Collection: Roberts, John G.: Files
Folder Title: Chron File (12/01/1983-12/12/1983)
Box: 62

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name		***Withdrawer***
		IGP 8/30/2005
File Folder	CHRON FILE (12/01/1983 - 12/12/1983)	***FOIA***
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DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	ROBERTS TO FIELDING RE RAILROAD RETIREMENT BOARD (PARTIAL)	2	12/6/1983	B6	638
2	MEMO	FIELDING TO BECKY NORTON DUNLOP RE RAILROAD RETIREMENT BOARD (PARTIAL)	2	12/6/1983	B6	639

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

December 1, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Sherry Klinger Request for Letter of Recommendation

Sherry Klinger, whose aunt and uncle are apparently personal friends of the Reagans, has written the President to ask him to write a letter of recommendation on her behalf, to be added to her law school admissions application materials. Klinger notes in her letter that she served as a "political appointee" at HUD and, before that, as one of the President's California delegates to the 1980 Republican National Convention. I have reviewed Klinger's file at Presidential Personnel, which reveals that she served as Secretary (GS-10) to Undersecretary of HUD Donald Hovde for approximately one year. The file contains recommendations written on Klinger's behalf by previous employers and Republican Party figures. The file also documents Klinger's involvement on the grass roots level in Republican politics in California.

I have prepared a standard reply to Klinger, noting that we do not respond to requests for Presidential letters of recommendation.

Attachment

THE WHITE HOUSE

WASHINGTON

December 1, 1983

Dear Ms. Klinger:

Thank you for your letter of October 21 to the President. In that letter you requested the President to write a letter of recommendation on your behalf, to be added to your application materials for admission to law school.

The White House has been compelled to adopt a policy of generally not responding to requests for Presidential letters of recommendation. This policy is based not only on the inability of the President to consider personally the vast number of such requests he receives, but also on concern that a letter from the President could, because of his office, distort the normal workings of whatever selection process is involved.

We adhere to this policy regardless of any views on the particular individual involved, so our inability to respond to your request should in no sense be considered an adverse reflection on you.

I trust you will appreciate the reasons we cannot be more responsive to your request. Best of luck with your applications to law school. I look forward to your becoming a member of the learned profession.

Sincerely,

Fred F. Fielding
Counsel to the President

Ms. Sherry N. Klinger
6133 Whitsett Ave., #21
North Hollywood, CA 91606

FFF:JGR:aea 12/1/83
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 1, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Remarks: Kennedy Center Honors Reception

Richard Darman has asked that we send any comments on the above-referenced remarks directly to Ben Elliott by 3:00 p.m. today. The remarks praise the five recipients of the Kennedy Center awards: Katherine Dunham, Virgil Thomson, Elia Kazan, Frank Sinatra, and Jimmy Stewart. The remarks themselves are unobjectionable. The award to Sinatra may generate some adverse comment, since the United Nations recently singled Sinatra out for criticism for repeated performances in the South African homelands. The United Nations does not recognize the legitimacy of the homelands and has urged entertainers to boycott them.

Attachment

THE WHITE HOUSE

WASHINGTON

December 1, 1983

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Remarks: Kennedy Center Honors Reception

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

cc: Richard G. Darman

FFF:JGR:aea 12/1/83
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 2, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Presidential Taping: Hillsdale College Dinner Honoring Jeane Kirkpatrick Monday, December 5, 1983 (12/1/83; 5:30 p.m.)

Richard Darman has requested that we send any comments on the above-referenced remarks directly to Ben Elliott by noon today. The remarks praise Ambassador Kirkpatrick as a scholar, public servant, and role model for American women. The remarks also stress the change in America's international posture and the new assertiveness by the forces of freedom against communism throughout the world. The penultimate paragraph also contains kind words for Hillsdale College itself.

Hillsdale College is intimately involved in the Grove City College dispute concerning the scope of Title IX, currently before the Supreme Court. Hillsdale College, like Grove City, contends that it is not required to complete Title IX compliance forms because it receives no federal financial assistance. In the lower courts the Justice Department successfully argued that the receipt of federal grants and guaranteed loans by Hillsdale students subjected the Hillsdale admissions program to Title IX. Hillsdale's petition for certiorari is being held by the Court pending decision in the Grove City case.

The President's remarks do not remotely concern the Title IX issue, and only tangentially discuss Hillsdale. I read the remarks to Assistant Attorney General Brad Reynolds, who had no objection to them. I concur in this view.

Attachment

THE WHITE HOUSE

WASHINGTON

December 2, 1983

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Taping: Hillsdale College
Dinner Honoring Jeane Kirkpatrick
Monday, December 5, 1983 (12/1/83; 5:30 p.m.)

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

cc: Richard G. Darman

FFF;JGR:aea 12/2/83
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 2, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Flag Code Request

The President has received two letters, essentially in haec verba, from Methodist ministers requesting that he amend the Flag Code to specify that "flags and insignia representing devotion to the Supreme Being" may be given prominence over the American Flag in religious sanctuaries and during religious ceremonies. Oddly enough, the Flag Code, 36 U.S.C. §§ 171-178, does purport to confer such authority on the President acting alone. Specifically, 36 U.S.C. § 178 provides:

> Any rule or custom pertaining to the display of the flag of the United States of America, set forth in sections 171-178 of this title, may be altered, modified, or repealed, or additional rules with respect thereto may be prescribed, by the Commander in Chief of the Armed Forces of the United States, whenever he deems it to be appropriate or desirable; and any such alteration or additional rule shall be set forth in a proclamation.

