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THE WHITE HOUSE

WASHINGTON

January 3, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill H.R. 5238 - Orphan Drug Act

Richard Darman has requested comments by 5:00 p.m. today on Enrolled Bill H.R. 5238, known as the Orphan Drug Act. The main provision of this bill would authorize tax credits, direct grants, and exclusive marketing rights for drug manufacturers to develop and market drugs for rare diseases -- so-called (for no apparent reason) "orphan drugs." The companies have argued that it is economically unprofitable for them to devote time and resources to such drugs, because there are so few buyers or potential buyers, even though the availability of the drugs is a matter of life and death for those few. Treasury opposes the orphan drug provisions, on the ground that the tax system should generally not be used to distribute subsidies.

The main opposition to the bill within the Executive Branch, however, focuses on section 7, a rider attached by Senator Hatch. Section 7 would require HHS to devise and publish charts demonstrating the probability that persons of different ages, sex, etc. are likely to develop cancer as a result of varying degrees of exposure to radiation fallout from nuclear bomb testing. The Department of Justice recommends a veto, on the ground that this provision would cripple the government's defense of radiation suits. That defense has focused on lack of evidence of causation, and the tables contemplated by the bill could fill this void in the typical plaintiff's case. The resulting exposure of the United States would be in the billions of dollars. HHS, urging approval, argues that the tables would clearly state their limitations and would simply convey scientific information, not predetermine legal questions. The bill contains a number of other objectionable riders, specifying funding of a categorical home health grant program, sickle cell centers, and EPA investigation of a particular reservoir.

OMB, Justice, Treasury, Energy, and OSTP recommend disapproval, primarily due to the radiation tables provision. Defense joins HHS in recommending approval, apparently

because a number of people with orphan drug diseases are associated with Defense. The bill is a high-profile one, the subject of an open letter to the President and Post editorial (attached). The legal objections raised by Justice are serious ones, and the tables could potentially be very costly to the United States. That depends, however, on what the tables say, and how they are used by courts. In essence the tables would simply provide more factual information on what is a mixed factual and legal question. While that may harm Justice's defense, it does not in itself change existing legal rules. The tables should not therefore be portrayed as determinative of the liability question.

I recommend that the memorandum to Darman reiterate the legal objections to the bill, but also correct the possible misimpression that signing the bill would be tantamount to conceding the radiation fallout cases.

Two draft memoranda of disapproval, prepared by OMB, are attached. The longer one notes that disapproval is based primarily on section 7, but also objects to the other riders and the tax credit aspects of the orphan drug provisions. The shorter memorandum simply objects to section 7 and indicates support for the orphan drug provisions. OMB and Treasury prefer the longer version. I favor the shorter version, since Congressional and popular support for the orphan drug provisions is so strong that the President's opposition to this bill must be seen as completely unrelated to those provisions.

I have attached a proposed memorandum to Darman.

Attachments

THE WHITE HOUSE

WASHINGTON

January 3, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 5238 - Orphan Drug Act

Counsel's Office has reviewed the above-referenced enrolled bill. We share the concerns expressed by the Department of Justice on section 7 of the bill. That section mandates the preparation of probability tables that could undermine the government's defense of radiation fallout cases. The exposure of the government in such cases runs into the billions of dollars.

The tables, however, would not be determinative of the government's liability. They would provide factual information of relevance to the question of causation. The significance of the tables to the ultimate resolution of radiation litigation will depend on what the tables say (unknown at this point) and how they are used by the courts. Government lawyers will be able to advance arguments limiting the use of the tables, and -- unless the tables reveal an overwhelming causative link between exposure to radioactive fallout and cancer -- the tables will be simply one of several factors for judges to consider in assessing the mixed factual and legal question of causation.

We do not, therefore, view the objections to section 7 of the bill -- while serious -- as an absolute bar to Executive approval, particularly in light of the strong support for the orphan drug provisions of the bill in Congress and among the public.

Counsel's Office has no legal objection to either of the draft memoranda of disapproval. In light of the strong support for the orphan drug provisions, however, we prefer the shorter memorandum. That memorandum limits the basis for disapproval to section 7, and expresses support for the orphan drug provisions. It avoids the danger -- present with the longer memorandum -- that the President may be perceived as opposed to government support for orphan drug development.

