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DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	ROBERTS TO FRED FIELDING (PARTIAL)	1	8/9/1984	B6	1259
2	MEMO	FIELDING TO CHARLES DONOVAN (PARTIAL)	1	8/9/1984	B6	1260

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]

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WDR - Reagan Presidential Record

COPY – Reagan Presidential Record

THE WHITE HOUSE

WASHINGTON

August 9, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Response to [redacted] b6

Chuck Donovan of White House Correspondence has sent us a "typical" agency draft response to a letter to the President, and has asked whether it is preferable for the WHite House to transmit the reply or have the agency respond directly. The letter in question concerned possible SBA action in response to default on an SBA loan.

While each case must be examined individually, it seems clear that as a general matter it would be better not to run agency replies through the White House, when the issue concerns loans, contracts, adjudications, and the like. This is of course the rule with respect to independent agencies, and it certainly makes sense to extend the rule to executive branch agencies, at least with respect to individual matters such as a specific SBA loan. A contrary approach -- having replies prepared at the agency but sent from the White House -- creates the potential for misinterpretation of the White House role in the matter at issue, not only on the part of the correspondent but the agency as well.

A draft memorandum for Donovan, recommending that in this case and similar ones replies come directly from the pertinent agency, is attached for your review and signature.

Attachment

COPY – Reagan Presidential Record

THE WHITE HOUSE

WASHINGTON

August 9, 1984

MEMORANDUM FOR CHARLES A. DONOVAN
DEPUTY DIRECTOR
WHITE HOUSE CORRESPONDENCE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Response to [redacted] b6

You have asked whether a reply to a letter to the President, prepared by the Small Business Administration (SBA), should be sent by the agency or by White House Correspondence. The correspondence concerns possible action by the SBA in response to default by the correspondent on an SBA loan.

As a general matter correspondence concerning specific cases pending before agencies should be answered directly by the pertinent agency rather than the White House. This is of course the rule with respect to so-called "independent" agencies; the rule should also be followed with respect to individual cases involving loans, grants, contracts, adjudication, or the like before executive branch agencies. A contrary course of action creates the potential for misinterpretation of the White House role in the agency process not only by the correspondent but by agency personnel as well. Since the instant letter concerns the handling of a specific SBA loan, it should be answered directly by SBA, not the White House.

Thank you for raising this matter with us. If you have any further questions on this score, please do not hesitate to contact this office.

FFF:JGR:aea 8/9/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

August 9, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: H.R. 1310 -- Education for Economic Security Act (Contains Equal Access)

Richard Darman has asked for comments on the above-referenced enrolled bill by close of business today. The last day for action on this bill is not until August 15, but the President plans to announce that he has signed the bill during this Saturday's radio broadcast.

The most significant aspect of the bill is Title VIII, the Equal Access Act. The Equal Access Act, a priority of the Administration for some time, makes it unlawful for any public secondary school receiving Federal financial assistance which has a "limited open forum" to deny access to that forum to student groups on the basis of the "religious, political, philosophical, or other content of the speech" at meetings conducted by the student groups. A school is deemed to have a "limited open forum" if it permits any group to have meetings at school during noninstructional time. In other words, if any student group (such as the chess club) can use school facilities during non-school hours, similar access cannot be denied to other groups, such as a prayer club or, for that matter, the student Ku Klux Klan group. There is no enforcement mechanism in the bill.

Justice has concluded that the equal access provisions will withstand constitutional challenge. In Widmar v. Vincent, 454 U.S. 263 (1981), the Supreme Court held that a public university could not deny "equal access" to its facilities to student groups that planned to engage in religious activities. The present bill would simply extend Widmar to public high schools. On balance I agree with Justice that the bill will pass constitutional muster, but the issue is not free from doubt. In his opinion for the Court in Widmar, Justice Powell hinted at a possible distinction based on the age of the affected students: "University students are, of course, young adults. They are less impressionable than younger students and should be able to appreciate that the University's policy is one of neutrality toward religion." 454 U.S., at 276 n. 14.

