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WITHDRAWAL SHEET

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IGP 8/4/2005

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COOK

19IGP

DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	APPOINTMENT PROCESS PERSONAL INTERVIEW RECORD (PARTIAL)	2	6/13/1983	B6	491
2	MEMO	ROBERTS TO FRED FIELDING RE BLAIR HOUSE (PARTIAL)	1	6/14/1983	B6	1284

COPY - Reagan Presidential Record

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]

B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]

B-3 Release would violate a Federal statute [(b)(3) of the FOIA]

B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]

B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]

B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]

B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]

B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

E.O. 13233

C. Closed in accordance with restrictions contained in donor's deed of gift.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 9, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*
SUBJECT: Restoration of Reagan Home
in Dixon, Illinois

An acquaintance of the President involved in the restoration of the Dixon home, Bill Thompson, has written the President, enclosing an itemized cost estimate for restoration work. In his letter Thompson states that with "a note or a telephone call to some of your friends in California, Texas or elsewhere -- maybe Bob Hope, Sinatra, Pat Boone, etc. -- that possibly enough cash could be raised to finish the projects that are important at this time . . ." Osborne has corresponded with Thompson on the President's behalf frequently in the past, and would like to advise him that it would be inappropriate for the President to accede to his request, but wanted to check with our office first.

Osborne is of course correct that it would not be appropriate for the President to do what Thompson suggests. Last year the Ronald Reagan Home Preservation Foundation met with the President, and the Chairman of the group later asked for photographs of the meeting to use in fundraising. You sent the photographs, but with a caveat that they "not be used in a way that suggests that either the White House or the President personally is asking for contributions."

I have prepared a memorandum for your signature to Osborne, agreeing with the substance of her proposed response. I think Osborne should do the response, since she has corresponded with Thompson in the past.

Attachment

THE WHITE HOUSE

WASHINGTON

June 9, 1983

MEMORANDUM FOR KATHY OSBORNE

FROM: FRED F. FIELDING

SUBJECT: Restoration of Reagan Home
in Dixon, Illinois

You have asked for our advice concerning a response to Mr. Bill Thompson, an acquaintance of the President who is involved in efforts to restore the Dixon home. Mr. Thompson suggested that the President contact friends of his to raise some \$250,000 for the restoration.

You are of course correct that it would be inappropriate for the President to accede to Mr. Thompson's request. Last fall the President met with officials of the Ronald Reagan Home Preservation Foundation, and when those individuals requested photographs to be used in fundraising, I sent the photographs but admonished that they "not be used in a way that suggests that either the White House or the President personally is asking for contributions." I would simply advise Mr. Thompson that it would be inappropriate for the President to become involved in raising funds for the restoration, either publicly or privately.

FFF:JGR:aw 6/9/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

June 9, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Justice Report on S. 1156, the "Ninth Circuit
Court of Appeals Reorganization Act of 1983"

James Murr of OMB has asked for our views on a proposed letter from Assistant Attorney General McConnell to Chairman Thurmond, conveying the Justice Department's views on S. 1156. S. 1156 would create a new Twelfth Circuit Court of Appeals by spinning Alaska, Idaho, Montana, Oregon, and Washington off of the Ninth Circuit. Justice would like to oppose the bill, primarily because the bill would not solve the basic problems of the existing Ninth Circuit, which are its size and California's dominance. Arizona, Nevada, and Hawaii would feel that dominance to an even greater extent if the bill were enacted. The letter also notes that the Ninth Circuit has adopted procedural devices to ease the problems of managing a 23-judge court. Congress should wait to see how these devices work before taking the fairly drastic step of further balkanizing the circuits to reduce the size of the Ninth Circuit. The letter reports that the bill is opposed by the Ninth Circuit judges, including Chief Judge Browning, who is from Montana but apparently would like his chambers as well as his heart to remain in San Francisco.

