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THE WHITE HOUSE

WASHINGTON

June 1, 1984

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: S. 905

As we discussed. I only became aware of this today, and then only because Ed raised it. The last information I had on this subject was from Mr. Fielding, who indicated that discussions were proceeding with Senator Hatfield. Wright's letter is counter-productive; the bill we are likely to get will be an unmitigated disaster. It will be small comfort to me when the Administration is confronted with a major constitutional crisis over this bill in the second term to be able to say I told you so.

THE WHITE HOUSE

WASHINGTON

June 1, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Correspondence From Strom Thurmond
Requesting Opportunity for a Constituent
to Present a Painting to the President

Pam Turner has asked if we have any objection to a proposed gift to the President of a painting entitled "Memories." Senator Thurmond has indicated that the artist, a South Carolinian, would like to present his creation to the President. Turner states that she would be happy to consider the presentation for Congressional Hour, but is concerned because the painting depicts a commercial product -- a can of Calumet baking powder.

I see no problem with the President accepting the painting. The painting hardly constitutes a commercial endorsement of Calumet baking powder, any more than Andy Warhol's Campbell's soup cans did of Campbell's soup. The can is depicted not because of the attributes of Calumet baking powder but because the can, at least to the artist, evokes a bit of Americana.

Turner asked us only for our views on the possible commercial endorsement problem; I did not get the impression that a final decision had been reached on whether the painting will be presented to the President. Accordingly, it is not necessary at this time to prepare the forms for donation of the painting to the Ronald Reagan library. The attached proposed memorandum for Turner notes that we do not object to a possible presentation of the painting because it includes a depiction of a commercial product.

Attachment

THE WHITE HOUSE

WASHINGTON

June 1, 1984

MEMORANDUM FOR PAMELA J. TURNER
DEPUTY ASSISTANT TO THE PRESIDENT
FOR LEGISLATIVE AFFAIRS (SENATE)

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence From Strom Thurmond
Requesting Opportunity for a Constituent
to Present a Painting to the President

You have asked if this office has any objections to the presentation to the President of a painting containing a depiction of a commercial product. Specifically, you indicated that you were considering a proposal that South Carolina artist Jim Harrison present his work "Memories" to the President. "Memories" depicts an arrangement of daisies in a can of Calumet baking powder.

We have no objection to the possible presentation on the ground that it could be construed as a commercial endorsement of Calumet baking powder. The can is depicted in the painting as a bit of Americana and not because of the attributes of Calumet baking powder. The President's receipt of the painting -- presumably for the Presidential library -- could not reasonably be considered a commercial endorsement of Calumet. Accordingly, you are free to consider the presentation as a possibility for Congressional Hour.

Thank you for raising this matter with us.

FFF:JGR:aea 6/1/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 11, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

USTR Recommendations: (1) Two Consent Orders Issued by USITC Regarding Certain Poultry Cut Up Machines (2) Cease and Desist Order Issued by USITC Regarding Certain Wooden Handle Kitchen Utensils

Richard Darman has asked for comments on the above-referenced items by noon today. The U.S. International Trade Commission (ITC) is authorized to investigate and take action with respect to unfair import trade practices by 19 U.S.C. § 1337. Pursuant to 19 U.S.C. § 1337(g), if the ITC determines that there has been a violation of the statute, it must refer its determination to the President. The President has sixty days to review the ITC decision, and may disapprove it "for policy reasons," expressly approve it prior to the end of the sixty-day period, or simply take no action. If the President takes no action the ITC order will take effect on the sixty-first day.

The ITC has referred two separate orders to the President for review under 19 U.S.C. § 1337(g). The orders have been reviewed by the Trade Policy Committee, consisting of representatives of USTR, CEA, Agriculture, Commerce, Defense, Energy, Interior, Justice, Labor, State, Transportation, and Treasury. The attached memoranda from Ambassador Brock forwards the unanimous recommendations of the Trade Policy Committee that the President take no action with respect to either of the ITC orders, thereby permitting them to become effective on the sixty-first day (June 13).

In the first matter the ITC issued two consent orders in which respondents admitted that the poultry cut up machines they imported violated patents and common law trademarks held by the complainant. The respondents agreed not to sell the infringing machines in the United States for the life of the patents and not to sell any machines violating the common law trademark for 20 years; the complainant in turn released respondents from all commercial liability. I see no reason to disagree with the recommendation of the Trade Policy Committee that the President take no action with respect to these orders, thereby permitting them to go into effect.

