Collection: Roberts, John G.: Files
Folder Title: Chron File (10/08/1983-10/17/1983)
Box: 61

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name

File Folder CHRON FILE (10/08/1983 - 10/17/1983)

Box Number

Withdrawer

IGP 8/30/2005

FOIA

F05-139/01

COOK

35IGP

DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	LETTER	ROBERTS TO HENRY J. FRIENDLY (OPEN IN WHOLE)	1	10/11/1983	B6	1257
2	MEMO	ROBERTS TO HOLLAND RE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD (PARTIAL)	1	10/13/1983	B6	598

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.

THE WHITE HOUSE

WASHINGTON

October 11, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: Judgment Funds Award Distribution for the Red Lake Band of Chippewa Indians

Richard Darman has asked for comments by tomorrow, October 12, on the above-referenced enrolled bill. This bill, which passed both Houses by voice vote, authorizes the distribution of some $600,000 awarded by the Court of Claims to the Red Lake Chippewas. OMB and Interior recommend approval; Justice has no objection. I have reviewed the memorandum for the President prepared by OMB Assistant Director for Legislative Reference James M. Frey, and the bill itself, and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

October 11, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT
DEPUTY TO THE CHIEF OF STAFF

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Judgment Funds Award Distribution for the Red Lake Band of Chippewa Indians

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

THE WHITE HOUSE

WASHINGTON

October 11, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS JGR

SUBJECT: S. 1148 - Judgment Fund Distribution for the Fort Belknap Assiniboine Tribe and the Fort Peck Assiniboine Tribe

Richard Darman has asked for comments by tomorrow, October 12, on the above-referenced enrolled bill. This bill, which passed both Houses by voice vote, authorizes the distribution of some $16.4 million awarded by the Court of Claims to the Fort Belknap and the Fort Peck Assiniboine Tribes. OMB and Interior recommend approval; Justice has no objection. I have reviewed the memorandum for the President prepared by OMB Assistant Director for Legislative Reference James M. Frey, and the bill itself, and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

October 11, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT
DEPUTY TO THE CHIEF OF STAFF

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: S. 1148 - Judgment Fund Distribution for the Fort Belknap Assiniboine Tribe and the Fort Peck Assiniboine Tribe

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

THE WHITE HOUSE

WASHINGTON

October 11, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS JGR

SUBJECT: Enrolled Resolution S.J. Res. 128 - Metropolitan Opera Day

Richard Darman has requested comments by close of business October 13 on the above-referenced enrolled resolution, which would designate October 22, the one-hundredth anniversary of the Met's first performance, as "Metropolitan Opera Day." The resolution reviews the glory of the Met and all that it has done, and requests an appropriate Presidential proclamation. The resolution passed both Houses, as seems appropriate, by voice vote. OMB and NEA recommend approval. After reviewing the memorandum for the President from OMB Assistant Director for Legislative Reference James M. Frey, and the resolution itself, I have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

October 11, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT
DEPUTY TO THE CHIEF OF STAFF

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Resolution S.J. Res. 128 - Metropolitan Opera Day

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

THE WHITE HOUSE

WASHINGTON

October 11, 1983

Dear Judge:

This morning the President signed H.R. 4101, which, among other things, will delay until January 1, 1986 the provisions of Public Law 98-21 extending social security coverage to senior judges. Congress and the Administration both recognized that a mistake had been made and, mirabile dictu, corrected it - at least for two years.

I fear, however, that another mistake is about to be made, one that will not be so easily undone. The pressure behind the Chief Justice's Intercircuit Tribunal proposal - a Trojan horse that will inevitably give birth to a National Court of Appeals - is becoming irresistable. In confidence, our office is fighting the good fight against it, and has delayed Administration support for almost a year, but we cannot hold out much longer against the combined assault of the Chief, Congressional leaders, and - at Professor Bator's urging - our own Justice Department. Our only hope is that Congress will continue to do what it does best - nothing.

I continue to enjoy my work here and expect to remain in place through the election. I trust all is well with you and that you are well into the press of business of another term. Please do not bother with a response.

Best wishes,

Respectfully,

John Roberts

The Honorable Henry J. Friendly
United States Court of Appeals
for the Second Circuit
United States Courthouse
Foley Square
New York, NY 10007

THE WHITE HOUSE

WASHINGTON

October 12, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS JGR

SUBJECT: Presidential Remarks: Kickoff of Partnerships in Education Program
Thursday, October 13, 1983
(10/11/83 - 6:30 p.m. draft)

Richard Darman has asked that comments on the above-referenced remarks be sent directly to Ben Elliott by noon today. The remarks discuss the need for education reforms and focus on the initiative to promote partnerships in education, whereby businesses or government agencies support a particular school. The President announces that he will sign an executive order directing "all branches of the Government" to form partnerships with local schools, and then announces that the White House will form such a partnership with Congress Heights Elementary School. The remarks conclude with the signing of a proclamation designating this school year as the National Year of Partnerships in Education.

Dianna advises me that the reference to the executive order is incorrect and will be deleted. I have memorialized this in our comment memorandum. The proclamation has already been signed by the President, but I have no objection to a second, ceremonial signing. I have no other objections.