FFF:JGR:aw 1/3/82
cc: FFFielding/JGRoberts/Subj./Chron

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

January 3, 1983

FOR: FRED F. FIELDING
FROM: JOHN G. ROBERTS
SUBJECT: Proclamation Designating January 3, 1983
As the "One Hundred and Fiftieth Anniversary
of Greene County, Missouri"

Dodie Livingston, for Richard Darman, has requested comments by noon today on the above-referenced draft proclamation. House Joint Resolution 630 authorized and requested the President to issue a proclamation designating January 3, 1983 the one hundred and fiftieth anniversary of Greene County, Missouri. The attached draft does so. I see no legal objections.

I do have a stylistic objection. The last part of the second sentence -- "and has contributed many of its sons and daughters to hold high public office and otherwise serve the State of Missouri and our nation" -- strikes me as awkward. The preposition "to" after the verb "contributed" calls for objects, yet this construction supplies the verbs "hold" and "serve." I suggest: "and has contributed many of its sons and daughters to high public office and other service of the State of Missouri and our nation." Better yet, the sentence should be split, to read: ". . . distinguished history. Many of its sons and daughters have held high public office and otherwise served the state . . ."

I have contributed a draft memorandum to discuss these minor concerns.

THE WHITE HOUSE

WASHINGTON

January 3, 1983

MEMORANDUM FOR DODIE LIVINGSTON
ASSISTANT TO RICHARD G. DARMAN

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Proclamation Designating January 3, 1983
the "One Hundred and Fiftieth Anniversary
of Greene County, Missouri

Counsel's Office has reviewed the above-referenced draft proclamation and has no legal objection.

We do, however, find the last part of the second sentence somewhat awkward, and suggest either of the following alternatives:

"Greene County ... distinguished history, and has contributed many of its sons and daughters to high public office and other service of the State . . ."

"Greene County . . . distinguished history. Many of its sons and daughters have held high public office and otherwise served the State . . ."

THE WHITE HOUSE

WASHINGTON

January 4, 1983

MEMORANDUM FOR T. KENNETH CRIBB, JR.
ASSISTANT COUNSELLOR TO THE PRESIDENT

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

SUBJECT: New Study on Exclusionary Rule

I am attaching a recent story and editorial on the new NIJ exclusionary rule study, which I mentioned at the last Saturday Group meeting at Bruce Fein's. The study shows that the exclusionary rule resulted in the release of 29% of felony drug arrestees in Los Angeles in one year -- a far cry from the highly misleading 0.4% figure usually bandied about. This study should be highly useful in the campaign to amend or abolish the exclusionary rule.

Attachment

THE WHITE HOUSE

WASHINGTON

January 4, 1983

FOR: FRED F. FIELDING
FROM: JOHN G. ROBERTS *JGR*
SUBJECT: FOIA Request from Budd Schulberg

James K. Hall, Chief of the FBI FOI/PA Section, has submitted two documents from FBI files for your review as to sensitivity prior to response to the requester. The documents are a request for a name check on the FOIA requester from Mildred Stegall, dated June 13, 1967, and the Bureau's response to that request. The name check request indicates Schulberg was being considered for a Presidential appointment; the Bureau response reveals that he had been the subject of security investigations in the 1940's and 1950's, and had been a member of the Communist Party from 1937-1940. Hall does not view the information as sufficiently sensitive to warrant redactions pursuant to the FOIA, and I agree.

I have prepared a memorandum to Hall for your signature.

THE WHITE HOUSE

WASHINGTON

January 4, 1983

MEMORANDUM FOR JAMES K. HALL
CHIEF, FOI/PA SECTION
RECORDS MANAGEMENT DIVISION
FEDERAL BUREAU OF INVESTIGATION

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: FOIA Request of Budd Schulberg

This is in response to your letter of December 14, 1982 in which you requested my review of two documents responsive to the above-referenced FOIA request. We have reviewed the two documents and have no legal objection to their release to the requester.

bcc: FFFielding
JGRoberts
Subject
Chron

THE WHITE HOUSE

WASHINGTON

January 4, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill H.R. 5826 -
Oil and Gas Lease Reinstatement

Richard Darman has requested comments by today on Enrolled Bill H.R. 5826, which would reinstate one particular oil and gas lease. Through an oversight, the lessee of a particular lease failed to advise the Bureau of Land Management (BLM) that his lease had been communitized with a neighboring leasehold. BLM therefore did not credit the lessee with drilling efforts on the other leasehold, and ruled that the lease had expired, due to the absence of drilling efforts. This bill reinstates the lease, retroactive to its date of expiration, upon filing of the communitization agreement and payment of any accrued rent. OMB and Interior recommend approval.

