

Ronald Reagan Presidential Library Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Roberts, John G.: Files
Folder Title: Chron File (05/01/1985-05/14/1985)
Box: 65

To see more digitized collections visit:

<https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories visit:

<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives Catalogue: <https://catalog.archives.gov/>

THE WHITE HOUSE

WASHINGTON

May 2, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Request for White House to Provide 130 Photos
with the President's Signature for "Up With
People" Group

Recently 130 student members of the "Up With People" group toured the White House and posed for a "class picture" on the front lawn, taken by an accompanying photographer. The photographer suggested to Billie Shaddix that the group would greatly appreciate receiving prints of the photograph signed by the President.

"Up With People" is a 501(c)(3) organization dedicated to promoting international understanding and goodwill. Groups of students associated with the organization tour the country and the world giving uplifting musical performances. I have no legal objection to the President signing the photographs for the students.

Attachment

THE WHITE HOUSE

WASHINGTON

May 2, 1985

MEMORANDUM FOR BILLIE SHADDIX
DIRECTOR, PHOTOGRAPHIC SERVICES

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Request for White House to Provide 130 Photos
with the President's Signature for "Up With
People" Group

You have asked for my views on a proposal to have the President sign a group photograph of the "Up With People" contingent, and send prints to those pictured. "Up With People" is a 501(c)(3) organization, and accordingly I have no objection to the proposal. It should be understood that the signed photographs are for the individual students, however, and may not be used in fundraising or promotion for "Up With People" itself.

FFF:JGR:aea 5/2/85

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

May 6, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS 

SUBJECT:

S. 47, "Voluntary School Prayer Act of 1985"

OMB has asked for our views no later than May 29 on S. 47, the "Voluntary School Prayer Act of 1985." This bill would divest the Supreme Court of jurisdiction to hear any case involving voluntary school prayer, and correspondingly divest the Federal district courts of jurisdiction over the same class of cases.

You may recall discussing this type of legislation with me in the past. After an exhaustive review at the Department of Justice I determined that such bills were within the constitutional power of Congress to fix the appellate jurisdiction of the Supreme Court, "with such Exceptions, and under such Regulations as the Congress shall make," Art. III, § 2, cl. 2. I also concluded that such bills were bad policy and should be opposed on policy grounds.

My views did not carry the day, however, and the Department issued an opinion (in the form of a letter to the Senate and House Judiciary Committees) concluding that the above-quoted "Exceptions Clause" did not mean what it said and that Congress could not restrict the appellate jurisdiction of the Supreme Court in constitutional cases. The bills were, accordingly, opposed on constitutional grounds.

I do not know if the new regime at Justice will adhere to the old opinion or revisit the issue. There is much to be said for the virtues of stare decisis in this area, and I think I would recommend that we adhere to the old misguided opinion and let sleeping dogs (an apt reference, given my view of the opinion) lie. On the other hand, I know this issue has been close to the hearts of some who are now over at Justice, so there could be a push for reconsideration. If you agree, I would like to tell OMB we will wait to see the Justice report before opining on the bill.

THE WHITE HOUSE

WASHINGTON

May 6, 1985

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS 

SUBJECT: Rock Schnabel

I discussed by telephone with Mr. Schnabel his various affiliations with the Republic of South Africa. Mr. Schnabel advised that he served as "honorary consul" for South Africa from 1968 until he resigned in late 1980. His duties consisted of representing South Africa and South Africans, primarily in trade matters. According to Schnabel, he would typically arrange introductions in the area for companies from South Africa, and, less frequently, obtain introductions for American companies interested in exports to South Africa. Schnabel reported that this activity was a volunteer one for which he received no compensation. He stated that he accepted the role in 1968 in the hope that it would generate investment banking business for him (although it never did).

By 1980, according to Schnabel, much of the consulate business was going to the official consul in San Francisco, and so he resigned. An official consulate was opened in Los Angeles shortly thereafter.

Schnabel was named a Commander in the South African Order of Good Hope in 1981, a purely honorific post, in gratitude for his years of service as an honorary consul. He is listed as a Consul Emeritus solely to indicate for social purposes that he served as an honorary consul. Schnabel has no current active role for South Africa.