Attachment

THE WHITE HOUSE

WASHINGTON

October 12, 1983

MEMORANDUM FOR BEN ELLIOTT
PRESIDENTIAL SPEECHWRITING OFFICE

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Remarks: Kickoff of Partnerships in Education Program
Thursday, October 13, 1983
(10/11/83 - 6:30 p.m. draft)

Counsel's Office has reviewed the above-referenced draft remarks. It is our understanding that the first sentence of the first full paragraph on page 4 is incorrect, and that no such executive order will be signed. Appropriate changes in the text should be made, deleting any reference to an executive order. We have no other objections.

cc: Richard G. Darman

RAH:JGR:aea 10/12/83

bcc: FFFielding/RAHauser
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 12, 1983

MEMORANDUM FOR STANLEY E. MORRIS
ASSOCIATE DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Gerald Warren Kincaid

You will recall that on October 3 I forwarded to you correspondence received in our office from Gerald Kincaid. Mr. Kincaid raised several allegations concerning Timothy Kincaid and requested a federal investigation. Gerald Kincaid has now requested the name and address of the individual at the Justice Department to whom he should direct further correspondence on this matter. I am forwarding Kincaid's latest letter to you in order that you might provide him this information directly.

Many thanks.

THE WHITE HOUSE

WASHINGTON

October 13, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: Draft Presidential Remarks: Drop by Second White House Conference for Non-Career Executives (10/12 - 4:00 p.m. draft)

Richard Darman has asked that comments on the above-referenced remarks be sent directly to Ben Elliott by 10:00 a.m. today. The brief remarks review the progress of the economic recovery and touch upon the improvement in our foreign relations. I have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

October 13, 1983

MEMORANDUM FOR BEN ELLIOTT
PRESIDENTIAL SPEECHWRITING OFFICE

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Draft Presidential Remarks: Drop by Second White House Conference for Non-Career Executives (10/12 - 4:00 p.m. draft)

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

RAH:JGR:aea 10/13/83

cc: FFFielding/RAHauser
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

October 13, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: Partnerships in Education -- Draft Presidential Memo to Heads of Departments and Agencies and Enclosed Materials (Prepared by the Office of Private Sector Initiatives)

Richard Darman has asked for comments by noon today on the attached proposed Presidential memorandum. The memorandum requests each executive department and agency - including field offices - to "adopt" a school and have employees engage in such activities as tutoring, field trips, tours, and speakers programs with pupils from the adopted school. The memorandum notes that the White House staff will lead by example by adopting a D.C. public school.

I have no general objection to the concept of adopting a school, or even to including government agencies in the effort, although it is obvious that legal questions will arise with respect to the particulars of any program. (*E.g.*, should workers be given time off to tutor students? May appropriated funds be used in the program?) I think the program can only proceed as a voluntary one, and this fact should be made clear in the memorandum. I reviewed the matter with Joe Morris of OPM and he saw no problems, assuming that participation of federal employees was voluntary and on their own time. We should also stress to those who will be implementing the program that appropriated funds may only be used for the purposes for which they were appropriated.

Attachment

THE WHITE HOUSE

WASHINGTON

October 13, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT
DEPUTY TO THE CHIEF OF STAFF

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Partnerships in Education -- Draft Presidential Memo to Heads of Departments and Agencies and Enclosed Materials (Prepared by the Office of Private Sector Initiatives)

Counsel's Office has reviewed the proposed Presidential memorandum to heads of executive departments and agencies on Partnerships in Education. This proposed program, which we have not had an opportunity to review until this late date, should, in our view, only proceed on the basis of voluntary participation by federal employees on their own time. This point must be made clear in the Presidential memorandum.

Those charged with implementing the program, both in the Private Sector Initiatives Office and in the agencies, must also be reminded that appropriated funds may only be used for those purposes for which they were appropriated. Serious questions would be raised, for example, if an agency with no specific responsibilities in the education area were to use appropriated funds to assist its adopted school. Any such questions arising in the course of implementing this program should be reviewed by the appropriate general counsel.

With respect to the particular language of the memorandum, we recommend changing the beginning of the penultimate sentence in the second paragraph to read: "Elements of the partnership can range from your employees volunteering to become involved in..." The following should also be added at the end of the second paragraph: "Participation by individual employees in this program is entirely voluntary, and should be on the employee's own time."

RAH:JGR:aea 10/13/83

cc: FFielding/RAHauser
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 13, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Enrolled Bill H.R. 3379 - Edwin D. Eshleman Post Office Building

Richard Darman has asked for comments by close of business, October 14, on the above-referenced enrolled bill, which would name a specific post office building in Pennsylvania the "Edwin D. Eshleman Post Office Building." Eshleman, in case his renown has escaped you, was born in 1920 near the post office in question and served for nine years in the House of Representatives, from 1966-1975.