I have reviewed the memorandum for the President from James Frey, Assistant Director of OMB for Legislative Reference, and the bill itself. I see no legal objections.

THE WHITE HOUSE

WASHINGTON

January 4, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING ^{0118 31 100 10 117}
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 5826 -
Oil and Gas Lease Reinstatement

Counsel's Office finds no objection from a legal perspective
to the above-referenced enrolled bill.

bcc: FFFielding
✓ JGRoberts
Subject
Chron

THE WHITE HOUSE

WASHINGTON

January 4, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill H.R. 4496 - Texas
Band of Kickapoo Reservation Act

Richard Darman has requested comments by Wednesday, January 5, on Enrolled Bill H.R. 4496, which would heap Federal benefits on the Texas Band of Kickapoo Indians. The Kickapoos, originally from the Great Lakes area, did not stop running from their encounter with Europeans until they reached Mexico, where they now hold 17,000 acres of land. The Kickapoos provide migrant labor in the United States, and a group of them made Newsweek by choosing to live in squalid conditions beneath the International Bridge in Eagle Pass, Texas, rather than their Mexican homeland. The bill would: (1) require the Secretary of Interior to develop a list of Kickapoos, and grant U.S. citizenship to anyone on that list; (2) entitle Kickapoos to cross the Mexican/U.S. border free of any restrictions; (3) direct the Secretary to accept up to 100 acres of donated land for a Kickapoo reservation in Texas; (4) give the Kickapoos the benefits of the Indian Reorganization Act; and (5) permit Federal services to be provided the Kickapoos without regard to restrictions that limit such services to Indians on a reservation.

OMB, Interior, and State recommend approval; Justice defers to Interior. While the approach of the bill -- ad hoc exceptions to restrictions in general laws -- strikes me as unfortunate, and while its provisions seem overly generous -- particularly in light of the fact that these are, generally speaking, Mexican Indians and not American Indians -- the bill is consistent with the Administration's recommendations. I see no legal objections, and have prepared a memorandum to that effect for your signature.

Attachment

THE WHITE HOUSE

WASHINGTON

January 4, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 4496 - Texas
Band of Kickapoo Reservation Act

Counsel's Office finds no objection from a legal perspective to the above-referenced enrolled bill.

FFF:JGR:aw 1/4/83

cc: FFFielding
✓JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

January 5, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Resolution S.J. Res. 101 -
National High School Activities Week

Richard Darman has requested comments by January 6 on enrolled resolution S.J. Res. 101, which designates the week of October 17 - 23, 1982, as "National High School Activities Week." The resolution notes the benefits of extracurricular activities and states that former President Ford has agreed to serve as honorary national chairman of the effort to emphasize the importance of such activities. OMB recommends approval; Education has no objection. In light of the tardiness of the resolution, James Frey recommends in his memorandum to the President that he sign the resolution, but not issue a proclamation. I see no legal objection to this course of action.

Attachment

THE WHITE HOUSE

WASHINGTON

January 5, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Resolution S.J. Res. 101 -
National High School Activities Week

Counsel's Office finds no objection from a legal perspective to the above-referenced enrolled resolution.

FFF:JGR:aw 1/5/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

January 5, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill S. 3105 - West
Virginia Federal Judicial Districts

Richard Darman has requested comments by January 6 on enrolled bill S. 3105, which would realign the two federal judicial districts in West Virginia, to balance the workload, and provide an additional judge in each district to replace a current judgeship shared by the two districts. The bill reflects the wishes of the West Virginia judges and congressional delegation. OMB and the Administrative Office of U.S. Courts recommend approval; Justice has no objection.

I have reviewed the memorandum for the President from James Frey, Assistant Director of OMB for Legislative Reference, and the bill itself. I see no legal objections, and have prepared a memorandum to Darman to that effect for your signature.

Attachment

THE WHITE HOUSE

WASHINGTON

January 5, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 3105 - West
Virginia Federal Judicial Districts

Counsel's Office finds no objection from a legal perspective
to the above-referenced enrolled bill.