WHO'S WHO IN AMERICA, 1984-1985

SCHNABEL, ROCKWELL ANTHONY, investment banking executive; b. Amsterdam, Holland, Dec. 30, 1936; came to U.S., 1957; s. Hans and Wilhelmina S.; m. Marna Belle Del Mar, 1964; children: Mary Darrin, Christy Ann, Everton Anthony. Student, Trinity Coll., Haarlem, Netherlands, 1951-56. Pres. Unilife Assurance Group S.H. Luxembourg, 1974-78; dir. Bateman Eichler, Hill Richards, Los Angeles, 1967-82, sr. v.p., 1969-82, vice chmn. bd., mem. exec. com., 1978-82; pres. Bateman Eichler Hill Richard Group, Los Angeles, 1981-83; dep. chmn. Morgan, Olmstead, Kennedy & Gardner, Inc., Los Angeles, 1983—; dir. Angeles Corp., Los Angeles, Macrodyne Industries. Fin. co-chmn. Republican Party candidates, 1982; adv. council Commn. Econ. Devel. Calif., 1982; attache Netherlands Olympic Com., 1982; dir. Los Angeles Ballet, 1982; hon. consul Republic of South Africa, 1968-81. Served with Air N.G., 1958-64. Named Comdr. Order of Good Hope, South Africa, 1981, Consul Emeritus of South Africa, South Africa, 1981. Mem. Los Angeles Bond Club, Stock Exchange Club, Kappa Beta Phi. Club: Los Angeles Beach. Home: 3350 Serra Rd Malibu CA 90265 Office: Morgan Olmstead Kennedy & Gardner Inc 606 S Olive St Los Angeles CA 90014

THE WHITE HOUSE

WASHINGTON

May 6, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Request for Information Concerning
Employment Discrimination and
Affirmative Action

Richard Martinez, the Chairman of the Affirmative Action Advisory Committee for the Merced County Department of Human Resources, has written the President to ask for information on the positions of the Department of Justice and the Commission on Civil Rights on affirmative action and comparable worth. I recommend referring the letter to both Justice and the Commission on Civil Rights, asking them to respond directly, and so advising Martinez. Appropriate drafts are attached.

Attachments

THE WHITE HOUSE

WASHINGTON

May 6, 1985

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Letter to the President from Richard Martinez

In the attached letter to the President, Richard Martinez, the Chairman of the Merced County Department of Human Resources Affirmative Action Advisory Committee, requests information on various positions of the Department of Justice. The correspondence is submitted to you for whatever direct reply you consider appropriate. I have also referred the correspondence to the Commission on Civil Rights, and advised Mr. Martinez of both referrals.

Many thanks.

FFF:JGR:aea 5/6/85

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

May 6, 1985

MEMORANDUM FOR JOEL MANDELMAN
ACTING GENERAL COUNSEL
U.S. COMMISSION ON CIVIL RIGHTS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Letter to the President from Richard Martinez

In the attached letter to the President, Richard Martinez, the Chairman of the Merced County Department of Human Resources Affirmative Action Advisory Committee, requests information on various positions of the Commission on Civil Rights. The correspondence is submitted to you for whatever direct reply you consider appropriate. I have also referred the correspondence to the Department of Justice, and advised Mr. Martinez of both referrals.

Many thanks.

Attachment

FFF:JGR:aea 5/6/85

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

May 6, 1985

Dear Mr. Martinez:

Thank you for your letter of April 23 to the President. In that letter you requested information concerning various positions of the Commission on Civil Rights and the Department of Justice.

I have referred your letter to those agencies for direct reply. You should be hearing from them shortly.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Richard F. Martinez
Department of Human Resources
Post Office Box 112
Merced, California 95341-0112

FFF:JGR:aea 5/6/85


bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

May 7, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Letter of Commendation for
Federal Protection Officer

Anne Higgins has asked if the President should send a brief letter of commendation to Federal Protection Officer Grover E. Songer. The request for such a letter came from Mrs. Songer. According to a letter of appreciation from a GSA supervisor, FPO Songer, while on patrol, noticed and reported a suspicious individual lurking near the site of a scheduled Presidential visit. The Secret Service investigated and the individual was deemed to have been something of a threat. Mrs. Songer notes that her husband has worked as an FPO for GSA for seven years, and has been told every year that he would probably be laid off. She thinks a letter from the President would encourage him.

I would not send a letter. If Mr. Songer is in fact faced with a possible lay off, there is the danger that he would try to use a letter from the President to save his job. If the reason for the lay off is even remotely linked to budget cuts, the embarrassment to the President could be significant. A letter from the Secret Service -- if they consider one appropriate -- is far less problematic. The attached reply to Higgins advises her to raise the matter with them.

Attachment

THE WHITE HOUSE

WASHINGTON

May 7, 1985

MEMORANDUM FOR ANNE HIGGINS
SPECIAL ASSISTANT TO THE PRESIDENT
DIRECTOR OF CORRESPONDENCE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Letter of Commendation for
Federal Protection Officer

You have asked if the President should send a letter of commendation to Grover E. Songer, who alerted the Secret Service to an individual representing a potential threat to the President. I recommend against such a letter, primarily because the request for it, from Mrs. Songer, notes that Mr. Songer has been faced with the prospect of being laid off for several years. There is the danger that Mr. Songer would use a letter from the President to try to save his job should that eventuality come to pass, or that, if the lay off is at all attributable to budget cuts, that the letter could be embarrassing to the President. I would have no objection to forwarding Mrs. Songer's request to the Secret Service for whatever consideration that agency would accord it.