OMB recommends approval; the Postal Service and GSA have no objections. I have reviewed the memorandum for the President prepared by OMB Assistant Director for Legislative Reference James M. Frey, and the bill itself, and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

October 13, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT
DEPUTY TO THE CHIEF OF STAFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 3379 - Edwin D. Eshleman Post Office Building

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

FFF:JGR:aea 10/13/83

cc: FFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

October 13, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Statement of John C. Keeney Regarding Credit Card Fraud on October 17, 1983

We have been provided with a copy of the statement Deputy Assistant Attorney General John C. Keeney proposes to deliver on October 17 before the Senate Judiciary Committee. The proposed testimony presents the views of the Department of Justice on S. 1870, a bill that would provide criminal penalities for certain credit and debit card counterfeiting and related fraud. The testimony supports the thrust of the bill, but suggests several substantial revisions to respond to specific problems that the Department has encountered in prosecuting this type of fraud. The testimony also suggests that the Committee consider amending Title 15, the current home of the Truth-in-Lending and Electronic Funds Transfer Acts, rather than Title 18 to address these problems. Finally, the testimony urges the Committee to enact Part G of Title XI of S. 1762, the Comprehensive Crime Control Act of 1983, as part of its effort to fill in the gaps in the present law regarding bank fraud. I have reviewed the testimony and have no objections to it.

Attachment

THE WHITE HOUSE

WASHINGTON

October 13, 1983

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of John C. Keeney Regarding Credit Card Fraud on October 17, 1983

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

FFF:JGR:aea 10/13/83

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 13, 1983

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS

SUBJECT: Appointment of Betty Cuevas to the Advisory Committee on Small and Minority Business Ownership

I have reviewed the Personal Data Statement submitted by Betty Cuevas in connection with her prospective appointment to the Advisory Committee on Small and Minority Business Ownership. Under 15 U.S.C. § 636(j)(3)(A), the President is authorized to appoint five high-level officers from United States businesses and five representatives of minority small businesses to this committee. Mrs. Cuevas falls into the latter category, as the founder and owner of Cuevas Catering Service and Cuevas Restaurants. Her PDS reveals no holdings or associations that would preclude her appointment.

ADVISORY COMMITTEE ON SMALL AND MINORITY BUSINESS OWNERSHIP

Independent

AUTHORITY: P.L. 95-507, 92 Stat. 1765, 10/24/78 (authorizes estab'mt)
Executive Order 12190, 2/1/80
Executive Order 12258, 12/31/80 (extends term. date)
Executive Order 12399, 12/31/82 (extends term. date)

METHOD: Appointed by the President

MEMBERS: TEN as follows:

FIVE high-level officers from five United States businesses and
FIVE representatives of minority small businesses

In selecting the members, the President shall give due consideration to the particular skills desirable to accomplish the purpose and functions of the Committee.

CHAIRMAN: Designated by the President from among the members

TERM: Pleasure of the President

SALARY: Each member who is not otherwise employed by the Federal Government shall receive no compensation from the U.S. by virtue of their service on the Committee, but all members may receive transportation and travel expenses, including per diem in lieu of subsistence as authorized by 5 U.S.C. 5702 and 5703.

PURPOSE: Shall assist in monitoring and encouraging the placement of subcontracts by the private sector with eligible small businesses, particularly with small minority businesses, and shall study and propose the incentives and assistance needed by the private sector to help in the training, development, and upgrading of such businesses.

ADMINISTRATIVE SUPPORT: All necessary administrative staff services, support, facilities, and expenses of the Committee shall, to the extent permitted by law, be furnished by the Small Business Administration.

TERMINATION: The Committee shall terminate on ~~December 31, 1980.~~
~~December 31, 1982.~~
September 30, 1984.

THE WHITE HOUSE

WASHINGTON

October 13, 1983

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS JGR

SUBJECT: Appointment of David H. Welch to the Architectural and Transportation Barriers Compliance Board

I have reviewed the Personal Data Statement submitted by David H. Welch in connection with his prospective appointment to the Architectural and Transportation Barriers Compliance Board. The President is authorized to appoint members to this Board by 29 U.S.C. § 792(a)(1)(A). That provision specifies that five of the eleven Presidential appointees "shall be handicapped individuals." [redacted]

b6

THE WHITE HOUSE

WASHINGTON

October 13, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: CAB Decision in U.S.- Scandinavia High Class and Special Point-to-Point Fares - 10 Day Case

Richard Darman's office asked for comments by noon tomorrow on the above-referenced CAB decision, which was submitted for Presidential review as required by § 801(b) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 1461(b). Under this provision, any order of the Board pursuant to 1482(j) of Title 49, "suspending, rejecting or canceling a rate, fare, or charge for foreign air transportation, and any order rescinding the effectiveness of any such order," must be submitted to the President. The President may disapprove a submitted order, but only for foreign policy or national defense reasons. If the President wishes to disapprove an order, he must do so within ten days of submission of the order to him by the Board (in this case, by October 17, 1983).

The CAB order would suspend certain lower fares proposed by SAS on its routes from Detroit, in retaliation for a recent disapproval by Denmark, Norway, and Sweden of lower fares proposed by Northwest Airlines on New York - Scandinavia routes. The action by the Scandinavian countries was taken to protect SAS from competition.