In the second matter the ITC issued a cease and desist order against an importer of wooden handle kitchen utensils and gadgets, after determining that the importer had violated an earlier ITC consent order. The consent order required the importer to seek ITC staff clearance of certain of its items before selling them in the United States. The importer disregarded this requirement of the consent order, and complainant brought an enforcement action before the ITC.

The ITC determined that the importer's product did not infringe the complainant's trademark, but the ITC nonetheless imposed a penalty because the importer violated the prophylactic consent order. Accordingly, the ITC issued an order prohibiting the importer from selling the items in question, even though they did not in fact infringe the complainant's trademark.

As Brock's memorandum notes, the ITC order raises legal issues of first impression concerning the authority of the ITC to take action in the absence of a finding of a violation of 19 U.S.C. § 1337. Certainly the ITC should be permitted to enforce its consent orders; the question is whether the ITC may issue such orders in the first place. The statute does not specifically sanction this procedure, and expressly authorizes action by the ITC only on the basis of a violation of 19 U.S.C. § 1337. Indeed, 19 U.S.C. § 1337(g), the provision requiring Presidential review, is triggered by an ITC determination "that there is a violation of this section, or that...there is reason to believe that there is such a violation." Again, the ITC determined that there was no violation of 19 U.S.C. § 1337 in this case, only a violation of its previous consent order.

I agree with Brock that there is no reason for the President to decide this issue. The President is authorized to disapprove ITC orders "for policy reasons," and the Trade Policy Committee has discerned no policy reason for blocking this order. The importer may appeal to the U.S. Court of Appeals for the Federal Circuit for review of the close legal question of the ITC's authority to block the sale of products in the absence of a finding of a violation of 19 U.S.C. § 1337. Brock has cautioned the ITC that any decision in this case should not be viewed as a blanket endorsement of any action the ITC may take to enforce a consent order.

Attachment

THE WHITE HOUSE

WASHINGTON

June 11, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: USTR Recommendations: (1) Two Consent
Orders Issued by USITC Regarding Certain
Poultry Cut Up Machines (2) Cease and
Desist Order Issued by USITC Regarding
Certain Wooden Handle Kitchen Utensils

Counsel's Office has reviewed the recommendations of the United States Trade Representative concerning the above-referenced orders issued by the U.S. International Trade Commission (ITC). I have no objection to the recommendation that the President take no action in either case, thereby permitting the orders to become effective on June 13. The order in Certain Wooden Handle Kitchen Utensils and Gadgets raises difficult legal questions concerning the authority of the ITC, but I agree that it is not necessary for these issues to be resolved at this time in the course of the President's review pursuant to 19 U.S.C. § 1337(g).

FFF:JGR:aea 6/11/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 11, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

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

SUBJECT: Draft DOJ Report on S. 385, a Bill
to Provide Greater Discretion to the
Supreme Court in the Selection of
Cases for Review

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

THE WHITE HOUSE

WASHINGTON

June 12, 1984

MEMORANDUM FOR JOHN S. HERRINGTON
ASSISTANT TO THE PRESIDENT
FOR PRESIDENTIAL PERSONNEL

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Appointment of Enrico Mihich to the
National Cancer Advisory Board

Counsel's Office has reviewed the Personal Data Statement submitted by Dr. Enrico Mihich in connection with his prospective appointment to the National Cancer Advisory Board. I reviewed the requirements for appointees to this Board in my memorandum for you of April 17, 1984 (copy attached). Dr. Mihich is replacing Irving J. Selikoff on the Board, and in my memorandum I advised you that whomever was chosen to replace Dr. Selikoff must be "knowledgeable in environmental carcinogenesis." See 42 U.S.C. § 286b(a)(1). Our office is of course not qualified to determine who is or is not "knowledgeable in environmental carcinogenesis." Assuming that your office confirms that Dr. Mihich meets this requirement, we have no objection to proceeding with his appointment.

FFF:JGR:aea 6/12/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 12, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Civil Aeronautics Board Decision
in El Al Israel Airlines Limited

Richard Darman's office has asked for comments by close of business June 15 on the above-referenced CAB decision, which was 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 this case, by July 8).