FFF:JGR:aea 5/7/85

cc: FFFielding

JGRoberts

Subj

Chron

THE WHITE HOUSE

WASHINGTON

May 7, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS 

SUBJECT:

Request to Sell Girl Scout Cookies
to the President

B. Oglesby has referred to you a request from Congressman Frank Wolf (R-VA) that the President meet with a constituent who apparently is breaking all records for sales of Girl Scout cookies. Elizabeth Brinton of Falls Church has sold some 10,000 boxes and would like to sell one to the President. The little huckster thinks the President would like the Samoas.

Such a meeting would, of course, constitute an implied endorsement by the President of the principal fundraising endeavor of the Girl Scouts. Given the nature of the Scouts, however, I would have no objection to an exception to our policy against such endorsements if Scheduling is interested in the idea. Attached is a draft memorandum addressed to Fred Ryan, conveying Wolf's proposal and the absence of any legal objection from us.

Attachment

THE WHITE HOUSE

WASHINGTON

May 7, 1985

MEMORANDUM FOR FREDERICK J. RYAN, JR.
DEPUTY ASSISTANT TO THE PRESIDENT
DIRECTOR, PRESIDENTIAL SCHEDULING

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Request to Sell Girl Scout Cookies
to the President

As you will see from the attached, Congressman Frank Wolf has suggested that the President meet with a young constituent who is apparently breaking all records for sales of Girl Scout cookies. The constituent would like to sell a box of the cookies to the President.

As you know, normal policy would preclude Presidential involvement in this charitable fundraising activity. Given the nature of the Girl Scouts, however, I would not interpose a legal objection to the meeting if it is something you would like to do. I express no view on whether the President should meet with the young Scout, or buy a box of cookies from her, but simply note no legal objection to him doing either or both.

cc: M.B. Oglesby, Jr.

FFF:JGR:aea 5/7/85

bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

ID# 300957

Proposed for [unclear]

INCOMING

DATE RECEIVED: APRIL 03, 1985

NAME OF CORRESPONDENT: THE HONORABLE FRANK R. WOLF

SUBJECT: FORWARDS COPY OF LETTER FROM ELIZABETH
BRINTON, FALLS CHURCH, VIRGINIA WITH REQUEST
TO SELL THE PRESIDENT GIRL SCOUT COOKIES

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION ACT CODE	DATE YY/MM/DD	TYPE RESP	DISPOSITION C COMPLETED D YY/MM/DD
M. B. OCLESBY	ORG	85/04/03		NO A 85/04/15
<i>WCU Full</i>		85/04/18		1 1
<i>CVAT 18</i>		85/04/19		2 85/04/29
		1 1		1 1
		1 1		1 1

COMMENTS: *See I.D. 300956*

ADDITIONAL CORRESPONDENTS: MEDIA: L INDIVIDUAL CODES: 1240
MAIL USER CODES: (A) (B) (C)

- *****
- | | | | |
|--------------------------|----------------------|----------------------|---|
| *ACTION CODES: | *DISPOSITION CODES: | *OUTGOING | * |
| *A-APPROPRIATE ACTION | *A-ANSWERED | *CORRESPONDENCE: | * |
| *C-COMMENT/RECOM | *R-NON-SPEC-REFERRAL | *TYPE RESP=INITIALS | * |
| *D-DRAFT RESPONSE | *C-COMPLETED | *OF SIGNER | * |
| *F-FURNISH FACT SHEET | *S-SUSPENDED | *CODE = A | * |
| *I-INFO COPY/NO ACT NEC* | | *COMPLETED = DATE OF | * |
| *R-DIRECT REPLY W/COPY * | | *OUTGOING | * |
| *S-FOR-SIGNATURE | | | * |
| *X-INTERIM REPLY | | | * |
- *****

REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE
(ROOM 75, OFOB) EXT. 2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING
LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS
MANAGEMENT.

THE WHITE HOUSE

WASHINGTON

May 8, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS



SUBJECT:

Portal-to-Portal Inquiry from GAO

Chris Hicks received the attached inquiry from GAO, requesting information on the provision of portal-to-portal service in the Executive Office of the President. GAO would like a reply by May 11. The inquiry asks for the names of officials who have received portal-to-portal since January 1, 1985, under what authority, how often, in a leased or Government-owned vehicle, whether relatives of officials receiving portal-to-portal were transported in Government vehicles when not accompanied by the official, and what guidance has been provided to staff members on the portal-to-portal issue. Hicks has asked for our views on a response, noting that the Vice President, Regan, Deaver, and McFarlane routinely receive portal-to-portal.