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 allow the order to go into effect, and reports that the NSC and the Departments of State, Defense, Justice and Transportation have no objection to the Board's order. In ten-day review cases, unlike sixty-day review cases under 49 U.S.C. § 1461(a), it is standard simply to take no action on CAB orders not being disapproved, rather than sending a "no disapproval" letter to the Board. I see no reason for disagreeing with the recommendation that the President not disapprove this order.

Attachment

THE WHITE HOUSE

WASHINGTON

October 13, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: CAB Decision in U.S.- Scandinavia High Class and Special Point-to-Point Fares - 10 Day Case

We have reviewed the above-referenced CAB decision and have no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(b).

We also have no legal objection to OMB's recommendation that the President not disapprove this order.

FFF:JGR:aea 10/13/83

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 14, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Cabinet Council on Legal Policy Planning Session - Friday, October 14 - 3:00 p.m. in the Roosevelt Room

In the attached memorandum to Craig Fuller, the Deputy Attorney General concludes that it is almost inevitable that "drug tsar" legislation will clear both Houses of Congress by overwhelming margins. Schmults asks for authorization to approach Senators Thurmond and Biden to negotiate a version of such legislation the Administration would support. Schmults describes his desired approach as "a Drug Policy and Operations Board chaired by the Attorney General and made up of members of the Cabinet Council on Legal Policy."

I am in no position to assess Schmults' views on the inevitability of passage of drug tsar proposals, but I would insist on a conclusive determination that we have no choice in the matter before switching positions. Last year, largely at the Justice Department's urging, the President vetoed an otherwise desirable bill because it contained a "drug tsar" provision, and sustained considerable political damage in doing so. At the Cabinet Council meeting you should insist on greater specificity from Schmults as to exactly what type of bill he has in mind. At present he is simply asking for a blank check to support a bill that would increase the powers of his department vis-a-vis the others involved in the drug war (Treasury, Transportation, Carlton Turner's office, etc.)

THE WHITE HOUSE

WASHINGTON

October 14, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT
DEPUTY TO THE CHIEF OF STAFF

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Executive Order: Continuation of Export Control Regulations

This will confirm our oral advice that we have no legal objection to the proposed Executive Order. As we indicated, however, we would prefer that the last sentence of section 4 read as follows: "It is my intention to terminate this Order upon the enactment into law of a bill reauthorizing the Export Administration Act."

RAH:JGR:aea 10/14/83

cc: FFielding/RAHauser
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 14, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Testimony of Floyd Clarke on Computer Crime - October 17, 1983

We have been provided with a copy of the testimony that FBI Deputy Assistant Director Floyd Clarke proposes to deliver on Monday before the House Subcommittee on Transportation, Aviation and Materials. The testimony concerns computer related crime. Clarke makes clear that the FBI does not have accurate statistics on computer related crime, since the Bureau does not break down crimes according to whether computers were involved. He reviews several recent FBI investigations into computer piracy, and expresses general support for H.R. 3970 and S. 1733, bills designed to improve federal computer crime legislation. The proposed testimony concludes by noting that the computer and communications systems of the FBI would be enhanced by greater security systems. In particular, Clarke urges voice protection measures for the Bureau's radio system. The Administration has asked Congress for funds for this purpose in the past.

I have reviewed the proposed testimony, and have no objections to it.

Attachment

THE WHITE HOUSE

WASHINGTON

October 15, 1983

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Testimony of Floyd Clarke on Computer Crime - October 17, 1983

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

FFF:JGR:aea 10/14/83

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 17, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Draft Briefing Materials for Possible Press Conference Regarding Martin Luther King and Airline Deregulation

Richard Darman has asked that comments on the above-referenced materials be sent directly to Mike Baroody by 2:00 p.m. today. The King holiday materials explain the President's shift as based on a view of the holiday as commemorating not just one man but the entire nation's struggle, and explains our opposition to opening the King tapes on privacy grounds. The airline materials basically present the view that in any competitive environment there will be winners and losers. I think the President should be given more guidance on responding to a specific question on use of Chapter XI to void labor contracts. I frankly do not know what the answer is - presumably we should avoid comment on specific cases - but the present materials give no guidance at all.

Attachment

THE WHITE HOUSE

WASHINGTON

October 17, 1983

MEMORANDUM FOR MICHAEL E. BAROODY
DEPUTY ASSISTANT TO THE PRESIDENT
DIRECTOR, OFFICE OF PUBLIC AFFAIRS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Briefing Materials for Possible Press Conference Regarding Martin Luther King and Airline Deregulation

Counsel's Office has reviewed the King holiday and airline deregulation materials for the possible press conference. We have no objection to the materials, but think more guidance may be advisable with respect to a question on the use of Chapter XI proceedings to void existing labor contracts. The materials at present contain no proposed answer, even though such a question could well be presented. While you will want to seek guidance from the appropriate departments on an answer, we recommend that the President simply recognize that concerns have been raised but decline comment on the ground that the question is being presented in the context of particular legal disputes (e.g., challenges to the Continental plan).