The order here has 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 this order involves a foreign carrier, the proposed letter from the President to the CAB Chairman prepared by OMB does not include the standard sentence designed to preserve availability of judicial review.

This order expands El Al's authority, permitting it to add Chicago, Miami, Boston, and Los Angeles to its routes, and to add Montreal as an intermediary point and Mexico City as a beyond point. OMB describes this order as "a routine, noncontroversial matter."

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

Attachment

THE WHITE HOUSE

WASHINGTON

June 12, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision
in El Al Israel Airlines Limited

Our office has reviewed the above-referenced CAB decision 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 this order or to the substance of the letter from the President to the CAB Chairman prepared by OMB.

FFF:JGR:aea 6/12/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 12, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: President's Article on the Presidency
for National Forum Issue on the
Bicentennial of the Constitution

Attached is a draft of the President's article on the Presidency for the issue of National Forum dedicated to the bicentennial of the Constitution. The article was supposed to be written at a level understandable to secondary school students. The attached draft slightly exceeds the length limits established by the editors, so suggested deletions will be more welcome than suggested additions.

I do not consider it necessary to do anything in the way of "staffing" other than having the Research Office do the same sort of accuracy check it does for addresses. The elements of the article concerning current Administration proposals and positions -- the regulatory reform, foreign policy, and line-item veto discussions -- are taken from previous statements by the President. I think we should share the draft with the editors as soon as you are comfortable with it, rather than waiting for the completion of whatever further staffing you consider appropriate.

Attachment

THE WHITE HOUSE

WASHINGTON

June 12, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: President's Article on the Presidency
for National Forum Issue on the
Bicentennial of the Constitution

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Attachment

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THE WHITE HOUSE

WASHINGTON

June 13, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: U.S. International Trade Commission
Determination Regarding Certain Coin-
Operated Audiovisual Games

Richard Darman has asked for comments on the above-referenced item by close of business today. The U.S. International Trade Commission (ITC) originally determined that an importer of coin-operated audio-visual games was not guilty of unfair import trade practices when it imported games that infringed the complainant's trademark because there was no established domestic industry. The Court of Appeals for the Federal Circuit reversed this determination, and the ITC has now ordered the exclusion of the infringing games.

Pursuant to 19 U.S.C. § 1337(g), the President has sixty days to review the ITC order. The President may disapprove the order "for policy reasons," may expressly approve it prior to the expiration of the sixty-day period, or may do nothing, in which case the order becomes effective on the sixty-first day. The Trade Policy Committee, with representatives of USTR, Agriculture, Commerce, Interior, Justice, Labor, State, Treasury, and CEA has reviewed the instant order and unanimously recommended that the President take no action, permitting the order to become effective on the sixty-first day, June 19. Ambassador Brock notes in his memorandum for the President that competition in this market is fierce and will not be noticeably diminished by the ITC exclusion order. Brock also notes that the order is not inconsistent with our international trade obligations. I have no legal objections and see no reason to disagree with the unanimous recommendation of the Trade Policy Committee.

Attachment

THE WHITE HOUSE

WASHINGTON

June 13, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: U.S. International Trade Commission
Determination Regarding Certain Coin-
Operated Audiovisual Games

Counsel's Office has reviewed the recommendation of the United States Trade Representative concerning the above-referenced item, and finds no objection to it from a legal perspective.

FFF:JGR:aea 6/13/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 13, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Resolution S.J. Res. 296
Baltic Freedom Day

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

FFF:JGR:aea 6/13/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 13, 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 -- Baltic Freedom Day

Counsel's Office has reviewed the above-referenced draft proclamation. I recommend deleting "and self-respect" in the first line of the third paragraph. One cannot demand self-respect; it is a quality one gives to one's self -- others are quite incapable of responding to any such demand.

FFF:JGR:aea 6/13/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 13, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Request Through Congressman Wylie for
the President to Sign Posters From State
Convention of Ohio Viet-Nam Veterans

David Wright, at the behest of Congressman Wylie (R-Ohio), has renewed a request by Michael Hurwitz of Columbus that the President sign three posters used at the Ohio convention of the Vietnam Veterans Association. One poster would be presented to the Ohio office of the association, one would be kept for Hurwitz's private collection, and one would be sold to raise funds to erect a monument for those who served in Vietnam. According to Wright, our office turned down this request last year, although Central Files has no record of the matter. Wright asks that if we turn down the request again we simply advise him of the reasons so that he can advise Congressman Wylie and Hurwitz.