As you know, Senator Proxmire has requested similar information; no action has yet been taken on the draft response to Proxmire's letter I submitted on April 15. Joe Wright wrote Regan on April 12 requesting a meeting to address the issue; we were holding up on the response to see if such a meeting was imminent.

I recommend that we advise Hicks to compile the information requested in questions 1a, 1b, 1d, 1e, 2a, 2b, 2c and 2e. He should list himself as the administrative contact in response to question 4. The following is a suggested response to question 1c (you may want to use only the first paragraph):

Security and the need to maintain a constant communications link with the President are the principal justifications for the provision of portal-to-portal transportation to these key officials. The transportation is provided not as a service to the individuals but in the best interests of the Government and national security. Various Department of Justice and other Executive branch legal opinions issued over the years have accepted the validity of these justifications for portal-to-portal service.

We are aware that Comptroller General decision B-210555 (June 3, 1983) questioned the validity of such justifications. The Department of Justice has concluded, as a matter of constitutional law, that opinions of the Comptroller General interpreting substantive provisions of law are advisory only and not binding upon the Executive branch. In light of the confusion surrounding this issue -- recognized in the Comptroller General decision -- the Administration is developing legislation to address the entire portal-to-portal issue. We have been working with both the Congress and GAO in developing a suitable bill.

Answering question 2d, concerning the authority for relatives, is more difficult. As you know, Justice has issued an opinion basically concluding that a spouse of an official may use Government transportation only when accompanying the Government official on a space-available basis. Even GAO was not so extreme. In a June 28, 1984 letter (B-210555.9) to Senator Garn, Milt Socolar, for the Comptroller, concluded that "in certain circumstances, an unaccompanied spouse of an official who himself or herself is entitled to Government transportation as a perquisite of office pursuant to 31 U.S.C. § 1344(b) [now 31 U.S.C. § 638a] may also properly be transported to or from an official or quasi-official function; that is, when the spouse's presence at the function is in the Government's interest and circumstances make it awkward or impossible for the official to accompany the spouse enroute." Certainly if an official is entitled to portal-to-portal under authority other than 31 U.S.C. § 638a, then the GAO corollary permitting some transportation of spouses would also apply. We need to obtain from Hicks the facts about spousal use of vehicles before suggesting an answer to question 2d, but to the extent the facts fit the language just quoted, we can cite that.

I would gloss over question 3, simply noting that staff members are provided appropriate legal guidance as necessary, unless you want to say more.

Attachment

THE WHITE HOUSE

WASHINGTON

May 8, 1985

MEMORANDUM FOR CHRISTOPHER HICKS
DEPUTY ASSISTANT TO THE PRESIDENT
FOR ADMINISTRATION

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Portal-to-Portal Inquiry from GAO

You have asked for my views on a response to an inquiry from GAO on the provision of portal-to-portal service in the Executive Office of the President. You should compile the data requested in questions 1a, 1b, 1d, 1e, 2a, 2b, 2c, and 2e. You should list yourself as the administrative contact in response to question 4. The following response may be given to question 1c:

Security and the need to maintain a constant communications link with the President are the principal justifications for the provision of portal-to-portal transportation to these key officials. The transportation is provided not as a service to the individuals but in the best interests of the Government and national security. Various Department of Justice and other Executive branch legal opinions issued over the years have accepted the validity of these justifications for portal-to-portal service.

We are aware that Comptroller General decision B-210555 (June 3, 1983) questioned the validity of such justifications. The Department of Justice has concluded, as a matter of constitutional law, that opinions of the Comptroller General interpreting substantive provisions of law are advisory only and not binding upon the Executive branch. In light of the confusion surrounding this issue -- recognized in the Comptroller General decision -- the Administration is developing legislation to address the entire portal-to-portal issue. We have been working with both the Congress and GAO in developing a suitable bill.

I will not know how to respond to question 2d until you apprise me of the facts involved. Finally, I would respond to question 3 as follows: "Those working in the Executive Office of the President are provided appropriate legal guidance as necessary."

FFF:JGR:aea 5/8/85


cc: FFFielding/JGRoberts/Subj/Ch rcz

THE WHITE HOUSE

WASHINGTON

May 8, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: U.S. Institute of Peace

The U.S. Institute of Peace was established by Title 17 of Public Law 98-525, the Department of Defense Authorization Act for 1985. Pursuant to Section 1706 of that Act, codified at 22 U.S.C. § 4605, the powers of the Institute are vested in a Board of Directors. The Board consists of the Secretary of State (or another State PAS designated by the Secretary), the Secretary of Defense (or another Defense PAS designated by the Secretary), the Director of the Arms Control and Disarmament Agency (or another ACDA PAS designated by the Director), the president of the National Defense University (or the vice president, if the president so designates), and eleven individuals, appointed by the President, who are not U.S. Government officers or employees. Of the 15 Board members, no more than eight may be of the same political party. Pursuant to Section 1706(e)(3), the President was to have submitted the names of the eleven nominees no later than April 20, 1985. The law was enacted on October 19, 1984, so this deadline was not unreasonable.