The bulk of H.R. 1310 consists of objectionable budget-busting provisions the Administration will have to swallow to get the Equal Access Act. Titles I-III establish grant programs to promote math and science teaching; Title IV authorizes $1 million for 100 Presidential math and science teaching awards in 1985; Title V authorizes $50 million per year for 1984-1985 and $100 million per year for the five succeeding years to assist the States in abating asbestos hazards in the schools; Title VI authorizes $16 million per year for 1984-1985 for demonstration projects on educational excellence; Title VII creates a grant program for magnet schools.

OMB and Education recommend approval, although they object to many of the provisions other than the Equal Access Act as unnecessary, expensive, duplicative, and riddled with excessive administrative burdens. NSF and OSTP have no objection. Justice also does not object to signing the bill, but notes that it is problematic that the Equal Access Act has no enforcement mechanism, and questions whether it is really a good idea to deny school officials the power, for example, to decide that the student branch of the Ku Klux Klan shall not meet at the school. EPA and Interior defer; Treasury objects to the interest-free loan aspect of the asbestos abatement program. The Equal Access Act is a sufficiently high priority that it appears the bill must be signed, despite its many objectionable features.

OMB has submitted a signing statement that expresses approval of two aspects of the bill: the efforts to promote math and science teaching and, of course, the equal access provisions. The statement concludes by noting that many provisions in the bill are objectionable and too expensive, and that the Administration will not feel bound to request funding at the excessive levels set in the bill. At lines 12-13 on page 2 of the statement, the President states that the bill appropriately balances free speech and "the prohibition against government support of religion." There is no such prohibition, and incorrectly paraphrasing the Establishment Clause in that fashion will be meaningful to students of the controversies surrounding it. I would change "support" to "establishment," to avoid any suggestion of a gloss on the constitutional text.

Attachment

THE WHITE HOUSE

WASHINGTON

August 9, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: H.R. 1310 -- Education for Economic Security Act (Contains Equal Access)

Counsel's Office has reviewed the above-referenced enrolled bill, and finds no objection to it from a legal perspective. With respect to the draft signing statement, I would change "support" on page 2, line 13 to "establishment," to more closely track the constitutional language. A "prohibition against government support of religion" could be considered quite different from a "prohibition against government establishment of religion," and only the latter is clearly barred by the First Amendment.

FFF:JGR:aea 8/9/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

August 9, 1984

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS JGR

SUBJECT: Use of Presidential Photos and Seal for Commercial Profit by Piedmont Pictures, Inc.

Attached, as we discussed, is a letter to Piedmont Pictures, objecting to their sale of reproductions of the Seal of the President and inquiring as to the source of their White House photographs. The use of the Seal by Piedmont clearly violates 18 U.S.C. § 713. With respect to the photographs, however, there is probably nothing we can do, provided Piedmont is simply selling reproductions of photographs released into the public domain. Their response to our inquiry should help determine if this is the case.

Attachment

THE WHITE HOUSE

WASHINGTON

August 9, 1984

Dear Mr. McFarlin:

Your company's offer for sale of White House photographs and reproductions of the Seal of the President has come to our attention, and raises several serious concerns. The permitted uses of the Seal of the President are limited by law. Section 713 of Title 18, United States Code, establishes criminal penalties for the reproduction or sale of any likeness of the Seal of the President, except as authorized by regulations promulgated by the President. These regulations are embodied in Executive Order No. 11649, as amended. I have enclosed copies of the pertinent statute and executive order for your information.

You will notice that your use of the Seal is not authorized by the executive order, and constitutes a violation of 18 U.S.C. § 713. I must, accordingly, advise you to cease immediately any reproduction and sale of likenesses of the Seal.

Your offer for sale of White House photographs also raises serious concerns. I would appreciate being advised concerning the source of the photographs, whether they are White House originals or reproductions produced by your company, and any other information that would assist us in evaluating whether your marketing of the photographs is consistent with applicable law and White House policy.