The apparent decision last year not to approve the signing of the posters was correct, and should not be departed from this year. Quite apart from principles of stare decisis, signing of the posters would contravene White House policy generally prohibiting endorsement of specific charitable fundraising projects. There is also considerable controversy surrounding the claim of the Vietnam Veterans Association to represent Vietnam veterans, and of course there is controversy over the erection of a second monument to those who served in Vietnam.

I recommend advising Wright that we must adhere to our previous decision not to approve the signing of the posters, relying on the fundraising policy and the general inappropriateness of the President signing specific items for memorabilia collections (to cover the other uses proposed by Hurwitz).

Attachment

THE WHITE HOUSE

WASHINGTON

June 13, 1984

MEMORANDUM FOR DAVID L. WRIGHT
SPECIAL ASSISTANT TO THE PRESIDENT
FOR LEGISLATIVE AFFAIRS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Request Through Congressman Wylie for
the President to Sign Posters From State
Convention of Ohio Viet-Nam Veterans

You have submitted for our review a request by Dr. Michael Hurwitz that the President sign three posters used at an Ohio convention of Vietnam veterans. One poster will go to Hurwitz's private collection, another to an office of the Vietnam Veterans Association, and the third will be used in fundraising.

We must adhere to our previous decision not to approve the signing of the posters. The President has found it necessary to adopt a policy of generally not endorsing particular charitable fundraising projects, however laudable the objective of the fundraising may be. This policy is necessary in light of the large number of requests the President receives, and because of the inability of the White House to monitor the activities of particular charitable groups. With respect to the proposed use of the other posters, the President generally does not autograph particular items for private collectors.

Thank you for raising this matter with us.

FFF:JGR:aea 6/13/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 13, 1984

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Appointment of Charles Gentry to the
President's Commission on White House
Fellowships

I have reviewed the Personal Data Statement submitted by Charles Gentry in connection with the above-referenced prospective appointment. The President is authorized to appoint an unspecified number of members to the Commission by Executive Order 11183, as amended. Members must be "outstanding citizens from the fields of public affairs, education, the sciences, the professions, other fields of private endeavor, and the Government service."

Mr. Gentry is an attorney in a Dallas law firm. A former White House fellow who served in the lofty position of Special Assistant to the Attorney General, Mr. Gentry is now the President of the White House Fellows Association and Foundation. He responded to question #15 of the PDS, inquiring if he or any firm with which he has been associated had ever registered as a foreign agent, by answering "Not to my knowledge." In light of the criminal prohibition against concurrent service as an officer of the United States and a registered foreign agent, I advised Mr. Gentry that his answer was not sufficient and that he must make inquiries at his law firm to ensure that he was not covered by a partnership registration. Gentry did so and now advises that neither his firm nor any member of it is registered as a foreign agent. There is nothing else revealed on the PDS that raises any questions concerning Mr. Gentry's prospective service on the Commission, and I have no objection to his appointment.

THE WHITE HOUSE

WASHINGTON

June 14, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Enrolled Resolution S.J. Res. 285
Harmon Killebrew Day and Accompanying
Draft Proclamation

We have been asked for our comments as soon as possible on the enrolled resolution designating yesterday "Harmon Killebrew Day," and the draft proclamation called for by the resolution. Killebrew, who began his career with the Washington Senators, will be inducted into the Hall of Fame this August. It strikes me as unusual to single out Killebrew for such special treatment, but Congress passed the resolution by voice vote and of course we should sign it. OMB recommends approval.

The draft proclamation, approved by OMB, reviews Killebrew's accomplishments, recognizes "the other baseball immortals enshrined in Cooperstown," and quotes some general musings from Justice Blackmun on baseball. The quotation of Blackmun is appropriate. Whatever his virtues as a jurist, Blackmun is one of the greatest fans of the game. I have no objection to the draft proclamation.