In the meantime, however, OMB has cleared and submitted to the Hill a bill to amend the provisions governing the Institute Board of Directors. Under the Administration proposal, another ex officio member would be added -- the Director of the Foreign Service Institute (or the Deputy Director, if designated by the Director). The number of Directors nominated by the President would be reduced to ten, and the bipartisanship requirement would apply only to those ten. I.e., under the proposed bill no more than five of the ten nominated members may be of the President's party, while under the existing statute no more than eight of all 15 members (including those serving ex officio) may be of the same political party.

Presidential Personnel has submitted a list of eleven prospective nominees, six Republicans and five Democrats. This means that, to comply with existing law, no more than two of the four ex officio members (or designees) may be Republicans. Since we are already violating the law by not having submitted nominations by April 20, I think we must form the Board under existing law and not delay any further in the hope that new legislation will pass.

Before we can clear these nominees, then, it will be necessary to determine the party affiliations of the ex officio members, or the designees who will serve in their place. I assume Democrats or Independents in PAS positions can be found at State, Defense, and ACDA, and if at least two are designated to serve on the Board the current list of nominees can go forward. It is unusual to be worrying about the political affiliations of ex officio members, but the existing statute requires this. The proposed bill would delete this requirement, but I do not think we can wait for it to pass (if in fact it ever does).

Attachment

THE WHITE HOUSE

WASHINGTON

May 8, 1985

MEMORANDUM FOR ROBERT TUTTLE
DEPUTY ASSISTANT TO THE PRESIDENT
DIRECTOR, PRESIDENTIAL PERSONNEL

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: U.S. Institute of Peace

Pursuant to 22 U.S.C. § 4605, the powers of the new U.S. Institute of Peace are vested in a Board of Directors. The Board is to consist of 15 members: four specified officers of the U.S. Government (or their designees) and eleven individuals nominated by the President who are not Federal officers or employees. Of the 15, no more than eight may be members of the same political party. Nominations were to have been submitted by April 20, 1985.

The Administration has proposed legislation to amend these provisions, increasing the number of ex officio members to five, reducing the number of nominated individuals from outside the Federal Government to ten, and applying the bipartisanship requirement only to those ten. I am advised that there is little reason to suppose that the Administration bill will pass any time soon, if at all. Since we are already in violation of the statute because of our failure to submit nominations by April 20, it is my view that we should submit a list of nominees consistent with existing law. Since the bipartisanship requirement applies, under existing law, to all 15 members of the Board, it will be necessary to determine who will be filling the four ex officio slots, and their party affiliations. If the current list of eleven nominees from outside the Government is to go forward, no more than two of the four ex officio members (or designees) may be Republicans.

FFF:JGR:aea 5/8/85

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

May 9, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Duracell Litigation

James Bierman has written you concerning the pending Duracell litigation, using the pretext of sending you a "courtesy copy" of his brief for the appellant to once again suggest settlement of the issue. He enclosed a copy of a letter from Senator Thurmond to Chief of Staff Regan, proposing a settlement whereby foreign-language grey market batteries would be excluded but English-language grey market batteries could be imported, with a labeling change.

I see no reason for the White House to become involved in settlement negotiations in a pending case. I would simply refer the correspondence to Justice, and advise Bierman that we have done so.

Attachment

THE WHITE HOUSE

WASHINGTON

May 9, 1985

Dear Mr. Bierman:

Thank you for your letter of May 3 concerning the pending litigation in Duracell v. ITC. Along with that letter you sent a copy of the appellant's brief and a copy of a letter from Senator Thurmond to Chief of Staff Regan.

Since this matter is currently pending before the United States Court of Appeals for the Federal Circuit, I have referred the correspondence to the Department of Justice for appropriate review and consideration.

Sincerely,

Fred F. Fielding
Counsel to the President

James N. Bierman, Esquire
Foley & Lardner
1775 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-4680

FFF:JGR:aea 5/9/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

May 9, 1985

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Duracell v. ITC

The attached correspondence concerning Duracell v. ITC, pending before the United States Court of Appeals for the Federal Circuit, is referred to the Department for whatever consideration may be appropriate. I have advised Mr. Bierman of this referral.

Attachment


FFF:JGR:aea 5/9/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

May 10, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: BMW Inquiry from GAO

Attached is a draft response to the GAO inquiry on discounts to those holding diplomatic passports. You should note the following about the draft response:

° The last sentence of the second paragraph states that State regulations on diplomatic passports do not prohibit acceptance of discounts offered by foreign manufacturers on the basis of holding such a passport. In my view it is not accurate to assert -- as has been asserted in the past -- that State regulations permit what happened in this case. The pertinent State regulation permits "[a]cceptance of rates and discounts offered to employees as a class." 22 C.F.R. § 100.735-202(b)(4). The discounts in question were, as I understand it, offered only to holders of diplomatic passports, not any employee.