Thank you in advance for your cooperation. I look forward to hearing from you at your earliest convenience.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. William F. McFarlin
President
Piedmont Pictures, Inc.
Post Office Box 648
Madison, Virginia 22727

FFF:JGR:aea 8/9/84

bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

August 9, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Request for Help for Congressman Hansen

Mrs. Jim Richmond of Independence, Missouri has written the President, urging him to support Congressman George Hansen during this, his time of need. I recommend a brief reply noting that Hansen has been convicted, that his appeal is pending, and that it would accordingly be inappropriate for us to comment in any way on the case. A draft is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

August 9, 1984

Dear Mrs. Richmond:

Thank you for your letter of July 18, 1984 to the President, concerning Congressman George V. Hansen of Idaho. Congressman Hansen was convicted by a jury on April 2, 1984 of four counts of filing false statements with Congress. His case is presently on appeal before the United States Court of Appeals for the District of Columbia Circuit. As I am certain you will understand, it would accordingly be inappropriate for us to comment on the case in any way.

Thank you, however, for writing and sharing your views with us.

Sincerely,

Fred F. Fielding
Counsel to the President

Mrs. Jim Richmond
8818 Smart
Independence, MO 64053

FFF:JGR:aea 8/9/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

August 9, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Enrolled Bill H.R. 4952 -- Assistance for Indian Tribes Affected by MX Missile Deployment

Richard Darman has asked for comments on the above-referenced enrolled bill by close of business Friday, August 10. This bill would authorize the Secretary of Defense to reimburse Indian tribes for expenses they incurred prior to October 2, 1981, for community impact planning in connection with the ill-fated multiple protective shelter basing plan for the MX missile system. In 1981 some $5 million was authorized and appropriated to reimburse states and localities for such planning expenses, but Indian tribes were not covered. This bill retroactively covers them for expenses already incurred, with funds to come from that portion of the $5 million as yet unexpended.

OMB and Defense recommend approval; Interior defers to Defense. I have reviewed the memorandum for the President prepared by OMB Assistant Director for Legislative Reference James M. Frey, and the bill itself, and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

August 9, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 4951 -- Assistance for Indian Tribes Affected by MX Missile Deployment

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

FFF:JGR:aea 8/9/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

August 9, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Radio Talk: Equal Access Bill

Richard Darman has asked that comments on the above-referenced remarks be sent directly to Ben Elliott by noon today. The remarks begin with the President announcing that he has signed the Equal Access Act. The President then goes on to criticize the House Democratic leadership for bottling up important legislation, including the balanced budget amendment, the enterprise zones bill, full I.R.A.'s for spouses working in the home, tuition tax credits, and the comprehensive anti-crime package.

I have reviewed the remarks and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

August 9, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Radio Talk: Equal Access Bill

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

cc: Richard G. Darman

FFF:JGR:aea 8/9/84
bcc: FFFielding/JGRoberts/Subj/Chron

August 10, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Solicitor General Filing in Secretary, United States Department of Education v. Betty-Louise Felton

Today the Solicitor General will file a jurisdictional statement before the Supreme Court to appeal the decision of the United States Court of Appeals for the Second Circuit in the above-referenced case. Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 2701 et seq., established a program under which Federal funds are used to pay teachers for remedial reading, remedial mathematics, and English as a second language instruction. In enacting Title I, Congress specified that these programs were to be available to educationally deprived children in private schools as well as those in public schools. On July 9, 1984, the United States Court of Appeals for the Second Circuit, considering a case originating in New York, held that Title I was unconstitutional. The court ruled that Title I violated the Establishment Clause by authorizing use of federal funds to send public teachers into religious schools to carry on instruction.