Attachment

THE WHITE HOUSE

WASHINGTON

June 14, 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/Harmon Killebrew Day

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

FFF:JGR:aea 6/14/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 14, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Resolution S.J. Res. 285
Harmon Killebrew Day

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

FFF:JGR:aea 6/14/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 14, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Inquiry From Assistant Attorney General
Robert McConnell on Line-Item Veto Issue

Bob McConnell has sent identical memoranda to B. Oglesby and you, asking why the White House has resisted the Justice Department proposal to support legislation giving the President the power not to spend particular items of appropriation. A statute according the President such power would achieve the same result as a line-item veto: if the President were to decide not to spend a particular item, Congress could pass a law requiring him to do so. The President could then veto that specific bill, and Congress could then try to override the veto.

Justice suggested this approach in a letter it sent for clearance to OMB on January 12, 1984 (Tab A). The letter presented the Department's views on S.J. Res. 178, a proposed constitutional amendment granting line-item veto power, and S. 1921, a statute purporting to do the same directly. The proposed report concluded that S. 1921 would be unconstitutional, that a constitutional amendment would be difficult to achieve, and that a third approach -- that outlined above -- was superior. In our comments to OMB on the Justice report (Tab B), we agreed with OMB that it should not be cleared "at this point" in light of the plan for the President to request line-item veto authority in the State of the Union Address. We recommended that the report be returned to Justice for revision in light of that address.

Meanwhile, we took prompt action to ensure that those working on the address were fully aware of the Justice proposal. At your request, I prepared and you sent a memorandum to Deaver, Darman, and Elliott agreeing with the Justice recommendation and attaching suggested language outlining the Justice option (Tab C). Deaver, Darman, and Elliott did not adopt our suggested language. The State of the Union Address simply noted that the grant of line-item veto power "would be most effective if done by constitutional amendment," language which does not preclude support for Justice's option.

I recommend a memorandum to Oglesby, agreeing with McConnell that the Administration should support the Justice option. There is no inconsistency with doing so and simultaneously seeking a constitutional amendment. As we recommended back in January, however, the proposed Justice report on S.J. Res. 178 and S. 1921 will have to be revised in light of the State of the Union Address. The revision would simply involve a recognition that a constitutional amendment would be the "most effective" approach, although the report could go on to support the Justice option as desirable if a constitutional amendment is not feasible, or as an interim approach during the lengthy amendment process.

Attachment

THE WHITE HOUSE

WASHINGTON

June 14, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Inquiry From Assistant Attorney General
Robert McConnell on Line-Item Veto Issue

Assistant Attorney General Robert A. McConnell has inquired concerning apparent reluctance at the White House to support a suggestion by the Justice Department that would go far to according the President line-item veto authority, without the necessity of a constitutional amendment. On January 12, 1984, Justice sought OMB clearance of a draft report on S.J. Res. 178, a proposed constitutional amendment granting line-item veto authority to the President, and S. 1921, a bill purporting to do the same. The Justice report concluded that the bill would be unconstitutional, and that it would be difficult to obtain the constitutional amendment. The Justice report suggested a third alternative -- a bill authorizing the President to refuse to spend all or part of an individual item of appropriation -- that would closely approximate a line-item veto in practice.

On January 23, 1984, I sent a memorandum to Messrs. Deaver, Darman, and Elliott, recommending support for the Justice alternative, and proposing language to be included in the State of the Union address outlining the Justice approach. At the same time I advised OMB that the proposed Justice report should be returned to Justice for final revision in light of the final text of the State of the Union Address. As delivered, the State of the Union Address noted that the grant of veto power "would be most effective if done by a constitutional amendment." This language in no way forecloses support for the Justice option either as an interim approach pending adoption of a constitutional amendment, or an alternative if such an amendment is considered not feasible. I have no legal objection to support for the Justice option.

cc: Robert A. McConnell
Assistant Attorney General

FFF:JGR:aea 6/14/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 14, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Radio Talk: Father's Day

Richard Darman has asked that comments on the above-referenced draft remarks be sent directly to Ben Elliott by 5:00 p.m. today. The remarks focus on family values, and discuss the strain imposed on families by the deterioration of the economy before 1980 and the reversal of that deterioration by our economic policies. The remarks also review several child protection initiatives, including the Child Protection Act of 1984 and opening of the National Center for Missing and Exploited Children.

On page 3, lines 20-22, the remarks state "We're trying hard to make two other changes: We want to see fewer abandoned, handicapped, or underprivileged children warehoused in foster care." Many foster parents provide loving care in their homes to children, and I object to the use of the term "warehoused" to describe all foster care. I suggest changing "warehoused in foster care" to "warehoused in institutions."