° The fourth paragraph discussion of why a discount is not a "gift" had to walk a very fine line. A discount is not a gift because the manufacturer gets something in return. This point has to be made without suggesting that what he gets in return is improper influence over an official.

GAO sent similar inquiries to State and the National Highway Traffic Safety Administration. A draft of the State reply is attached. The reply is bizarre in that it does not respond to the questions GAO raised. Most of the letter discusses a different issue -- sale abroad of items imported into the foreign country under favorable conditions.

I have asked for but not yet received the NHTSA draft reply. I have, however, been advised that the Administrator, Diane K. Steed, purchased a foreign automobile in the United States and arranged to and did pick it up in Europe. According to NHTSA Chief Counsel Jeff Miller, she received no discount of any sort. Miller told me that the NHTSA reply would probably conclude that it would be unethical for anyone at NHTSA to accept a discount from an automobile manufacturer.

I suppose we should await the NHTSA draft reply before finally deciding anything, but I wanted to put this much before you now.

THE WHITE HOUSE

WASHINGTON

May 10, 1985

Dear Mr. Hunter:

Thank you for your letter of April 18, 1985, advising that you had received a request from the Chairman of a Congressional Subcommittee concerning discounts offered to those using diplomatic passports. The inquiry asked whether the practice was legal, what regulations or guidelines were applicable, whether a discount available only to some Federal employees was proper, whether the discount constituted a gift, and whether any National Highway Traffic Safety Administration officials received such a discount. You added an inquiry concerning whether any White House employees sold foreign cars acquired at discount for profit prior to March 19.

As I noted in my March 19 Memorandum for White House Staff, there is nothing per se illegal or unethical in the acceptance of a discount offered by a foreign manufacturer by virtue of holding a diplomatic or official passport. No guidelines had been issued to the White House staff on this specific question prior to the March 19 memorandum. The Department of State will provide citations to regulations governing the issuance and use of diplomatic passports. Those regulations do not prohibit the acceptance of discounts offered by foreign manufacturers.

The fact that a discount may be offered to some Federal employees but not others -- e.g., Government attorneys, Government physicians, employees from a particular department -- does not, in and of itself, render the discount illegal or improper. In light of possible appearance problems, however, I have taken the precaution of precluding the acceptance of discounts offered only to members of the White House staff.

Discounts of the sort at issue do not constitute a gift. The Ethics in Government Act of 1978 defines "gift," for purposes of the executive personnel financial disclosure requirements, as "a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor." Manufacturers of foreign automobiles do not offer these discounts out of selfless benevolence but because, in their view, they receive "consideration of equal or greater value." For example, in this case a spokesman for BMW was quoted as saying "it's sort of a PR gesture by the company.

We like to have opinion leaders driving our cars." This is merely an instance of what is generally true of commercial discounts: they are offered for an underlying commercial reason, either to increase sales volume or some other reason. The fact that the company derives a benefit does not, of course, mean that the recipient of the discount is rendering a service of any sort for the company in exchange for the discount. It does, however, mean that the discount is not a gift. Although such discounts are not gifts, it seemed appropriate to me, in the interests of avoiding even the appearance of impropriety, to direct that members of the White House staff treat them as if they were gifts for purposes of our standards of conduct. See 5 C.F.R. § 100.735.14.

I have no information that any officials of the National Highway Traffic Safety Administration received a discount from a foreign automobile manufacturer, nor am I aware of any instance in which White House employees sold foreign cars acquired at a discount for profit. My March 19 memorandum specifically prohibits the latter, noting that the practice would result in dismissal from the White House staff and possible criminal prosecution.

I hope the foregoing is helpful.

Sincerely,

Fred F. Fielding
Counsel to the President

Robert H. Hunter, Esquire
Assistant General Counsel
U.S. General Accounting Office
Washington, D.C. 20548

FFF:JGR:aea 5/10/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

May 10, 1985

MEMORANDUM FOR DIANNA G. HOLLAND

FROM:

JOHN G. ROBERTS 

SUBJECT:

Appointment of Thomas W. Moses
as a Member of the John F. Kennedy
Center for the Performing Arts
Advisory Committee

I have reviewed the Personal Data Statement submitted by the above-referenced individual for appointment as a member of the John F. Kennedy Center Advisory Committee.