cc: Richard G. Darman

THE WHITE HOUSE

WASHINGTON

October 17, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Proposed Statement of William F. Baxter Regarding Federal Coal Leasing Policies

We have been asked for our views by noon today on the above-referenced proposed testimony. The testimony consists of economic analysis demonstrating that the most desirable coal leasing policy is one which promotes economic welfare, and that this goal is not the same as maximizing federal revenue. As Baxter points out, maximizing federal revenue from the coal leasing program would simply mean higher rates for electric utility users. Baxter's economic analysis concludes that federal coal leasing policy would enhance economic welfare if it ensured that sufficient coal were leased to assure adequate competition among holders of coal reserves and that the most efficient reserves to supply utility demands were available in the market. Baxter's testimony also suggests several reforms of the statutory scheme to permit achievement of this objective. The most prominent of these suggestions is that the "diligent development" requirement in the current statutory scheme be revoked. Under this requirement, federal coal leaseholders are required to develop their leasehold within ten years. Baxter points out that this requirement distorts the market in coal leases, and results in inefficiencies.

In light of the short turn-around time, I contacted Fred Khedouri directly to discuss this testimony. Khedouri advised me that the only controversial aspects of Baxter's testimony, from the point of view of the Administration's program, was the suggested revocation of the "diligent development" requirement. Khedouri indicated that he would have Baxter's testimony revised to suggest review of this requirement rather than flatly supporting its revocation. I advised Khedouri that such a revision seemed desirable, and that I had no other objections. Unless you disagree, no further action is required.

Attachment

THE WHITE HOUSE

WASHINGTON

October 17, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Tuition Tax Credits -- Draft Letter To Senator Dole and Draft Presidential Memo Attached

Richard Darman has asked for comments by 10:00 a.m. today on a proposed letter from Mr. Meese to Senator Dole and from the President to Catholic school administrators. The letter from Meese notes that the tuition tax credit coalition is united behind S. 528 in its present form. As you know, questions had been raised concerning possible changes in the bill in the wake of the Supreme Court's decision in *Mueller v. Allen*, most prominently whether to extend coverage of the bill to public school expenses. On September 29 you sent a memorandum to Messrs. Meese, Baker, Deaver, Darman, and Duberstein recommending a meeting to discuss possible changes in the bill. Neither I nor Peter, who has been handling this matter, know if such a meeting took place or what the results were.

If the meeting took place and it was decided not to make changes in the bill, these letters can be sent. If you think that the issues have not yet been adequately addressed - *i.e.*, if there has not yet been the meeting called for in your September 29 memorandum - the Meese letter should either not be sent or should be revised. As presently written it conveys the impression that the Administration is committed to S. 528 without changes. Both OPD (Galebach) and Legislative Affairs (Kabel) have told me that the Meese letter must be sent in some form, to get Dole to proceed with the bill, and that supporting changes in S. 528 would doom the bill. The attached memorandum to Darman is based on Peter's guess that no meeting has yet taken place on the issue of changes in S. 528, and the perceived need to send something to Dole. The suggested changes soften language that would otherwise seem to commit us to a no-changes position. I am operating on the basis of less than complete information, so if you want something else done in light of your more complete information please let me know. (I have advised Darman that we needed a little more time.)

THE WHITE HOUSE

WASHINGTON

October 17,1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT
DEPUTY TO THE CHIEF OF STAFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Tuition Tax Credits -- Draft Letter To Senator Dole and Draft Presidential Memo Attached

Counsel's Office has reviewed these proposed letters. We have no objection to the letter from the President. The letter to Senator Dole from Mr. Meese conveys the impression that the Administration is opposed to any changes in S. 528. While that may be our ultimate position, I am not convinced that the question has been adequately reviewed, and accordingly recommend softening language that could be interpreted as committing the Administration to a no-change position.

Specifically, we recommend:

1. deleting "on what form of legislation they desire" at the end of the first paragraph;

2. changing "are united behind S. 528 in the form you reported out of Finance Committee in May" in the second paragraph to "is united in the effort to bring S. 528 to a vote;"

3. deleting "in its present form" at the end of the second paragraph.

It is our belief that these changes will give the Administration greater flexibility should we decide that changes in S. 528 are necessary or desirable. As revised the Meese letter, like the President's letter, will focus more on bringing the bill to a vote than on the specific form of the bill.

FFF:JGR:aea 10/17/83

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 17, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: H.R. 3939 - "The Regulatory Oversight and Control Act of 1983"

OMB has asked for our views by October 27 on the above-referenced bill, which has been introduced by a group of House Republicans under the leadership of Congressman Trent Lott. The bill would effect several major changes in the regulatory process, requiring cost-benefit analysis of proposed rules, review of existing rules, and sunset provisions for major rules. The bill also contains a modified "Bumpers Amendment" and a provision obviating current "race to the courthouse" problems through a random forum selection process. Finally, the bill responds to the Chadha decision by requiring a joint resolution of approval before "major" rules can take effect and a ninety-day report and wait period providing an opportunity for a joint resolution of disapproval with respect to "minor" rules. A major rule is one designated as such by the President or issuing agency, or one with an annual economic impact of $100 million or more. You will recall that we sent a memorandum to Darman on October 7 (copy attached) objecting on several grounds to a proposed letter from Ken Duberstein to Lott concerning the bill.