In the carryover paragraph between pages 3 and 4, I really wonder whether "our policies" have had much to do with the fact that "out-of-wedlock birth rates are beginning to slow." I suggest at least questioning the causal connection in the memorandum for Elliott.

Attachment

THE WHITE HOUSE

WASHINGTON

June 14, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Radio Talk: Father's Day

Counsel's Office has reviewed the above-referenced draft remarks. On page 3, line 22, we suggest changing "warehoused in foster care" to "warehoused in institutions." Many foster parents provide loving care in their own homes to foster children, and the present language of the remarks belittles their contributions. With respect to the carryover paragraph between pages 3 and 4, I do not see the causal connection between "our policies" and the fact that "out-of-wedlock birth rates are beginning to slow." It strikes me as very problematic whether a connection exists, and such a dubious claim detracts from the more valid claims, such as those concerning family income and the crime rate.

FFF:JGR:aea 6/14/84
cc: FFFielding/JGRoberts/Subj/chron

THE WHITE HOUSE

WASHINGTON

June 14, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: PPSSCC Foundation Logo

Craig Fuller has raised concerns about the logo used by J. Peter Grace's Foundation for The President's Private Sector Survey on Cost Control, Inc. The Foundation, a 501(c)(3) organization, was founded by Grace to monitor implementation of the report of the PPSSCC to the President. The logo consists of the same depiction of the White House that appeared on the PPSSCC report, over the name of the Foundation.

I agree with Fuller that the name of the Foundation and the use of the White House on the letterhead convey the false impression that the White House endorses the activities of the Foundation. This is particularly unfortunate since one of the first uses of the offending letterhead was on a fundraising letter soliciting contributions for the Foundation. The text made no distinction between the Foundation for the PPSSCC and the PPSSCC itself, and in fact was signed by Grace as "Chairman, PPSSCC." Checks are even to be made payable "to PPSSCC."

I think we must advise Grace to cease using a depiction of the White House on Foundation stationery, and to either change the name of the Foundation or include a disclaimer on the stationery noting that the Foundation has no connection with the Government. A draft letter to Grace is attached; in light of Grace's close ties to the Administration you may want to consider telephoning him or suggesting that someone else in the Administration do so.

Attachment

THE WHITE HOUSE

WASHINGTON

June 14, 1984

Dear Mr. Grace:

The activities of the Foundation for the President's Private Sector Survey on Cost Control, Inc., have recently come to my attention. While I think the Foundation represents a highly laudable effort to expand the campaign against waste in the Federal Government, I must advise you that the Foundation's name and letterhead raise serious concerns.

The White House adheres to a policy of not approving any private use of a depiction of the White House in a manner that suggests or could be construed as an endorsement by the President or the White House of the activities of the private entity. The prominent depiction of the White House on the Foundation letterhead could readily be construed as an endorsement of the Foundation by the President or the White House, and accordingly contravenes established White House policy.

Furthermore, the very name of the Foundation readily suggests an affiliation of some sort with the President's Private Sector Survey on Cost Control, which you so ably chaired. That organization, however, was a formal Presidential advisory committee, which completed its work with the presentation of its thorough report to the President. There is, in my view, a clear danger that recipients of material from the Foundation will be led to believe that the Foundation also has some official status or association with the President.

The President has, of course, expressed his admiration and appreciation for the work of the President's Private Sector Survey on Cost Control, and your contributions in particular, and it is the goal of the Foundation to promote the work of the President's Private Sector Survey on Cost Control. We cannot, however, permit a private organization such as the Foundation to convey, however inadvertently, the false impression of Presidential involvement in its activities. In particular, we cannot permit such an impression to be conveyed in connection with fundraising activities.

