office in [redacted] b6

The attached correspondence to Assistant to the President Richard Darman from [redacted] requesting a transfer for [redacted] is submitted for whatever review and direct reply you consider appropriate. We have not responded to [redacted] Many thanks. b6

Attachment

THE WHITE HOUSE

WASHINGTON

May 4, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Draft OMB Statement Concerning Legislative Veto

OMB has asked for our views by 3:00 p.m. May 4 on testimony Chris DeMuth proposes to deliver on May 10 before the House Rules Committee on legislative veto. The testimony considers the various omnibus responses that have been proposed to INS v. Chadha. Those proposals generally either require all rules to be submitted to Congress for a 90-day period before going into effect, providing an opportunity for Congress to pass a law disapproving them, or require Congress to pass a law affirmatively approving all "major" rules before they may go into effect. DeMuth notes that the Administration has not yet taken a position on the various proposals, and states that this reticence should not be taken to suggest the Administration will ultimately support any such proposal.

The remainder of DeMuth's testimony discusses in a general way the various concerns surrounding the post-Chadha debate. DeMuth touches upon the problem of the political accountability of agencies, the shift of policymaking to courts exercising expansive review of agency decisions, and the various constitutional means by which Congress can influence agencies (oversight hearings, informal dialogue, the confirmation process, etc.). He also discusses the ways in which either omnibus approach to overturning Chadha would have practical effects significantly different from the legislative veto scheme in place before Chadha.

At several points in his broad-ranging discussion, DeMuth directly contradicts previous Administration positions on the Chadha issue. In the carryover paragraph between pages 4 and 5, DeMuth notes that expansive judicial review of the regulatory process has led to a migration of policy-making to an unelected judiciary. DeMuth states: "This is not, as is often supposed, the result of the growth of 'activist' judicial doctrines among modern judges; rather it is a direct corollary of the increasing economic importance of regulatory law." The Attorney General and numerous other Justice Department officials are, however, among those who have "supposed" and indeed argued publicly that the shift of

policymaking to the judiciary in the regulatory area is at least partly the result of the activist jurisprudence embraced by many judges. DeMuth can make his point by saying the problem is partly the result of an activist judiciary but also caused by the increasing economic importance of regulatory law.

On page 6, lines 21-22, DeMuth refers to executive orders requiring agencies to consider the costs and benefits of rules and to "consult with members of the President's immediate office" before issuing them. The executive orders referred to by DeMuth, such as E.O. 12291, however, require consultation with OMB, which is generally not considered part of "the President's immediate office." I would change "members of the President's immediate office" to "the Office of Management and Budget."

On page 8, lines 16-20, DeMuth dismisses as "vain" the hope expressed by "many observers" that Congress will respond to Chadha by drafting better laws confronting policy choices rather than shunting them to agencies and the courts. The observers faulted by DeMuth include you and the Attorney General. In his press release on the day the Chadha decision was announced, the Attorney General stated that its longterm effect "will be a better and more effective Congress as well as a more effective Presidency." The Attorney General made the same point in his subsequent op-ed piece for the New York Times. On the day after the Chadha decision you circulated to the Senior Staff a memorandum stating "the Chadha decision will promote better government by forcing Congress to draft statutes more clearly and narrowly" -- the precise point rejected by DeMuth. Guidance provided the Press Office by our office made the same argument. Quite apart from this "precedent," I happen to believe the argument DeMuth rejects is in fact sound. Acts of Congress will not suddenly become paragons of precision, but Congress will be forced to be more circumspect in delegating authority, since it will not have a "second bite" at agency action through a legislative veto. Again, DeMuth can make his point that the nature of the modern Federal Government makes it difficult for Congress to write precise laws without completely rejecting the argument that Chadha will force Congress to be at least somewhat more responsible.

On page 10, lines 14-15, DeMuth states that "Presidents accepted [legislative vetoes] to induce broader grants of authority from Congress." Every President presented with the question, however, has opposed legislative vetoes as unconstitutional. By signing bills with legislative vetoes,

Presidents have not "accepted" them in any legal sense. This point was explicitly recognized in the Chadha opinion itself, slip op. at 21, n. 13. The sentence should be deleted.

Attachment

THE WHITE HOUSE

WASHINGTON

May 4, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft OMB Statement
Concerning Legislative Veto

Counsel's Office has reviewed the above-referenced draft testimony. In the carryover paragraph between pages 4 and 5, the testimony dismisses the supposition that the shift of policymaking authority in the regulatory area to the judiciary is due to judicial activism. The argument that such activism is in fact at least one cause of this shift has been advanced publicly on numerous occasions by Justice Department officials, most prominently the Attorney General, and the testimony should not undermine this position. I would change the carryover sentence to read as follows: "This is not only the result of judicial activism but also a consequence of the increasing economic importance of regulatory law."

On page 6, lines 21-22, "members of the President's immediate office" should be changed to "the Office of Management and Budget." The phrase "the President's immediate office" is imprecise and would generally suggest something other than OMB.

On page 8, lines 16-20, the proposed testimony dismisses as "vain" the hopes that Chadha will compel Congress to act more responsibly in drafting laws. Again, this is inconsistent with previous Administration statements that made the precise point that is rejected. Furthermore, I do not consider it accurate to dismiss the hope as unfounded. It is entirely reasonable to suppose -- certainly to hope -- that Congress will be more circumspect in delegating lawmaking authority now that it will not have a ready opportunity to review agency action in specific cases. This paragraph should be rewritten to make its point without altogether dismissing the argument that, as the Attorney General stated in his press release the day Chadha was decided, the long-term effect of the decision "will be a better and more effective Congress as well as a more effective Presidency."

The sentence on page 10, lines 14-15, should be deleted. Presidents have not accepted legislative vetoes; all 11 that have addressed the issue have expressed the view that they are unconstitutional. As the Chadha opinion itself makes clear, Presidents have not "accepted" legislative vetoes in any legal sense simply by signing bills that contain them.

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