S. 1156 was proposed by Senator Gorton (R-Wash.), probably out of parochialism, although it does address the very serious problem of the size of the existing Ninth Circuit. A 23-judge appellate court (28-judge if our bill to add new judgeships is passed) is a jurisprudential nightmare, giving rise to frequent conflicts among different panels and a total lack of coherent legal interpretations. Not too long ago a distinguished Second Circuit judge, when asked by a litigant to overrule a decision by a previous Second Circuit panel, retorted "This is not the Ninth Circuit, counsel." A conflict between the circuits is a recognized basis for the grant of certiorari, but the Supreme Court in recent years has received numerous petitions asserting (correctly) a conflict within the Ninth Circuit. The conundrum, of course, consists in the fact that any effective reduction in the size of the Ninth Circuit would involve splitting

California between different circuits, which raises problems of its own.

These problems will probably have to be resolved at some point, but for now it is enough to agree with Justice that S. 1156 does not adequately resolve the issues, and that more study is needed. In any event, the precise division of the circuits does not affect the President's powers as, for example, the Intercircuit Tribunal proposal would, and we can appropriately defer to Justice's judgment.

THE WHITE HOUSE

WASHINGTON

June 9, 1983

MEMORANDUM FOR JAMES C. MURR
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Justice Report on S. 1156, the "Ninth Circuit
Court of Appeals Reorganization Act of 1983"

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

FFF:JGR:aw 6/9/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 10, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Remarks for Reception of Baltic Americans

Richard Darman has requested that comments on the above-referenced remarks be sent directly to Aram Bakshian by noon today. The remarks are to accompany the President's signing of the Proclamation designating June 14 as Baltic Freedom Day, authorized and requested by Public Law 97-196. The remarks review the Soviet snatching of Latvia, Estonia, and Lithuania in 1940 and subsequent Soviet efforts to subjugate those Baltic cultures. The remarks urge the Soviets to concentrate on meaningful negotiations in Geneva rather than silly gestures such as the proposal for an Atom-Free Baltic. Mention is also made of the recent intrusion of "unidentified submarines" into Norwegian and Swedish waters. The bluntness of the remarks may ruffle some State Department feathers, but I have no legal objections. I have noted a grammatical error in the remarks in the proposed memorandum to Bakshian.

Attachment

THE WHITE HOUSE

WASHINGTON

June 10, 1983

MEMORANDUM FOR ARAM BAKSHIAN, JR.
DEPUTY ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Remarks for Reception of Baltic Americans

Counsel's Office has reviewed the above-referenced draft remarks, and finds no objection to them from a legal perspective. On page 1, second line from the bottom, "has" should be "have."

cc: Richard G. Darman

FFF:JGR:aw 6/10/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

June 10, 1983

MEMORANDUM FOR DANIEL F. LEONARD
DEPUTY DIRECTOR
DRUG ABUSE POLICY OFFICE

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Travel

You have advised this office that you have been offered transportation on the private aircraft of McNeil, Inc., a pharmaceutical company, in connection with your scheduled appearances in New England. Those appearances are part of the campaign coordinated by your office to involve pharmacists in the fight against drug abuse. The planned itinerary requires you to travel from Springfield/Hartford, to Montpelier, to Providence, and back to Springfield/Hartford over the course of two days. You have advised us that it is not possible to take commercial transportation between Springfield/Hartford and Montpelier and between Montpelier and Providence and still meet the scheduled commitments. Officials from McNeil, who are participating in the program and appearances, will be travelling between these sites on a private aircraft, and have offered transportation to you.

We have determined that you may accept the offer to travel between Springfield/Hartford and Montpelier and between Montpelier and Providence on the McNeil aircraft. Our conclusion is based on your advice that it is not possible to travel commercially between these sites and meet your scheduled commitments. It is our understanding that your office has no regulatory or commercial dealings with McNeil or its parent, Johnson & Johnson, and that neither of these entities expects any advantage whatsoever in their dealings with the federal government arising from their offer of transportation. McNeil should be reimbursed at a rate equal to the commercial rate between Springfield/Hartford and Montpelier, and between Montpelier and Providence, plus one dollar.