In his filing today the Solicitor General contends that the Establishment Clause does not erect a per se barrier to sending public teachers to religious schools for remedial instruction, and that the facts of this case do not present the danger of [illegible] entanglement between church and state that the Establishment Clause was designed to prevent. The Solicitor General notes that the Supreme Court has already agreed to hear School District of the City of Grand Rapids v. Ball, [illegible], No. 83-990. That case, arising from the 6th Circuit, involves a state program similar in many aspects to Title I. The Solicitor General recommends that the Court note probable jurisdiction in Felton (the equivalent of a grant of certiorari in an appeal), and hold the case for the Ball case.

cc: Jay Sykes

THE WHITE HOUSE

WASHINGTON

August 10, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Solicitor General Filing in Secretary, United States Department of Education v. Betty-Louise Felton

Today the Solicitor General will file a jurisdictional statement before the Supreme Court to appeal the decision of the United States Court of Appeals for the Second Circuit in the above-referenced case. Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 2701 et seq., established a program under which Federal funds are used to pay teachers for remedial reading, remedial mathematics, and English as a second language instruction. In enacting Title I, Congress specified that these programs were to be available to educationally deprived children in private schools as well as those in public schools. On July 9, 1984, the United States Court of Appeals for the Second Circuit, considering a case originating in New York, held that Title I was unconstitutional. The court ruled that Title I violated the Establishment Clause by authorizing use of federal funds to send public teachers into religious schools to carry on instruction.

In his filing today the Solicitor General contends that the Establishment Clause does not erect a per se barrier to sending public teachers to religious schools for remedial instruction, and that the facts of this case do not present the dangers of excessive entanglement between church and state that the Establishment Clause was designed to prevent. The Solicitor General notes that the Supreme Court has already agreed to hear School District of the City of Grand Rapids v. Ball, cert. granted, No. 83-990. That case, arising from the Sixth Circuit, concerns a state program similar in many respects to Title I. The Solicitor General recommends that the Court note probable jurisdiction in Felton (the equivalent to a grant of certiorari in an appeal), and consolidate the case with Ball.

Consistent with our usual practice in such cases, I have prepared a memorandum for Baroody, copy to Speakes, advising them of the filing.

Attachment

THE WHITE HOUSE

WASHINGTON

August 27, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Enrolled Bill S. 2436 -- Public Broadcasting Amendments Act of 1984

Richard Darman has asked for comments on the above-referenced enrolled bill as soon as possible. This bill would authorize appropriations for the Corporation for Public Broadcasting (CPB) and a grant program of the National Telecommunications and Information Administration, both at levels far beyond Administration requests. The bill would also repeal 47 U.S.C. § 396(k), which requires public broadcasters who pay taxes on earned income unrelated to broadcasting to refund to CPB an amount equal to the taxes paid. The bill contains no other provisions beyond the setting of the funding levels.

OMB and Commerce recommend a veto. The draft disapproval statement recognizes the contributions of public broadcasting but objects to the levels in the bill as incompatible with the clear and urgent need to reduce Federal spending. The statement notes that legislation providing for Federal funding at realistic and reasonable levels would be "appropriate and welcome."

Assuming the recommendations to veto this bill are accepted, the question arises whether to use a pocket veto or a return veto. The use of the pocket veto during an intrasession adjournment of Congress was addressed in the attached memorandum prepared for you by Deputy Assistant Attorney General Robert Shanks on July 10, 1984. That memorandum noted that while use of the pocket veto during an intrasession adjournment would be contrary to Kennedy v. Sampson, 511 F.2d 430 (D.C. Cir. 1974), the Government is presently arguing in Barnes v. Kline, No. 84-5155 (D.C. Cir., filed May 18, 1984) that use of the pocket veto is appropriate during any adjournment lasting longer than three days. The Shanks memorandum concluded that during intrasession adjournments of longer than three days the President should, if he desires to disapprove a bill, send it to the originating House with his objections as well as a statement to the effect that he is doing so only to comply technically with Kennedy v. Sampson and not because of any doubts concerning the availability of the pocket veto.