In light of the foregoing concerns I am compelled to request that the Foundation change its letterhead. There should be no depiction of the White House on the revised stationery. If the Foundation retains its current name, a brief disclaimer to the effect that the Foundation is a private

organization not affiliated with any government organization must appear on the stationery. I hope you will understand the reasons we must request that this action be taken, and also that the adherence to established White House policy in this instance is in no sense an adverse reflection on you or the Foundation.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. J. Peter Grace
1511 K Street, N.W.
Suite 643
Washington, D.C. 20005

FFF:JGR:aea 6/14/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 15, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Inquiry From Assistant Attorney General
Robert McConnell on Line-Item Veto Issue

Assistant Attorney General Robert A. McConnell has inquired of both of us concerning an apparent reluctance at the White House to support a suggestion by the Justice Department that would go far to according the President line-item veto authority, without the necessity of a constitutional amendment. On January 12, 1984, Justice sought OMB clearance of a draft report on S.J. Res. 178, a proposed constitutional amendment granting line-item veto authority to the President, and S. 1921, a bill purporting to do the same. The Justice report concluded that the bill would be unconstitutional, and that it would be difficult to obtain the constitutional amendment. The Justice report suggested a third alternative -- a bill authorizing the President to refuse to spend all or part of an individual item of appropriation -- that would closely approximate a line-item veto in practice.

On January 23, 1984, I sent a memorandum to Messrs. Deaver, Darman, and Elliott, recommending support for the Justice alternative, and proposing language to be included in the State of the Union address outlining the Justice approach. At the same time I advised OMB that the proposed Justice report should be returned to Justice for final revision in light of the final text of the State of the Union Address. As delivered, the State of the Union Address noted that the grant of veto power "would be most effective if done by a constitutional amendment." This language in no way fore-closes support for the Justice option either as an interim approach pending adoption of a constitutional amendment, or an alternative if such an amendment is considered not feasible. I have no legal objection to support for the Justice option.

If you concur, with whatever internal clearances you suggest, I will so advise Justice. Please advise.

Thank you.


FFF:JGR:aea 6/15/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 15, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Presidential Message Requested
by the Chief Justice

As you know, the Chief has asked the President to send a brief message to the National Conference on Factories with Fences, co-sponsored by the George Washington University and the Brookings Institution. The conference, which will take place on Monday, June 18, will discuss the Chief's principal project, promoting prison industries. I have expanded a bit on the draft message prepared by the Department of Justice; Justice has no objection to my revisions. (Lowell Jensen and Norman Carlson from the Department are participating in the conference.)

I have alerted the Office of Presidential Messages to the imminence of our request for this message. Jack Wells, who is in charge of that office in Dodie Livingston's absence, advised that a request from you for the message, along with the draft language, should be submitted as soon as possible.

Attachment

THE WHITE HOUSE

WASHINGTON

June 15, 1984

MEMORANDUM FOR JACK WELLS
DEPUTY DIRECTOR, OFFICE OF SPECIAL
PRESIDENTIAL MESSAGES

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Request for Presidential Message

On Monday, June 18, The George Washington University and the Brookings Institution will host a national conference on "Factories with Fences: The Prison Industries Approach to Correctional Dilemmas." The conference will discuss a leading project of the Chief Justice, who will deliver the keynote address. The Chief has requested a brief message from the President to the conference hosts, and I agree that such a message would be wholly appropriate and desirable. A draft that has the approval of the Department of Justice and this office is attached. The message should be addressed to Dr. Lloyd H. Elliott, President of The George Washington University, and Bruce K. MacLaury, President of The Brookings Institution, and should be received by them prior to the opening of the conference Monday morning -- preferably today. A copy of the conference program is attached for your further information.

Many thanks for your attention to this request on such short notice.

FFF:JGR:aea 6/15/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

Let me extend my congratulations to you for hosting the National Conference on "Factories With Fences" at The George Washington University.

The critical task you have undertaken is especially important today as we attempt to find new ways of reducing inmate idleness in our nation's prisons. Solutions to these complex problems will require the combined efforts of the private sector and government at all levels.

You have my best wishes for success in this important work.

THE WHITE HOUSE

WASHINGTON

June 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Korean Airlines' Refusal to Sign a Purchase Order With McDonnell Douglas for 6 MD-80s Unless Given Route Rights

Dan McKinnon, Chairman of the Civil Aeronautics Board, has sent identical letters to Mr. Baker and Mr. Deaver, concerning a pending dispute involving Korean Air Lines (KAL). According to McKinnon, the Carter Administration foolishly agreed in 1980 to give KAL route rights to Oakland and Chicago in exchange for a Korean agreement to provide certain cargo facilities by March 1981. Korea has not yet built the facilities, and the United States -- or at least some elements in the Government -- are attempting to rescind the route commitment. KAL, in response, has threatened not to purchase six aircraft it has ordered from McDonnell Douglas unless it gets the routes in question.