RAH:JGR:aw 6/10/83

cc: RAHauser/JGRoberts/Subj./Chron

THE WHITE HOUSE

WASHINGTON

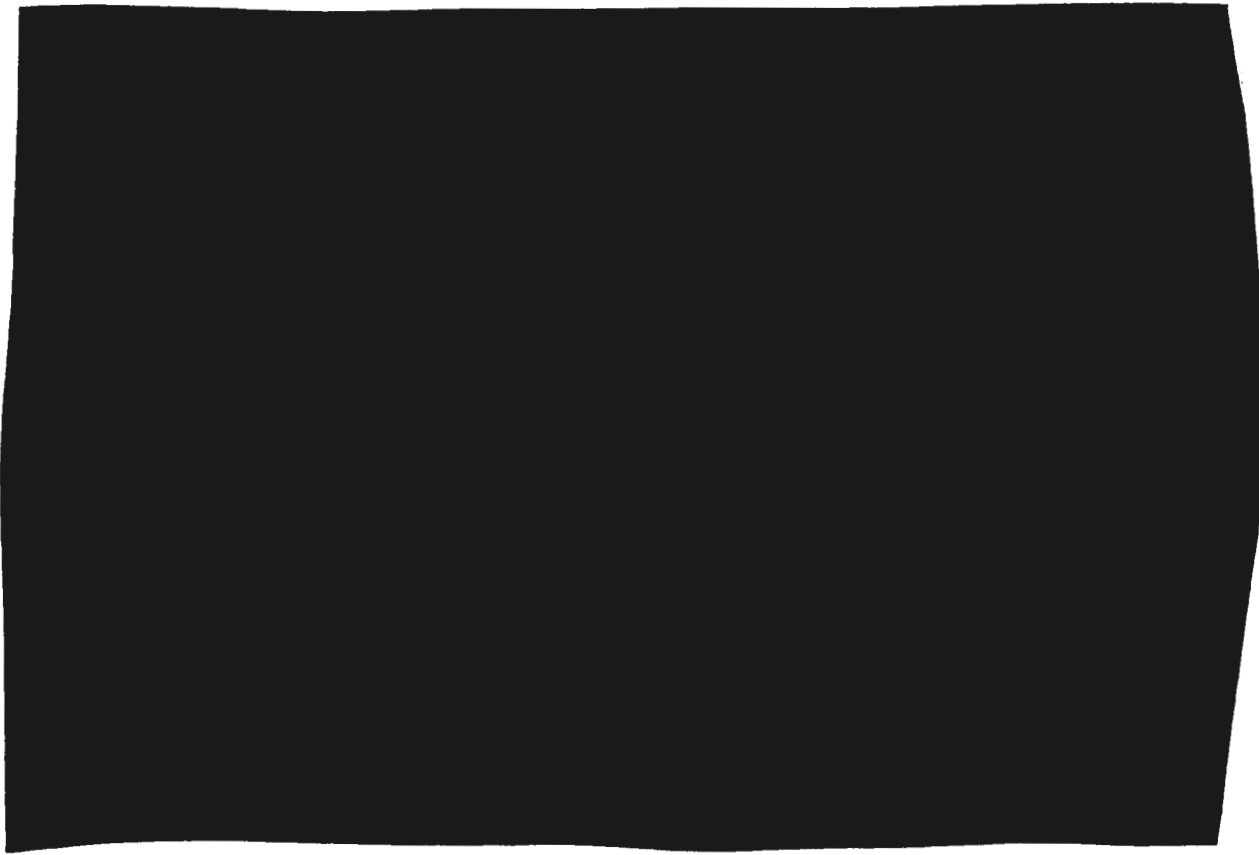
June 13, 1983

APPOINTMENT PROCESS PERSONAL INTERVIEW RECORD

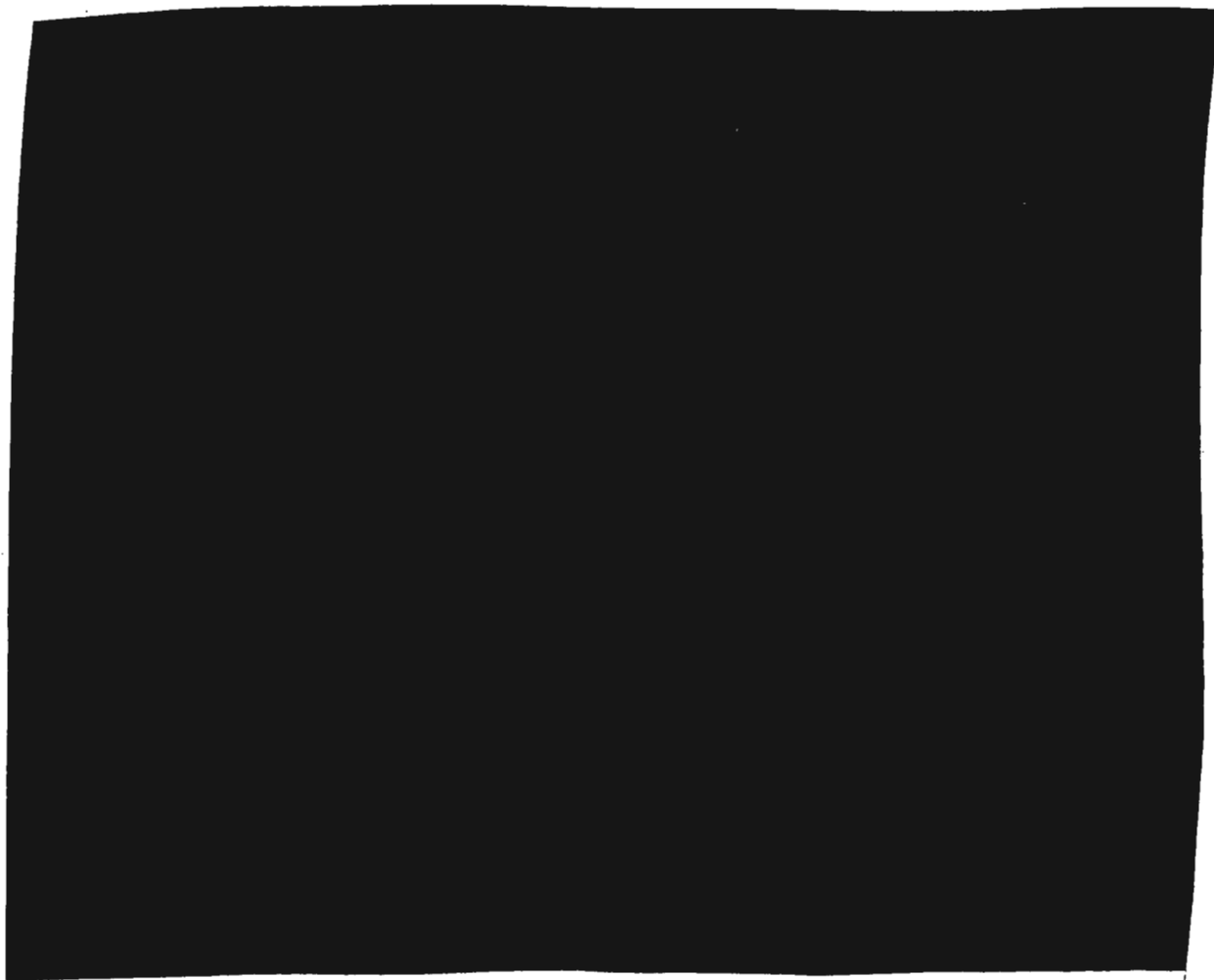
DATE OF INTERVIEW: May 27, 1983 (in person)
CANDIDATE: James E. Merritt
POSITION: Chief Counsel, Internal Revenue Service
INTERVIEWER: John G. Roberts *JGR*

Comments

I have reviewed the Personal Data Statement and SF-278 submitted by James E. Merritt, who is being considered for nomination to be Assistant General Counsel at the Treasury and Chief Counsel for the Internal Revenue Service. The President is authorized to appoint an individual to this position pursuant to 31 U.S.C. § 301(f)(2). Mr. Merritt (or rather his professional corporation) is currently a partner in the local office of Morrison & Foerster. He is a well-respected and accomplished tax lawyer who has been prominent in bar association tax activities and has published numerous articles on tax subjects. He also served from 1964 to 1968 as an IRS trial attorney.