I have raised this matter with Shanks and he has confirmed that the advice in the July 10 memorandum is applicable to this case. The attached memorandum for Darman for your review and signature alerts Darman to the pocket veto problem and suggests appropriate revision of the draft message of disapproval.

cc: Richard A. Hauser
Peter J. Rusthoven

THE WHITE HOUSE

WASHINGTON

August 27, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 2436 -- Public Broadcasting Amendments Act of 1984

Counsel's Office has reviewed the above-referenced enrolled bill. If the President decides to disapprove this bill, as recommended by the Office of Management and Budget and the Department of Commerce, the proposed message of disapproval should be revised to preserve the argument that the "pocket veto" is available during this adjournment of Congress. It is unclear whether use of the pocket veto is appropriate during an intrasession adjournment of Congress. Case law in the District of Columbia suggests that it is not, Kennedy v. Sampson, 511 F.2d 430 (D.C. Cir. 1974), but the Department of Justice is presently arguing in court that the pocket veto is available during any adjournment of Congress lasting longer than three days. Barnes v. Kline, No. 84-5155 (D.C. Cir., filed May 18, 1984).

In light of the uncertainty surrounding this issue, the Department of Justice has recommended that the President send the instant bill back to the Senate with his objections as well as a statement that he is doing so only to comply technically with Kennedy v. Sampson and not because of any doubts concerning the availability of the pocket veto. The following language should be substituted for the first sentence of the draft message of disapproval:

> Since the adjournment of the Congress has prevented my return of S. 2436 within the meaning of Article I, section 7, clause 2 of the Constitution, my withholding of approval from the bill precludes its becoming a law. Notwithstanding what I believe to be my constitutional power regarding the use of the "pocket veto" during an adjournment of Congress, however, I am sending S. 2436 to the Senate with my objections, consistent with the Court of Appeals decision in Kennedy v. Sampson, 511 F.2d 430 (D.C. Cir. 1974).

FFF:JGR:aea 8/27/84
cc: FFFielding/RAHauser/JGRoberts/PJRusthoven/Subj/Chron

THE WHITE HOUSE

WASHINGTON

August 27, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Enrolled Bill S. 2201 -- Zuni Indian Tribe Land Conveyance

Richard Darman has asked for comments on the above-referenced enrolled bill by noon today. This bill would authorize conveyance of some 11,000 acres of Federal, State, and private land in Arizona to be held in trust for the Zuni Indians. The lands are said to be of religious significance; indeed, they contain a site known as Zuni Heaven, to which all Zuni spirits hasten. The bill contains several provisions designed to facilitate transfer of the lands, such as authorization for the Zunis to use certain Court of Claims funds to purchase the private land, and a provision deeming the transfer of private lands to be involuntary conversions for Federal tax purposes. The bill also requires the Secretary of the Interior to sell an amount of Bureau of Land Management land equal to the transferred private land to the local county government. The theory is that this will offset the county's loss of taxable land.

The Administration took no position on this bill, confident that it would not pass. That confidence turns out to have been misplaced, and now the affected agencies grudgingly advise that they have no objection to approval. Justice voiced some concern over whether Congressional action to aid the Zunis in acquiring land for religious purposes -- stated to be the purpose of the bill in the bill itself -- would violate the Establishment Clause. Justice concluded that it would not, and I concur. In light of the unique trust relationship between the Federal Government and the various Indian Tribes, assistance that would be unacceptable if extended to other groups should be considered constitutionally tolerable when extended to Indians.

Attachment

THE WHITE HOUSE

WASHINGTON

August 27, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 2201 -- Zuni Indian Tribe Land Conveyance

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

FFF:JGR:aea 8/27/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

August 27, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Enrolled Bill H.R. 4214 -- Mineral Resources Research Institutes

Richard Darman has asked for comments on the above-referenced enrolled bill by noon today. This bill, consistently opposed by the Administration, would extend for five years Federal matching funding for 31 mineral institutes, typically established at universities. The affected agencies do not recommend a veto, since funding levels are low and the President's February 1984 veto of a similar water research institutes bill was easily overriden.