This bill is of course a major undertaking, and the Administration response will have to be distilled from comments supplied by numerous departments and agencies, in particular the Justice Department and those offices that have been engaged in the regulatory reform effort. At this point, all we can do is highlight some problem areas. The attached draft memorandum does so, pointing out: (1) the burden of mandating agency review of existing regulations, (2) objections to the modified Bumpers Amendment previously voiced by the Justice Department, (3) objections to hobbling agency rulemaking by requiring affirmative Congressional assent to all major rules, (4) a constitutional objection to a detail in the legislative veto provisions.

Attachment

THE WHITE HOUSE

WASHINGTON

October 17, 1983

MEMORANDUM FOR JAMES C. MURR
ASSISTANT DIRECTOR FOR LEGISLATIVE REFERENCE
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: H.R. 3939 - "The Regulatory Oversight and Control Act of 1983"

Counsel's Office has reviewed the above-referenced bill. Several of its provisions, such as those mandating regulatory analyses of agency rules and requiring agencies to adopt the most cost-effective alternative, appear to be consistent with the Administration's approach to regulatory reform. Other provisions of the bill would seem to impose excessive burdens on the regulatory agencies in a manner that could well impede the achievement of Administration objectives.

Of particular concern is the bill's response to the Supreme Court's decision in INS v. Chadha. Requiring affirmative Congressional approval of all major proposed rules, while constitutionally acceptable under Chadha, would effectively halt agency rulemaking. While this may seem a halcyon prospect with respect to some agencies, it would also hobble Administration efforts to reform existing regulatory schemes. Depriving agencies of authority to issue regulations without Congressional approval would represent a dramatic shift of power from the executive to the legislative branch, and is, in our view, an extreme overreaction to the Chadha decision.

We would also point out that in § 201 of the bill, proposed § 802(a)(3)(b)(ii) of Title 5, United States Code, is constitutionally invalid under Chadha. That provision would permit regulations that would become effective after expiration of a 90-day waiting period in the absence of a joint resolution of disapproval to become effective earlier upon rejection by one House of such a resolution. This gives legal effect to action by Congress (rejection by one House) that does not satisfy the bicameralism or presentment requirements of Chadha.

Section 103 of the bill, proposed § 706 of Title 5, United States Code, is the so-called modified Bumpers Amendment. On September 21, 1983, Assistant Attorney General Jonathan Rose advised the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee that the Justice Department objected to similar provisions in S. 1080. We assume that those objections would also apply to this bill.

Finally, we would note the tremendous burden this bill would impose on agencies by requiring review of existing major rules. Such a blunderbuss approach may not be the most efficient use of each agency's time and resources.

THE WHITE HOUSE

WASHINGTON

October 17, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: FOIA Request of Douglass Lee Matheson

Mr. Matheson has filed an FOIA request with Dianna asking for all his files at the FBI, CIA, MI(ASA)(?), and Office of the President. While I do of course like to help Dianna's friends whenever possible, I recommend that we advise Mr. Matheson that we are not subject to the FOIA and that he should write directly to the other agencies he has listed. An appropriate letter is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

October 17, 1983

Dear Mr. Matheson:

This is in response to your letter of October 5. In that letter you requested, pursuant to the Freedom of Information Act, copies of files at various agencies and offices.

Please be advised that the White House Office, "whose sole function is to advise and assist the President," is not an agency subject to the Freedom of Information Act. Kissinger v. Reporters Committee for Freedom of the Press, 445 U.S. 136, 156 (1980). Accordingly, we are not in a position to respond to your Freedom of Information Act request.

If you will write directly to those agencies listed in your request that are subject to the Freedom of Information Act, those agencies will respond to your request in an appropriate manner.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Douglass Lee Matheson
South 155 Oak, #C-4
Spokane, WA 99204

THE WHITE HOUSE

WASHINGTON

October 17, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Ethnic Press Lunch and Press Conference

Linas Koejelis, who handles the ethnic eastern European community for Public Liaison, has advised me that the President could be confronted with a question on the Justice Department Office of Special Investigations at tomorrow's scheduled luncheon for the ethnic media. Many Americans of Baltic (Lithuanian, Latvian, Estonian or Ukrainian) descent are outraged that OSI - the office that prosecutes alleged Nazi war criminals, usually seeking to revoke their citizenship and deport them - cooperates with Soviet legal authorities and the KGB to obtain evidence against individuals who fled eastern Europe to America as the Red Army retook eastern Europe. OSI does, as a matter of fact, cooperate closely with the Soviets, and the Soviets are of course anxious to produce evidence that individuals who left Latvia, Lithuania, Estonia, or the Ukraine for America are nothing but Nazi war criminals. The Baltic American community argues - quite persuasively, in my view - that defendants in OSI cases risk being railroaded on the basis of Soviet evidence of dubious validity, with no opportunity to gather exculpatory evidence from the same sources. (The KGB is not subject to the FOIA; nor are Soviet prosecutors subject to due process constraints.) These arguments are beginning to find a receptive audience in the courts (see attached clippings).