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THE WHITE HOUSE

WASHINGTON

June 13, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Year of the Bible Fundraising

John A. Hash, President and Editor of the monthly magazine "Bible Pathway," has written the President, applauding his "Year of the Bible" proclamation. Hash also sent a copy of this month's issue, which features the President on the cover (no problem) and a message on the inside cover from Hash to his readers concerning the proclamation. In that message Hash offers to send readers a copy of the President's proclamation and a cassette tape of his address in return for a "gift" of \$12.

I do not think there is much we can do as a legal matter about the use of these materials in fundraising, unless the promotion and/or the materials convey a false impression of Presidential endorsement. The proclamation and the speech -- whether reproduced on paper or on tape -- are in the public domain and cannot be copyrighted. Hash's message does not, in my mind, suggest that the President is participating in or has endorsed his particular appeal for funds. Hash simply offers copies of a Presidential proclamation and a speech, accurately identifying them as such.

If the proclamation "sold" by Hash is a copy of the ceremonial proclamation, however, with the Presidential Seal, the use of the seal in the commercial effort could constitute a violation of 18 U.S.C. § 713(b). If Hash is copying and selling the ceremonial proclamation, he is also reproducing and selling the seal. It is not clear whether the proclamation provided by Hash to his donors is the ceremonial one or simply a text produced by him.

I would be happy to call or write Hash to determine if he is using the seal in his fundraising, and advise him to cease doing so if he is. I could also raise the general concern to avoid the appearance of Presidential endorsement of his effort, and make certain that he does not suggest such endorsement in any of his material. Unless you think differently, however, I do not see any basis for halting Hash's fundraising scheme. I await your guidance.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 13, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Civil Aeronautics Board Decisions in
Windward Islands Airways; Maersk Air
I/S; Air Panama International, S.A.;
GRM International, Inc.

Richard Darman's office has asked for comments by close of business Tuesday, June 14, 1983 on the above-referenced CAB decisions, which were submitted for Presidential review as required by § 801(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 1461(a). Under this section, the President may disapprove, solely on the basis of foreign relations or national defense considerations, CAB actions involving either foreign air carriers or domestic carriers involved in foreign air transportation. If the President wishes to disapprove such CAB actions, he must do so within sixty days of submission (in these cases, by June 21, 21, July 8, and 18, respectively).

The orders here have been reviewed by the appropriate departments and agencies, following the procedures established by Executive Order No. 11920 (1976). OMB recommends that the President not disapprove, and reports that the NSC and the Departments of State, Defense, Justice and Transportation have not identified any foreign relations or national defense reasons for disapproval. These orders involve foreign carriers, and accordingly the proposed letter from the President to the CAB Chairman prepared by OMB omits the standard sentence designed to preserve availability of judicial review.

These are, as OMB states, routine, noncontroversial matters. The first three orders authorize service by the named carriers; the fourth order denies an application by a Philippine carrier for service as a freight forwarder since such service is not permitted U.S. carriers by the Philippines.

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

Attachment

THE WHITE HOUSE

WASHINGTON

June 13, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decisions in
Windward Islands Airways; Maersk Air
I/S; Air Panama International, S.A.;
GRM International, Inc.

Our office has reviewed the above-referenced CAB decisions and related materials and has no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(a).

We also have no legal objection to OMB's recommendation that the President not disapprove these orders or to the substance of the letter from the President to the CAB Chairman prepared by OMB.

FFF:JGR:aw 6/13/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 13, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Great American Flag

On Tuesday, Flag Day, the President is scheduled to accept on behalf of the American people the Great American Flag. You may recall that this flag, 210' x 411', was paid for by donations to the Great American Flag Fund, a private, non-profit, non-partisan organization, and was previously unfurled to welcome the hostages back from Iran. The flag will be donated to the American people along with its customized home, a tractor-trailor truck. The officials of the Great American Flag Fund have drafted a donation statement they propose to sign, transferring and assigning the flag to the United States. Michael Castine has asked for our views. The idea for the ceremony was Robert Bonitati's, and the ceremony has been developed through the Office of Private Sector Initiatives.