Appointments to the Kennedy Center Advisory Committee are authorized by Public Law 85-874 § 2(c). Appointees "shall be persons who are recognized for their knowledge of, or experience or interest in, one or more of the arts in the fields covered by the [Kennedy Center]." Id. Mr. Moses is the Chairman of the Board of the Indianapolis Water Company. He has been involved in fundraising activities for the Indiana Symphony and the Indianapolis Ballet, and was a founding member of the Leadership Advisory Council for the Indiana Committee for the Humanities. Based on my review of his Personal Data Statement, I see no reason to object to his appointment.

Attachment

THE WHITE HOUSE

WASHINGTON

May 13, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: The Berne Convention for the Protection
of Literary and Artistic Works

Al Kingon has prepared a memorandum for the President, transmitting Secretary Baldrige's memorandum on behalf of the Cabinet Council on Commerce and Trade recommending that the United States adhere to the Berne Convention for the Protection of Literary and Artistic Works. A decision to do so would require domestic implementing legislation as well as the execution of international agreements.

U.S. copyright law has historically been distinct from the copyright regime prevailing in the rest of the world. The U.S. system more closely tracks patent law, with an emphasis on formal registration and notice. The system in the rest of the world not only recognizes rights more by virtue of authorship itself than registration, but also accords authors significantly more expanded control over their works. The contrast between the American system and that prevailing elsewhere, however, was markedly reduced with the passage of the comprehensive 1976 Copyright Act. For example, copyright protection now extends for an author's life plus 50 years, rather than a set term (28 years, with a possible extension of 28 years) from date of registration. Registration and notice are still required, but they are no longer the sine qua non of protection.

Baldrige's memorandum focuses on three areas in which a decision to adhere to the Berne Convention would require domestic legislative changes. The first is making registration and notice voluntary. Users of copyrighted works -- librarians, reprint publishers, etc. -- rely on the notice and registration system to ascertain their rights to use material. With a voluntary system, such as the Berne Convention, users could no longer rely on copyright notices. As noted, however, the 1976 law has already made notice and registration far less significant.

Some compulsory licenses under U.S. law would also have to be changed to comply with the Berne Convention. In particular, opposition is expected from jukebox operators, since it may

be necessary to eliminate the compulsory licenses for jukeboxes.

Finally, U.S. law would have to be revised to accord recognition of what are known as "moral rights" of authors. U.S. law focuses solely on commercial protection, but the Berne Convention affords protection against use of a work in a way that would harm the author's honor or reputation in the artistic community, even if the use imposes no commercial harm.

Baldrige glosses over these three areas in which changes would be necessary with what is easily the most fatuous non sequitur I have ever read in a memorandum for the President: "These three possible areas of contention only emphasize the need to consolidate the present private sector support for adherence to the Berne Convention."

The need to change U.S. law to afford protection of "moral rights" will be extremely difficult. The concept itself is almost impossible to define and, in my view, entirely alien to the American legal system. Keep in mind that "moral rights" only come in to play when a use is commercially permitted. The clearest example is an author of a copyrighted book selling film rights, and then objecting that the particular depiction of his work on film is not consistent with his artistic creation. Under American law if the author wanted the right to review and oppose the film version, he could have negotiated and contracted for that right. Under the Berne Convention, the right is an inherent attribute of creation of the work. The author can sue to prevent screening of the film, and a court would decide if the film version -- though commercially authorized -- should be blocked as "prejudicial to the author's honor or reputation." Berne Convention, art. 6 bis (I).

"Moral rights" cases from the Continent have prevented an owner from separating the panels of a multi-paneled painting and selling them separately, because the painter created the work as an integral whole, and prevented the owner of a mural from painting over nudity he found offensive but the painter considered essential to his artistic message. In a celebrated "moral rights" case Soviet composers Shostakovich, Prokoffieif and Khachaturian blocked the showing in Paris of an anticommunist film that used their music as background. The film screened in New York, with music, see Shostakovich v. Twentieth Century Fox Film Corp, 80 N.Y.S. 2d 575 (Sup. Ct. 1948), aff'd 87 N.Y.S. 2d 430 (1949). See generally

Note, An Author's Artistic Reputation Under the Copyright Act of 1976, 92 Harv. L. Rev. 1490 (1979).

In short, recognition of "moral rights" in copyright law would move us from the crisp American system of commercial rights and contract to the foggy French system of artistic integrity and honor. French courts may do it all the time, but how would an American court decide if the film "Carmen Jones" should be blocked -- censored, really -- "on the ground that it transplanted Bizet's operatic celebration of Spain to Harlem, rearranged the placement of several arias and duets, and was an offensive 'rejuvenation of a classic'?" Id., at 1493 n. 20.

In any event, I do not propose that we argue against the Cabinet Council decision at this point. My concern is that the decision memorandum glosses over what are likely to be very serious implementation problems. This concern is reflected in the attached draft memorandum for Chew.