FFF:JGR:aw 1/5/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

January 5, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill S. 2273 - Earthquake
Hazard Reduction Act Reauthorization

Richard Darman has requested comments by close of business January 6 on enrolled bill S. 2273, which authorizes appropriations for the earthquake hazard reduction activities of the Federal Emergency Management Agency, the U.S. Geological Survey, the National Science Foundation, and the National Bureau of Standards. As noted in the memorandum to the President from James Frey, Assistant Director of OMB for Legislative Reference, the only areas in which the budget amounts in S. 2273 differ from Administration requests have been mooted by other authorization bills. All affected agencies recommend approval.

I have reviewed the memorandum to the President from James Frey and the bill itself, and see no legal objections. I have prepared a memorandum to Darman to that effect for your signature.

Attachment

THE WHITE HOUSE

WASHINGTON

January 5, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 2273 - Earthquake
Hazard Reduction Act Reauthorization

Counsel's Office finds no objection from a legal perspective
to the above-referenced enrolled bill.

FFF:JGR:aw 1/5/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

January 5, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Resolution H.J.
Res. 459 - American Indian Day

Richard Darman has requested comments by close of business January 7 on enrolled resolution H.J. Res. 459, which authorizes and requests the President to issue a proclamation designating May 13, 1983 as "American Indian Day." OMB recommends approval.

I have reviewed the memorandum for the President from James Frey, Assistant Director of OMB for Legislative Reference, and the resolution itself, and see no legal objections.

Attachment

THE WHITE HOUSE

WASHINGTON

January 5, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Resolution H.J.
Res. 459 - American Indian Day

Counsel's Office finds no objection from a legal perspective to the above-referenced enrolled resolution.

FFF:JGR:aw 1/5/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 5, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Withdrawal of Delegation of Authority
to Peace Corps Director to Appoint
Peace Corps Country Directors

Chris Hicks, Associate Director of the Office of Presidential Personnel, has asked whether the President may withdraw his delegation of authority to the Director of the Peace Corps to appoint Peace Corps Country Directors. The Peace Corps Act provides that "[i]n each country or area in which volunteers serve abroad, the President may appoint an employee or a volunteer as a Peace Corps representative to have direction of other employees of the Peace Corps abroad and to oversee the activities carried on under this chapter in such country or area." 22 U.S.C. § 2506(c). The power of appointment is thus expressly given to the President by statute. The President delegated all functions conferred upon him by the Peace Corps Act (unless explicitly excepted) to the Director of the Peace Corps in Executive Order 12137 (May 16, 1979).

As a general principle, delegations of authority are completely revocable. The Executive Order was expressly based on 3 U.S.C. § 301 and the Peace Corps Act. The former statute generally permits the President to designate other officials to perform functions vested in him by law, and explicitly provides that such designations "shall be revocable at any time by the President in whole or in part." The Peace Corps Act contains a more specific authorization of delegation. At the time the Executive Order was promulgated, 22 U.S.C. § 2503(b) provided: "The President may exercise any functions vested in him by this chapter through such agency or officer of the United States Government as he shall direct" (emphasis supplied). The delegation in the Executive Order, based in part on this provision, was thus clearly permissive, and in no sense irrevocable.

The conclusion that the President may revoke his delegation of authority to the Peace Corps Director is not affected by Title VI of the International Security and Development

Cooperation Act of 1981, Pub. L. No. 97-113, 95 Stat. 1519, which established the Peace Corps as an "independent" agency within the Executive Branch. Nothing in that legislation purported to address the power of the President in 22 U.S.C. § 2506(c) to appoint Country Directors. That Act did change the above-cited 22 U.S.C. § 2503(b), to read "The President may exercise any functions vested in him by this chapter through the Director of the Peace Corps," as opposed to "through such agency or officer of the United States Government as he shall direct." This simply narrowed the permissible delegation, and did not alter its revocable character.

Arguing that the delegation of authority in the Executive Order became permanent and could not be changed except by legislation would be tantamount to amending a statute (22 U.S.C. § 2506(c), authorizing the President to appoint Country Directors) by Executive Order, a plainly absurd result.

I recommend that you advise the Office of Presidential Personnel that the President may revoke his delegation of authority to the Director of the Peace Corps to appoint Peace Corps Country Directors, by appropriately amending Executive Order 12137. I have attached a proposed memorandum to that effect.