The gift can be formally accepted by the Administrator of General Services, by virtue of 40 U.S.C. § 298a. I have discussed the matter with GSA liaison Kerry Moody, who advises that GSA has no objection and that the President may ceremonially accept the flag on behalf of the American people. (This is not a gift for the Presidential library, so the typical donation agreement forms are inapt in this circumstance.)

Under 40 U.S.C. § 298a the donated property must be given unconditionally. Those behind the flag hope it will eventually fly along the Verrazano-Narrows Bridge in New York on flag-flying days, but no conditions are attached to the gift. The donation statement to be signed by the Flag Fund organizers contains no conditions.

I have drafted a memorandum for your signature to Castine, advising that the President may ceremonially accept the flag, that the gift will formally be to the Administrator of General Services, that it must be unconditional, and that we have no objection to the statement the Flag Fund organizers propose to sign.

Attachment

THE WHITE HOUSE

WASHINGTON

June 13, 1983

MEMORANDUM FOR MICHAEL P. CASTINE
DEPUTY DIRECTOR
PRIVATE SECTOR INITIATIVES

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Great American Flag

You have asked for our views on the President's scheduled acceptance of the Great American Flag from the Great American Flag Fund. The President may ceremonially accept the flag on behalf of the American people, but formally the authority to accept such gifts resides in the Administrator of General Services, by virtue of 40 U.S.C. § 298a. Our office has informed Kerry Moody, GSA liaison, of the proposed gift, and he has advised us that GSA has no objection. You should contact Moody concerning disposition of the flag, since it will become the property of GSA.

Under 40 U.S.C. § 298a, gifts must be unconditional, and our advice is predicated on the absence of conditions to the contemplated donation. The statement the Flag Fund organizers propose to sign is unobjectionable. It suggests no conditions and calls for no signature by the President. Since the Administrator of General Services and not the President has the legal authority to accept such gifts, the President should not sign any documents in connection with this ceremony.

FFF:JGR:aw 6/13/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

June 14, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Civil Aeronautics Board Decisions
in Worldwide Airlines, Inc.

Richard Darman's office asked for comments by close of business Monday, June 13, 1983 on the above-referenced CAB decisions, which were submitted for Presidential review as required by § 801(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 1461(a). Under this section, the President may disapprove, solely on the basis of foreign relations or national defense considerations, CAB actions involving either foreign air carriers or domestic carriers involved in foreign air transportation. If the President wishes to disapprove such CAB actions, he must do so within sixty days of submission (in this case, by July 2).

The order here has been reviewed by the appropriate departments and agencies, following the procedures established by Executive Order No. 11920 (1976). OMB recommends that the President not disapprove, and reports that the NSC and the Departments of State, Defense, Justice and Transportation have not identified any foreign relations or national defense reasons for disapproval. Since this order involves a domestic carrier, judicial review is theoretically available.

The proposed letter to the CAB Chairman, however, does not include the standard sentence designed to preserve availability of judicial review in such cases. Inquiries with the CAB (through OMB) and the Departments of Justice and Transportation disclosed no explanation for the omission. Transportation reiterated its general view that the sentence was surplusage, in light of the 1978 amendment to § 801(a) specifically preserving judicial review of orders not disapproved by the President. Justice advised that the sentence be included, since the new § 801(a) has yet to be tested by the courts. We have adhered to the Justice view in the past on this general question. Accordingly, I have recommended inclusion of the judicial review sentence in the attached draft memorandum for Darman.

Attachment

THE WHITE HOUSE

WASHINGTON

June 14, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decisions
in Worldwide Airlines, Inc.

Our office has reviewed the above-referenced CAB decisions and related materials and has no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(a).

We also have no legal objection to OMB's recommendation that the President not disapprove this order. Since this order involves a domestic carrier, and none of the reviewing agencies have identified any foreign relations or national defense reasons for Presidential action, the letter to the CAB Chairman should, pursuant to Executive Order 11920, contain the following sentence: "No foreign relations or national defense consideration underlies my decision not to disapprove this order."