Attachment

THE WHITE HOUSE

WASHINGTON

May 13, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: The Berne Convention for the Protection
of Literary and Artistic Works

I have reviewed the memorandum for the President from Al Kingon, transmitting Secretary Baldrige's memorandum recommending that the United States adhere to the Berne Convention for the Protection of Literary and Artistic Works. I am not interested in second-guessing the decision of the Cabinet Council on Commerce and Trade on this issue, but it does seem to me that the memoranda for the President gloss over what are likely to be serious implementation problems if a decision is made to adhere to the Convention.

I am particularly concerned that there is insufficient discussion of what recognition of an author's "moral rights" -- required under the Berne Convention -- would entail. The concept of an author's "moral rights" is entirely alien to the American copyright system and, in a certain sense, to the American legal system. The concept is difficult to define, as pointed out in Secretary Baldrige's memorandum, but it grants authors rights against uses that they consider prejudicial to their artistic "honor or reputation," even if the particular use is commercially authorized.

For example, an author who has sold the film rights to his novel could nonetheless assert a "moral rights" claim and attempt to block the film if he thought that the film rendition somehow did not capture the artistry of the book. Congress is not accustomed to drafting legislation to ensure artistic integrity and American courts are not accustomed to deciding whether a particular use accords sufficient respect to an author's artistic integrity, yet both efforts will be necessary if the U.S. decides to adhere to the Berne Convention. The existing American copyright system eschews recognition of such amorphous "moral rights" and concerns itself only with commercial exploitation of works. Transition to a Berne Convention regime will be very difficult, yet that difficulty is hardly conveyed in the memoranda for the President.

FFF:JGR:aea 5/13/85
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

May 14, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Drafts of Presidential Greetings

The attached incorporates the change suggested in your marginalia, with which I agree.

Attachment

THE WHITE HOUSE

WASHINGTON

May 14, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Drafts of Presidential Greetings

You have asked for my views on three draft Presidential form letters. I have no objection to the text of the draft convention greetings or letter for resigning chairmen. These letters, however, should not be sent on White House letterhead stationery. They should be sent only on the Ronald Reagan personal stationery, although the disclaimer language is not necessary. Production and mailing costs should be borne by the Republican National Committee.

I recommend that the first sentence of the third draft form letter, the thank you note on legislative initiatives, be changed to the following: "Your support on the [legislative initiative] vote has been brought to my attention." This change will minimize the danger that the letter could be seen as after-the-fact evidence of a violation of the Anti-Lobbying Act, 18 U.S.C. § 1913.

FFF:JGR:aea 5/14/85

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

May 13, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Drafts of Presidential Greetings

This was staffed to me for direct response by 5:00 p.m. today, but I thought I should run it by you. David Chew has asked for comments on three Presidential form letters. The first is a draft convention greeting, a purely partisan letter to be sent to State Republican Party gatherings. The second is a similarly partisan letter to be sent to resigning party chairmen. The third is a brief, non-partisan "thank you" for "assistance" on a legislative initiative.

The first two letters should be on Ronald Reagan personal stationery, not White House letterhead. The personal stationery need not carry the disclaimer language. The production and mailing costs of these letters should be borne by the Republican National Committee. I have discussed this with Sherrie and she concurs.

The problem with the third form letter is that, under certain circumstances, it may be taken as after-the-fact evidence of a violation of the Anti-Lobbying Act, 18 U.S.C. § 1913. If there is a concern, for example, that the Administration has violated the Act by enlisting an outside organization to conduct a mass mailing to Congress, it would not help our case to have a "thank you for your assistance" letter sent after the vote. Accordingly, I recommend that we approve this letter only for mailing to individual private citizens, not groups or organizations or the chairmen of groups or organizations. Approval for any thank you letters to such groups for legislative support should be sought on a case-by-case basis.

Attachment

THE WHITE HOUSE

WASHINGTON

May 13, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Drafts of Presidential Greetings

You have asked for my views on three draft Presidential form letters. I have no objection to the text of the draft convention greetings or letter for resigning chairmen. These letters, however, should not be sent on White House letterhead stationery. They should be sent only on the Ronald Reagan personal stationery, although the disclaimer language is not necessary. Production and mailing costs should be borne by the Republican National Committee.

I have no objection to the text of the third draft form letter, the thank you note on legislative initiatives. This letter may be sent on White House letterhead, but it should only be used to thank individual private citizens. It should not be sent to organizations or groups, such as the Chamber of Commerce or Citizens for America, nor should it be sent to the chairmen of such groups. The danger in such cases is that the letter could be seen as after-the-fact evidence of a violation of the Anti-Lobbying Act, 18 U.S.C. § 1913. Thank you letters for support on legislative initiatives for groups or organizations should be submitted for clearance on a case-by-case basis.

FFF:JGR:aea 5/13/85

cc: FFFielding
JGRoberts
Subj
Chron