My draft question and answer for the President avoids any substantive comment, and notes an awareness that most eastern European-Americans are not Nazi sympathizers (a point the ethnic community takes great pains to make).

Attachment

THE WHITE HOUSE

WASHINGTON

October 17, 1983

MEMORANDUM FOR KARNA SMALL
DEPUTY ASSISTANT TO THE PRESIDENT
DIRECTOR, MEDIA RELATIONS AND PLANNING

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Ethnic Media Luncheon

We have been alerted that the President may be confronted with a question concerning the Justice Department Office of Special Investigations at tomorrow's ethnic media luncheon. A proposed question and answer follows:

Q. The Justice Department Office of Special Investigations cooperates closely with Soviet authorities, including the KGB, to obtain evidence against eastern European immigrants accused of being Nazi war criminals. The Soviets are only too happy to portray those who left Lithuania, Latvia, Estonia, or the Ukraine for America as Nazi sympathizers, so the evidence supplied by the Soviets is of suspect authenticity. Do you approve of our Justice Department cooperating with the KGB to obtain evidence to use against American citizens?

A. There are several OSI cases pending in the courts, considering some of the questions you've raised, so it would not be appropriate for me to comment specifically upon them. I can say, however, that I have no doubt that the vast majority of immigrants who came to this country after World War II from the Baltic states, the Ukraine, and eastern Europe were not Nazi sympathizers - as the Soviets try to portray them - but were simply seeking freedom from Soviet oppression.

FFF:JGR:aea 10/17/83

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 17, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Draft Presidential Remarks: Luncheon with Ethnic Press (10/17 - 5:00 p.m. draft)

Richard Darman has asked that comments on the above-referenced remarks be sent directly to Ben Elliott by 9:00 a.m. tomorrow. The remarks review the progress of the economic recovery and our effort to rebuild our defenses, and conclude with a discussion of our willingness to enter into verifiable and fair arms limitations agreements with the Soviets. I have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

October 17, 1983

MEMORANDUM FOR BEN ELLIOTT
ACTING DIRECTOR
PRESIDENTIAL SPEECHWRITING OFFICE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Presidential Remarks: Luncheon with Ethnic Press (10/17 - 5:00 p.m. draft)

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

cc: Richard G. Darman

FFF:JGR:aea 10/17/83

bcc: FFFielding
JGRoberts
Subj
Chron

Chron

THE WHITE HOUSE

WASHINGTON

October 17, 1983

MEMORANDUM FOR: EDWIN MEESE III
COUNSELLOR TO THE PRESIDENT

JAMES A. BAKER III
ASSISTANT TO THE PRESIDENT
CHIEF OF STAFF

MICHAEL K. DEAVER
ASSISTANT TO THE PRESIDENT
DEPUTY CHIEF OF STAFF

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Release of Nixon White House Special Files

ACTION FORCING EVENT: November 10, 1983 deadline for review of 1.5 million pages of Nixon White House documents and possible assertion of executive privilege with respect to any of those documents.

ANALYSIS: For the past decade former President Nixon and members of his White House staff have been embroiled in a dispute with the Archivist and GSA concerning public access to the Nixon White House files. The current Administration may soon be compelled to make several decisions concerning its own position in the dispute. Mr. Fielding has recused himself from participation in this matter because his own files and those of his former colleagues are involved.

In 1974 Congress enacted the Presidential Recordings and Materials Preservation Act, note following 44 U.S.C. § 2107, a law applicable only to the Nixon White House files, which directed the Administrator of GSA to take control of all such files. The Administrator was directed by the Act to issue regulations, subject to legislative veto, governing public access to the files. President Nixon challenged the constitutionality of the Act on numerous grounds, most prominently separation of powers and executive privilege. A splintered Supreme Court upheld the Act, Nixon v. Administrator of General Services, 433 U.S. 425 (1977), essentially avoiding the privilege issue by noting that any privilege claims could be raised prior to disclosure under the regulations to be issued by GSA.

In the meantime, GSA was encountering difficulty promulgating the regulations mandated by the Act. Between 1975 and 1976 three sets were proposed by GSA and rejected by Congress pursuant to the legislative veto clause. The fourth and final set - allegedly prepared with substantial Congressional input - was not disapproved and became effective in August 1977. 41 C.F.R. § 105-63.

Under the regulations the Archivist is to review the Nixon files, returning private and personal material and removing material that falls into six specified categories, including classified material, law enforcement investigatory material, trade secrets, and material the disclosure of which would constitute a clearly unwarranted invasion of privacy. After this has been done the Archivist is to announce his intent to release publicly the remainder of the material, subject only to an opportunity for interested parties to assert any legal or constitutional right or privilege that would prevent or limit disclosure.