FFF:JGR:aw 6/14/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

June 14, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Blair House *gsm*

You asked that I check the employment status of [REDACTED] a butler at Blair House. I did so through the Legal Adviser's Office at the State Department. Gene Malmborg of that office advised me that [REDACTED] was one of a number of Blair House workers who were hired intermittently on an as needed basis. Until recently, these workers were considered by State to be independent contractors. After a review of the situation in conjunction with the IRS, however, it was determined that these individuals -- including [REDACTED] -- should be considered State Department employees and not independent contractors. State thereupon advised them that they would no longer be hired as before, but that State would obtain their services through caterers. Now State simply advises the particular caterer for an event when it needs a butler, for example, and the caterer will provide one. Whether the caterer would hire [REDACTED] is up to the caterer. *b6*

COPY - Reagan Presidential Record

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 14, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Draft Drug Abuse Policy Fact Sheet

Richard Darman has requested comments on a draft drug abuse policy fact sheet by noon June 15. The fact sheet is to be distributed June 17 in connection with a speech by the Vice President on the National Narcotics Border Interdiction System (NNBIS). The fact sheet, which focuses on drug law enforcement, was drafted by Carlton Turner, whose responsibilities are largely in other areas. It reviews four initiatives: the South Florida Task Force, the Organized Crime Drug Enforcement Task Forces, NNBIS, and the Law Enforcement Coordinating Committees. If the fact sheet is intended to be comprehensive, it should also mention the new FBI role in drug cases, the various proposed legislative reforms designed to improve drug law enforcement (e.g., the narcotics enforcement amendments, bail, and forfeiture portions of the Comprehensive Crime Control Act of 1983), and the establishment of the National Center for State and Local Law Enforcement Training.

The Justice Department, which is responsible for drug law enforcement, should be able to provide guidance on these topics, and may have other items which should be included. The Administration drug effort was recently attacked by the GAO, so I think we should put our best foot forward in any press release. I have drafted a memorandum to Darman for your signature.

Attachment

THE WHITE HOUSE

WASHINGTON

June 14, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Drug Abuse Policy Fact Sheet

Counsel's Office has reviewed the above-referenced proposed fact sheet. If it is intended to be a comprehensive listing of Administration efforts in the area of drug law enforcement, it should include additional initiatives, such as the Attorney General's action in January 1982 to bring the Federal Bureau of Investigation into drug cases, the Administration-sponsored legislative proposals to make drug law enforcement more effective (e.g., the narcotics enforcement amendments, bail reform, and forfeiture reform portions of the Comprehensive Crime Control Act of 1983), and the establishment of the National Center for State and Local Law Enforcement Training. The Department of Justice can provide specific information on these significant initiatives, and may also suggest additional items which deserve mention.

FFF:JGR:aw 6/14/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 14, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Proposed Testimony of INS Deputy
Commissioner Riso on the Immigration
Reform and Control Act

Jim Murr of OMB has requested comments on the above-referenced proposed testimony, scheduled to be delivered before the House Agriculture Committee on June 15. The testimony concerns H.R. 1510, the House version of the immigration bill, and focuses on those aspects of greatest concern to agricultural interests. In discussing employer sanctions, the testimony urges rejection of the Judiciary Committee amendment which would exempt employers from verifying the citizenship of prospective employees until after notification that the employers had an illegal alien in their employ. Riso also reviews INS plans for implementing the employer sanctions program, and the bill's temporary foreign worker scheme. I see no legal objections.

Attachment

THE WHITE HOUSE

WASHINGTON

June 14, 1983

MEMORANDUM FOR JAMES C. MURR
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Testimony of INS Deputy
Commissioner Riso on the Immigration
Reform and Control Act

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

FFF:JGR:aw .6/14/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

June 14, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: "Fair Housing Amendments of 1983" for
Transmittal to Congress by the President

Richard Darman has asked for comments by close of business June 15 on the Administration's proposed fair housing bill, an accompanying section-by-section analysis, and a draft transmittal message. The bill, of course, is the product of the Cabinet Council on Legal Policy. The materials in question were drafted by Justice and HUD, and have been reviewed by OMB and OPD. We noted no legal objection to the bill when it appeared on the Cabinet Council agenda, although we were given time only for a cursory review.