Attachment

THE WHITE HOUSE

WASHINGTON

January 5, 1982

MEMORANDUM FOR HELENE VON DAMM
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Appointment of Peace Corps Country Directors

This responds to your inquiry concerning the authority of the President to withdraw his delegation of authority to the Director of the Peace Corps to appoint Peace Corps Country Directors, by amending Executive Order 12137. This office has reviewed that question and we conclude that the President may, by appropriately amending Executive Order 12137, withdraw his delegation of authority to the Director of the Peace Corps to appoint Peace Corps Country Directors.

The President is given authority to appoint Peace Corps Country Directors by 22 U.S.C. § 2506(c). While that authority was delegated to the Director of the Peace Corps by Executive Order 12137, such delegations of authority are revocable at any time. See 3 U.S.C. § 301. Title VI of the International Security and Development Cooperation Act of 1981, Pub. L. No. 97-113, 95 Stat 1519, establishing the Peace Corps as an "independent agency within the executive branch," did not alter the President's authority to appoint Country Directors pursuant to 22 U.S.C. § 2506(c), nor in any way affect the revocable nature of the delegation of authority in Executive Order 12137.

FFF:JGR:aw 1/5/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

January 6, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill H.R. 3809 - Nuclear
Waste Policy Act of 1982

Richard Darman has requested comments by close of business today on enrolled bill H.R. 3809, the Nuclear Waste Policy Act of 1982. This bill, a leading item on the Administration's legislative agenda, is scheduled to be signed in ceremony tomorrow. The bill establishes detailed procedures for the selection and construction of nuclear waste repository sites. These procedures require the Secretary of Energy to submit candidate sites to the President, who must, within a specified period of time, decide on a particular site. An affected Governor or leader of an Indian tribe may disapprove the decision, and that disapproval will be binding unless Congress passes a joint resolution, which becomes law, approving the President's original decision. The Department of Justice has no "legislative veto" problems with this procedure: the President's decision is subject to veto not by Congress, but by outside groups, so no separation of powers problem is presented.

As a general policy matter it is objectionable to subject the President's decision to veto by a Governor or Indian chief, but as part of a comprehensive package on the siting of nuclear waste -- including a tax on utilities to pay for the site -- I think such a provision is tolerable. The bill is replete with collateral provisions, requiring the President to give notice to affected States and tribes and supply them with information on siting plans. The President or Secretary of Energy is also required to consult and cooperate with affected States and tribes throughout the process, and enter into a written agreement governing such specifics of cooperation as how information on the siting decision will be shared. These provisions do not, however, override possible claims such as executive privilege. Indeed, the procedures for sharing information are to be "in accordance with applicable law."

OMB, State, Defense, Energy, the Nuclear Regulatory Commission, and the Office of Science and Technology Policy all recommend approval; other affected agencies have no objection. While the numerous provisions permitting active participation of States and Indian tribes in the siting selection decision process of the Secretary of Energy and the President raise policy concerns, those provisions were apparently necessary to achieve passage of this high-priority package. In view of the exceptional nature of the siting decision, and the comprehensive package of which that decision is one part, I do not see any legal objection to Presidential approval.

THE WHITE HOUSE

WASHINGTON

January 6, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 3809 - Nuclear
Waste Policy Act of 1982

Counsel's Office finds no objection from a legal perspective to the above-referenced enrolled bill.

FFF:JGR:aw 1/6/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

January 6, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Enrolled Bill H.R. 6679 - Civil Penalties
for the Violation of Laws Dealing with Dis-
semination of Livestock and Plant Diseases

Richard Darman has requested comments by close of business January 7 on enrolled bill H.R. 6679, which would add civil penalties to the existing sanctions for violations of animal and plant quarantine laws. The bill would generally add civil penalties for violations of quarantine laws, currently punishable only by criminal sentences for knowing violations. This would make enforcement easier by providing more limited and appropriate sanctions. The bill also makes violations of agency rules and regulations punishable by civil and criminal sanctions. OMB and Agriculture recommend approval; Justice has no objection.

I have reviewed the memorandum for the President from James Frey, Assistant Director of OMB for Legislative Reference, and the bill itself. I see no legal objections.

Attachment

THE WHITE HOUSE

WASHINGTON

January 6, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 6679 - Civil Penalties
for the Violation of Laws Dealing with Dis-
semination of Livestock and Plant Diseases

Counsel's Office finds no objection from a legal perspective
to the above-referenced enrolled bill.