The bill does, however, contain a troublesome provision that Justice recommends addressing in a signing statement. The Surface Mining Control and Reclamation Act of 1977, which created the mineral institutes program extended by this bill, also established a Committee on Mining and Mineral Resources Research ("the Committee"). The membership of the Committee includes two private individuals who serve ex officio -- the President of the National Academy of Sciences and the President of the National Academy of Engineering. Under the 1977 Act, the responsibilities of the Committee were purely advisory, so the fact that these two individuals were not appointed by the President or an executive branch official presented no constitutional concerns. The instant bill would, however, expand the responsibility of the Committee, to include determining the eligibility of a college or university to participate in the mineral institutes program. Section 10(a).

Justice has advised, and I agree, that the Committee's new responsibility must be considered advisory rather than final if the bill is to survive scrutiny under the Appointments Clause, as interpreted in Buckley v. Valeo, 424 U.S. 1 (1976). The proposed signing statement makes this point.

I have reviewed the memorandum for the President prepared by OMB Director David Stockman, the bill itself, and the draft signing statement, and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

August 27, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 4214 -- Mineral Resources Research Institutes

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

FFF:JGR:aea 8/27/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

August 27, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Revised Presidential Remarks:
Presentation of Young American Medals

Richard Darman has asked that comments on the above-referenced remarks be sent directly to Ben Elliott by 11:00 a.m. today. The remarks have been revised to include a challenge to reach out to struggling youth -- the child in a foster home, those with drug or alcohol problems, the unwed mother, the dropout. I have reviewed the revised draft and still have no objections to it.

Attachment

THE WHITE HOUSE

WASHINGTON

August 27, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Revised Presidential Remarks:
Presentation of Young American Medals

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

cc: Richard G. Darman

FFF:JGR:aea 8/27/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

August 27, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: H.R. 5712 -- Departments of Commerce, Justice, State and Judiciary and Related Agencies Appropriations Bill, 1985

Richard Darman has asked for comments on the above-referenced bill and suggested signing statement as soon as possible. The appropriations levels set in the bill are generally consistent with Administration proposals, and all affected agencies recommend approval. There are, however, two objectionable riders that should be addressed in a signing statement.

The first, on page 19 of the bill, concerns the Legal Services Corporation (LSC). Last year's Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations Act, Public Law 98-166, contained a provision purporting to require continued funding of LSC grantees at existing levels unless action is taken by LSC directors confirmed by the Senate. When he signed Public Law 98-166, the President, on our advice and that of the Department of Justice, issued a signing statement objecting to this distinction between the authority of confirmed and recess appointed directors. The instant bill incorporates the problematic LSC provisions of Public Law 98-166 by reference, and it seems clear that our objections should similarly be reiterated. Failure to do so could well be construed as conceding the point. The issue was overlooked by Justice and OMB, however, and accordingly is not addressed in the proposed signing statement. I alerted Justice to the problem, and Ralph Tarr of OLC agreed that language essentially identical to that used last year should reappear in the instant signing statement. Justice will provide suggested language as soon as possible.

The second troublesome rider, not overlooked by Justice and OMB, is Section 510 of the bill, on page 30. This provides that the Federal Trade Commission may not use funds to proceed with antitrust actions against a municipality. The provision was prompted by Congressional objections to two pending FTC cases against the cities of New Orleans and Minneapolis, alleging unfair competition through municipal agreements with the taxicab industry.

Justice and the FTC have been feuding for the past several days over how to address this problem in the signing statement. The FTC views the issue as a general separation of powers problem -- Congressional interference with ongoing litigation -- while Justice prefers to regard it as an execution of the laws problem -- what happens when Congress does not give the Executive funds to discharge a constitutional responsibility. It seems clear that both aspects of the problem are present and should be addressed, and a compromise signing statement has been prepared by OMB. Stockman states in his memorandum for the President that the OMB draft "is acceptable to both agencies."