In his letter and accompanying briefing paper, McKinnon contends that aircraft sales should never be allowed to be a factor in route cases, and that the United States should avail itself of the opportunity -- presented by Korea's default on the 1980 agreement -- to get out from under a misguided "give away" of valuable routes to KAL. He indicates that this is the position of the CAB, Defense, Transportation, and the Economic Bureau at State, as well as, not surprisingly, KAL's competitors (Flying Tigers and Northwest). McDonnell Douglas, USTR, and the East Asian Bureau at State support KAL.

I contacted Matt Scocozza, Assistant Secretary of Transportation for Policy, for more information on the dispute. Scocozza is heading up the Administration handling of the matter. Scocozza noted that McKinnon's views were widely known to those reviewing the dispute. He recommended that the White House simply thank McKinnon for sharing those views, refer the letters to Transportation, and not otherwise become involved. According to Scocozza, further negotiations with the Koreans are scheduled for September. The matter is not at this point -- and may never be -- a section 801 case submitted for formal Presidential review.

I agree with Scocozza's recommendation. It is somewhat unusual for the head of an independent regulatory agency to send a letter to Presidential aides on a pending matter. I do not consider it necessarily improper, however, since the resolution of the dispute with the Koreans involves executive branch actions and is only partly under the jurisdiction of the CAB. I have attached a draft letter from you to McKinnon, thanking him for his views and advising him that we have referred his correspondence to Transportation. Memoranda to Scocozza, Baker, and Deaver are also attached.

Attachments

THE WHITE HOUSE

WASHINGTON

June 15, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence from Civil Aeronautics Board
Chairman Dan McKinnon on Korean Route Dispute

Attached for your information is a copy of my reply to the letter Chairman Dan McKinnon of the Civil Aeronautics Board wrote you, concerning the pending dispute between the United States and Korea over air route rights. Also attached is a copy of my memorandum to the Department of Transportation, referring McKinnon's letter.

Attachment

cc: Craig L. Fuller
Assistant to the President
for Cabinet Affairs

FFF:JGR:aea 6/15/84

bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 15, 1984

MEMORANDUM FOR MATT SCOCOZZA
ASSISTANT SECRETARY OF TRANSPORTATION
FOR POLICY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence from Civil Aeronautics Board
Chairman Dan McKinnon on Korean Route Dispute

Attached for your information is correspondence from Chairman Dan McKinnon of the Civil Aeronautics Board, concerning a pending dispute between the United States and Korea over air route rights. The correspondence is submitted for whatever review and consideration you deem appropriate. I have written Chairman McKinnon thanking him for his letters, and advising him that I have shared them with the Department of Transportation.

Many thanks.

Attachment

FFF:JGR:aea 5/15/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 15, 1984

MEMORANDUM FOR JAMES W. CICCONI
SPECIAL ASSISTANT TO THE PRESIDENT
SPECIAL ASSISTANT TO THE CHIEF OF STAFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence from Civil Aeronautics Board
Chairman Dan McKinnon on Korean Route Dispute

Attached for your information is a copy of my reply to the letter Chairman Dan McKinnon of the Civil Aeronautics Board wrote to Mr. Baker, concerning the pending dispute between the United States and Korea over air route rights. Also attached is a copy of my memorandum to the Department of Transportation, referring McKinnon's letter.

Attachment

cc: Craig L. Fuller
Assistant to the President
for Cabinet Affairs

FFF:JGR:aea 6/15/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 15, 1984

Dear Chairman McKinnon:

Your recent letters to Messrs. Baker and Deaver concerning the pending dispute between the United States and Korea over air route rights have been referred to me for consideration and direct reply. In those letters and accompanying briefing papers you outlined the facts surrounding the dispute and the various arguments on both sides.

We appreciate having the benefit of your informed views on this matter, and will certainly accord them every appropriate consideration. I have taken the liberty of sharing your views with the Department of Transportation, which, as you know, is deeply involved in the pending dispute. Once again, thank you for advising us of your concerns in this area.

Sincerely,

Fred F. Fielding
Counsel to the President

The Honorable Dan McKinnon
Chairman
Civil Aeronautics Board
Washington, D.C. 20428

FFF:JGR:aea 6/15/84
bcc: FFFielding/JGRoberts/Subj/Chron