FFF:JGR:aw 1/6/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

January 6, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Customs Declaration Package

You asked that I check into the status of the proposal, described in the attached Washington Post and New York Times articles, to have a private advertising firm distribute Customs declaration forms in a packet containing advertising and greetings from the President. According to Stephen Jacobs of the Customs Service, the packets have already been printed by the private firm and are on the verge of being distributed. (I am awaiting delivery of a sample.) The packages contain a brief greeting from President Reagan to foreign travelers, over a facsimile of his signature; a customs declaration form for the traveler to fill out, and turn in to the Customs Service; other information about what may and may not be taken into the United States; and six pages of private advertising.

The customs declaration form can be printed and distributed by anyone. In the past, airlines and foreign governments have printed and distributed the customs forms. Customs has agreed to accept the form in the advertising package. Customs believes that the advertising package scheme will reduce its costs of printing the forms, and also provide the added benefit of the Presidential greeting, at no cost to Customs. The Presidential greeting is a new idea; such greetings had not been distributed to travelers in the past. The scheme is not an exclusive one: plain forms will continue to be available, and others may distribute them or their own packets with the forms as they see fit.

The concern of this office, of course, is with the use of the Presidential message. Customs was advised by the General Counsel of GPO that if the message were published in a government document there would be no restrictions on its duplication and distribution for private purposes. Customs accordingly published the greetings in a pamphlet. My concern is twofold: (1) the presence of the message may suggest that the President has endorsed this particular commercial venture, and (2) the juxtaposition of the Presidential message and the six pages of advertising may suggest

endorsement by the President of the advertised products. While the private firm marketing the packet has every right to reproduce non-copyrighted documents in the public domain -- such as the President's greeting -- it does not have the right to convey a false impression of Presidential sponsorship either of its product or those of its advertisers. Had the firm asked this office for approval of its plan to use the President's greeting, we would have declined, consistent with established policy, to approve the request -- even though we probably could not have disapproved it either.

In light of the last-minute nature of our involvement, and the enthusiastic complicity of the Customs Service in the project, I think the best course would be to attempt to obtain some sort of disclaimer on subsequent printings of the package. If the page containing the President's message contained a line indicating that it was reprinted or taken from a government document, for example, that would go far in disassociating the President from any direct involvement with the packet or advertisers. The phrase "not a government document" on the packet would also be helpful, or even a more explicit announcement that the government in no way endorses advertisers appearing in the packet. The exact disclaimers would presumably be the subject of negotiations with the private firm. Whoever raises the subject with them should start with the concern about a false impression of Presidential endorsement, suggest removal of the greeting, and negotiate from there.

I think it would be advisable as a first step to have the General Counsel at Customs approach the individuals involved, and proceed from there. If you agree with this course of action, I will draft a memorandum from you to the Customs Service General Counsel.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 6, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Request for Presidential Endorsement
of "Yellow Books"

Craig Fuller has asked whether the President could endorse a plan by a private firm to publish federal government directories and distribute them free of charge to federal employees, while charging private subscribers and carrying advertising. Jud Clark of Public Affairs Information, a legislative and regulatory reporting service, described the proposal in a letter to Fuller, noting that the President had written a letter "applauding" a similar effort by California Journal when he was Governor.

Presidential endorsement of this private commercial venture would of course be contrary to established White House policy. I do not believe that the benefit of free directories for federal employees justifies departure from that policy, particularly since the directories will carry advertising and the President could be perceived as endorsing not only the directory and the directory company but its advertisers as well.

I have prepared a proposed reply to Fuller.

Attachment

THE WHITE HOUSE

WASHINGTON

January 6, 1983

MEMORANDUM FOR CRAIG L. FULLER
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Request for Presidential Endorsement
of "Yellow Book"

You have inquired whether the President could endorse a proposal by a private firm to produce and distribute federal government directories, free of charge, to federal employees. The firm would charge private subscribers for the directories, and the directories would also carry advertising. This proposal was described in an October 20, 1982 letter to you from Jud Clark of Public Affairs Information.

The White House adheres to a policy of not approving the use of the name, likeness, photograph or signature of the President in any manner that does or might suggest endorsement of a commercial product or enterprise. This proposal goes even further, seeking explicit Presidential endorsement of a commercial venture. There is also the danger that the President may be perceived as endorsing the products advertised in the contemplated directory. The possible benefit of free distribution of the directories to federal employees does not warrant departure from the established policy.

FFF:JGR:aw 1/6/83

cc: FFFielding
JGRoberts
Subj.
Chron