You will recall that the bill would authorize suit in federal court by the Attorney General in the event of failure of conciliation efforts in cases of individual housing discrimination. Current law authorizes suit only in pattern and practice cases. The Attorney General can seek civil penalties as well as equitable relief. Current law prohibits housing discrimination on the basis of race, color, religion, sex, or national origin; the proposed bill would add handicap to the list. Several other, more minor provisions would make enforcement of the Fair Housing Act easier and more effective.

I have re-reviewed the bill and have reviewed the section-by-section analysis and have no objections. I do, however, have several comments with respect to the transmittal statement:

1. The last full sentence on page 1 states that "It [the bill] thus places the leadership in enforcement where it belongs, with the Federal Government rather than with the individual victim." There is no support for this statement -- in either its factual or normative aspects -- beyond its own ipse dixit. In fact the bill strengthens the right and ability of individual victims to institute private suits for relief. In many areas enforcement of federal rights is advanced most effectively by private suits -- antitrust, securities,

and many areas of civil rights law come to mind -- and there is no reason to suppose housing will be different, particularly with the liberalized attorneys fees provisions in the Administration bill. This statement is, however, an implicit criticism of the rival Mathias bill, which relies on suits by individual victims to a greater extent than the Administration bill. On that basis I suppose it is tolerable.

2. The first full sentence on page 3 justifies the severe penalties in the bill on the ground that such penalties are needed "in cases of violation of the fundamental right to be free from discrimination." There is of course no such right; at the very least "illegal" should modify "discrimination." More significantly, "fundamental right" is a legal term of art, triggering strict judicial scrutiny under the Carolene Products analysis. The Attorney General has frequently criticized "fundamental rights" jurisprudence in the past, and the phrase should not be loosely used. Any synonym that is not a legal term of art could be substituted, such as "basic right."

3. The first full sentence on page 3 also dismisses the problem of the severity of the fines with the comforting assurance that the fines will be imposed by the federal courts, which have "earned and enjoyed the confidence of the American people over our history for [their] impartiality, independence, and fairness." As a statement of historical fact this is untrue. The federal judiciary has been viewed by the American people with active distrust from the very beginning, when the Federalists packed the new courts to thwart the aspirations of Jeffersonian Republicans. I assume the statement is included, however, as another implicit criticism of the Mathias bill, which would create new administrative law judges to apportion fines. Again, on that basis, I suppose it is tolerable.

A memorandum for Darman is attached for your review and signature. On the assumption you concur in the foregoing compromises to advocacy, the memorandum only addresses point 2.

Attachment

THE WHITE HOUSE

WASHINGTON

June 14, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: "Fair Housing Amendments of 1983" for
Transmittal to Congress by the President

Counsel's Office has reviewed the proposed Fair Housing Amendments of 1983, the accompanying section-by-section analysis, and the draft transmittal message. We have no legal objection to the bill or the section-by-section analysis. With respect to the transmittal message, we recommend changing the phrase "the fundamental right to be free from discrimination" at lines 5-6 on page 3 to "the basic right to be free from illegal discrimination." The term "fundamental right" is a legal term of art, triggering heightened judicial scrutiny in certain circumstances. The Attorney General has frequently criticized "fundamental rights" jurisprudence, and the phrase should not be loosely used in contexts in which its significance might be misinterpreted. The adjective "illegal" should be added to "discrimination" because there is no right to be free from discrimination per se, and only some types of discrimination -- for example, on the basis of race -- are banned.

FFF:JGR:aw 6/14/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

June 14, 1983

Dear Mr. Margulies:

With regard to your prospective appointment as General Counsel at the Department of Commerce, it will be necessary for you to complete the enclosed Personal Data Statement and Financial Disclosure Report.

Please return these forms to me at your earliest convenience.

With best wishes,

Sincerely,



John G. Roberts
Associate Counsel
to the President

The Honorable Irving P. Margulies
Deputy General Counsel
U.S. Department of Commerce
Room 5870
Washington, D.C. 20230

Enclosures