On August 12, 1983, the Archivist announced that he had completed his review of and proposed to release to the public 628 cubic feet (1.5 million pages) of material from the "Special Files Unit" of the Nixon files. According to the notice, the Special Files Unit "was established in 1972 to provide a central storage location for materials perceived as sensitive." The Special Files Unit includes files from Nixon's office and the offices of high-ranking advisors such as Henry Kissinger, H.R. Haldeman, and John Ehrlichman, and other files that would normally have gone to Central Files but were for various reasons considered more sensitive than routine files. Pursuant to the regulations, President Reagan was notified of the material proposed to be released, as were President Nixon and certain members of the Nixon White House staff. Any objections to the proposed release had to be received by September 12. On September 8, in response to a request from Nixon, this deadline was extended to November 10.

We have been advised by attorneys for Nixon and former Nixon White House staff members that several of the staff members will file suit this month to have the regulations declared invalid. (Nixon himself will not participate in this litigation, since he accepted the validity of the regulations in settlement of a previous suit.) The suit will argue that Congressional participation through the legislative veto process in drafting the regulations renders them invalid and will seek an injunction preventing disclosure of the files until new regulations have been adopted. If the suit is unsuccessful in blocking disclosure, Nixon would assert executive privilege with respect to many of the documents, and, if his claims are not upheld by the Archivist, would appeal to the courts.

We have examined some of the files in question on a cursory and random basis and determined that they contain material with respect to which we would normally be inclined to assert executive privilege. The files, for example, include handwritten predecisional notes by high White House staff members concerning meetings with the President, not to mention such handwritten notes by the President himself. The files also include documents affecting third parties who have had no opportunity to review the files or assert any claims, and indeed may not even be aware that they are mentioned in the documents. For example, the files include notes on personnel decisions, with candid comments on the individuals under consideration.

Decisions must be made whether to review the files as a prelude to possibly filing executive privilege claims with the Archivist to bar public disclosure of certain of the documents, and what form such a review should take. Under the regulations the Archivist is to issue a decision on any claims seeking to prevent disclosure, but as an executive branch official the Archivist will presumably have no choice but to honor claims submitted by the Chief Executive. If we do not review the files and assert claims ourselves, the Justice Department may nonetheless be called upon to advise GSA in ruling on Nixon's executive privilege claims. At the very least the Department will become involved when it defends GSA - as presumably it will - in the suit to be brought by the former staff members challenging the regulations.

OPTIONS:

A. Do nothing. Do not review the documents or assert any executive privilege claims. Do not support claims raised by Nixon.

Pro: Avoids public perception linking President Reagan with a Nixon effort to bar disclosure of sensitive Watergate-era documents.

Con: Privileged material will probably be released, not only compromising executive branch positions and deliberations but also undermining the force of the doctrine with respect to documents generated by this Administration.

Adverse precedent could be set with respect to claims we may want to raise concerning the Presidential Records Act, which provides for public release of documents from this Administration no later than 12 years after its conclusion.

B. Direct the Archivist to segregate potentially privileged material, pursuant to criteria outlined in a letter from the Justice Department. The letter would direct that no Watergate-related documents be considered potentially privileged. The Justice Department could then review the segregated material for possible claims.

Pro: Initial review is made by a more "objective" party, mitigating claims that we are shielding politically embarrassing documents from disclosure.

Permits some defense of the privilege.

Con: The Archivist is not trained in or sensitive to executive privilege concerns, and may not make an adequate review.

Any action by the current Administration to mandate a review for possibly privileged material - even if initially through the Archivist - risks the public perception that this President is shielding politically embarrassing, Watergate-era documents from public disclosure.

C. Do not undertake an independent executive privilege review or make any independent assertions of privilege, but respond to Nixon's claims, supporting some and rejecting others.

Pro: Permits some defense of the privilege.

Avoids perception that we are taking affirmative action to bar disclosure of the Nixon documents; rather we are only responding to claims presented to us.

Con: Nixon has different interests than the incumbent President, and may not raise privilege claims in all appropriate instances.

To the extent we support Nixon's claims we will still be viewed as aiding him in covering up politically embarrassing documents.

D. Undertake a full review of the documents and assert privilege where appropriate.

Pro: Protects privileged material from unwarranted disclosure.

Avoids adverse precedents with respect to documents generated by this Administration.

Con: Links this Administration in public's eye with a Nixon effort to shield disclosure of embarrassing documents.

Assertions of privilege may not be tenable in face of media, public, and Congressional pressure, further discrediting doctrine.

<u>RECOMMENDATION</u>: Counsel's Office recommends option B. This largely upholds our responsibility to the Presidency to safeguard executive branch deliberations, and minimizes the force of charges that our actions are politically motivated. It also leaves options open: even after the Archivist has segregated possibly privileged material we can decide (1) to do nothing further, (2) to respond only to Nixon's claims, or (3) to assert independent claims. All option B commits us to is an initial review, and that by the Archivist, which should arouse fewer suspicions than a review by Justice Department and/or Counsel's Office attorneys.

Option B would be implemented by sending the attached letter to the Archivist. We recommend that the letter be sent over the signature of the Assistant Attorney General for the Office of Legal Counsel. An early decision is essential in view of the planned release of the documents on November 10 and the volume of material to be reviewed.

RAH:JGR:aea 10/17/83

cc: RAHauser
JGRoberts
Subj
Chron