This is simply not true. Justice, according to Ralph Tarr, has not signed off on the draft and in fact objects to it. Justice is concerned that the language does not sufficiently distinguish between the two separate concerns, and is preparing a draft that does so. At this point we should advise Darman that Justice has not cleared the signing statement, and will be submitting alternative language as soon as possible. In light of the time constraints I have telephoned the substance of the attached memorandum to Darman's office.

Attachment

THE WHITE HOUSE

WASHINGTON

August 27, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: H.R. 5712 -- Departments of Commerce, Justice, State and Judiciary and Related Agencies Appropriations Bill, 1985

Counsel's Office has reviewed the above-referenced enrolled bill and the accompanying proposed signing statement. I am advised by the Department of Justice that the Department has not in fact agreed to the draft signing statement. There are two distinct points to be made about Section 510 of the bill -- one focusing on Congressional interference in pending cases, the other on failure to fund a constitutional responsibility of the Executive -- and it is Justice's view that the points are not sufficiently distinguished in the current draft. Justice will submit alternative language as soon as possible. That language should be cleared by the Federal Trade Commission when submitted.

The proposed signing statement makes no mention of the constitutionally problematic distinction in the bill between the powers of Legal Services Corporation directors confirmed by the Senate and those appointed during a Congressional recess. This objectionable provision appeared in last year's Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations Act, Public Law 98-166, and is incorporated by reference in the instant bill, see p. 19. Last year the President voiced his concerns about the provision on signing Public Law 98-166, and the concerns should be reiterated with respect to this bill, lest it appear that we are conceding the point or no longer concerned about it. I have alerted Justice to this problem, and that Department will include appropriate language in the new signing statement it is submitting.

cc: Michael Horowitz
Counsel to the Director
Office of Management and Budget

FFF:JGR:aea 8/27/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

August 27, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: H. J. Res. 600, National Commission on Agricultural Trade and Export Policy

Richard Darman has asked for comments on the above-referenced enrolled resolution as soon as possible. The resolution would establish a National Commission on Agricultural Trade and Export Policy. This Commission would review government programs, policies, and practices in the area of agricultural exports, and develop recommendations to be considered in the framing of the 1985 farm bill. The Commission is to be composed of three nonvoting members appointed by the President, twenty members from private life appointed by the President pro tempore of the Senate and the Speaker of the House (ten each), and twelve ranking members of Congress from pertinent committees.

The Administration mildly opposed the resolution, but it passed both Houses by voice vote. None of the affected agencies recommend disapproval, but Justice suggests a signing statement objecting to the hermaphroditic character of the Commission, partly legislative and partly executive. Since the functions of the Commission are purely advisory, there are no Appointments or Incompatability Clause problems, but Justice nonetheless contends commissions of this sort should clearly serve either the Executive or the Legislature. A draft signing statement prepared by OMB reflects this concern, and also emphasizes that many different groups are working on recommendations for the 1985 farm bill.

I have reviewed the memorandum for the President prepared by Director Stockman, and the resolution itself. I agree that the Commission is totally unnecessary, and is simply a means for elements in Congress to give added stature and credibility to their views on the farm bill, probably at the expense of Administration views. Nonetheless, a veto seems inadvisable. I have also reviewed the draft signing statement, and have no objections to it.

Attachment

THE WHITE HOUSE

WASHINGTON

August 27, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: H. J. Res. 600, National Commission on Agricultural Trade and Export Policy

Counsel's Office has reviewed the above-referenced enrolled resolution, and finds no objection to it from a legal perspective. The Commission seems designed simply to give added stature and credibility to the views of elements in Congress on the farm bill, but since the functions of the Commission are purely advisory its composition does not raise constitutional problems. I agree that the draft signing statement should be issued, so that our concerns about the creation of these hermaphroditic commissions will be known.

FFF:JGR:aea 8/27/84
cc: FFFielding/JGRoberts/Subj/Chron