By its terms the Flag Code does prohibit giving the place of highest prominence to a flag other than that of the United States. Pursuant to 36 U.S.C. § 175(c), "[n]o other flag or pennant should be placed above or, if on the same level, to the right of the flag of the United States of America, except during church services conducted by naval chaplains at sea, when the church pennant may be flown above the flag during church services for the personnel of the Navy." By the principle of expressio unius, exclusio alterius, the specific exception for naval church services at sea suggests other church services are not excepted.

More significantly, the question of the placement of the American flag during church services is explicitly addressed in 36 U.S.C. § 175(k), which provides:

> When displayed from a staff in a church or public auditorium, the flag of the United States of America should hold the position

> of superior prominence, in advance of the audience, and in the position of honor at the clergyman's or speaker's right as he faces the audience. Any other flag so displayed should be placed on the left of the clergyman or speaker or to the right of the audience.

The legislative history of this provision, while scant, nonetheless indicates a decision by the legislators that the national flag take precedence over religious flags. See S. Rep. 94-797 ("Section 3(k) has been amended to indicate the importance of the guarantee of religious freedom by the U.S. Constitution. The new language of this section affirms that when both the flag of the United States of America and the flag of the church are displayed on staffs, the flag of the United States should hold the position of prominence and the position of honor at the clergyman's right.") A witness testifying in support of the provision stressed that it was important "...in a time when some religious leaders forget that their right to preach their religious views is guarded and protected only by the strength of Constitutional guarantee." Hearing on S. 340 and S.J. Res. 91 Before the Subcommittee on Federal Charters, Holidays, and Celebrations of the Senate Committee on the Judiciary, 93d Cong., 2d Sess. 16 (1974).

In light of the explicit Congressional decision to preserve the prominence of the national flag even with respect to church flags, I do not think it would be appropriate for the President to exercise his authority under 36 U.S.C. § 178 to establish a contrary rule. The statute does authorize the President to alter, modify, or repeal rules codified in the Flag Code, but § 178 is best understood as empowering the President to respond to unforeseen contingencies, not to reverse Congress' own rules promulgated in the Flag Code simply because he disagrees with them.

The important point, of course, is that the Flag Code is only hortatory, a compilation of customary usages to provide guidance, rather than a set of legal rules. Both Congress itself and the courts have recognized as much. See, e.g., Holmes v. Wallace, 407 F. Supp. 493 (M.D. Ala.), aff'd, 540 F.2d 1083 (5 Cir. 1976). It contains no penalties for violations. If some church gives its flag the place of prominence over the Stars and Stripes, the pastor is hardly going to be sent up the river. There is, of course, a federal criminal penalty for flag desecration, 18 U.S.C. § 700, but that would not be implicated. Each state and the District of Columbia also has a flag desecration statute, but again it seems unlikely that any of these would cover the respective placement of church flags and the American flag.

I think our reply should subtly point out that the Flag Code neither proscribes nor was intended to proscribe conduct, without explicitly inviting the pastors simply to ignore the "law" if they really feel that strongly about it. I also recommend taking the position that any change of the sort urged by the pastors should come from Congress. A draft is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

December 2, 1983

Dear Mr. Staples:

Thank you for your letter to the President concerning the National Flag Code. That letter has been referred to this office for consideration. In your letter you asked the President to add language to the Flag Code specifying that "within religious sanctuaries and during ecclesiastical ceremonies, flags and insignia representing devotion to the Supreme Being may properly be given the place of highest honor."

Congress did consider the question of the relative placement of the national flag and a church flag when it enacted the Flag Code. See 36 U.S.C. § 175(k). The pertinent House Report explained this provision thusly:

> Section 3(k) [36 U.S.C. § 175(k)] has been amended to indicate the importance of the guarantee of religious freedom by the U.S. Constitution. The new language of this section affirms that when both the flag of the United States of America and the flag of the church are displayed on staffs, the flag of the United States should hold the position of prominence and the position of honor at the clergyman's right. Any other flag so displayed should be placed on the left of the clergyman or speaker or to the right of the audience.

The Flag Code was not intended to proscribe conduct, and it imposes no penalties. The purpose of Congress in enacting the Flag Code was rather to codify customary practices and usages concerning the flag.

The provision of the Flag Code authorizing the President to prescribe additional rules concerning the flag was designed to permit a response to unforeseen contingencies. In our view it would not be desirable for the President to exercise independent authority under this provision to overturn an explicit Congressional decision, reflected elsewhere in the Flag Code, at least without guidance from Congress. Since Congress has addressed in legislation the question of the placement of the national flag in a church, we think any reconsideration of this rule should come from Congress itself.

Thank you for raising this matter with us.

Sincerely,

Fred F. Fielding
Counsel to the President

The Reverend Lawrence S. Staples
Pastor
Hockanum United Methodist Church
178 Main Street
East Hartford, CT 06118

FFF:JGR:aea 12/2/83
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 2, 1983

Dear Mr. Zook:

Thank you for your letter to the President concerning the National Flag Code. That letter has been referred to this office for consideration. In your letter you asked the President to add language to the Flag Code specifying that "within religious sanctuaries and during ecclesiastical ceremonies, flags and insignia representing devotion to the Supreme Being may properly be given the place of highest honor."

Congress did consider the question of the relative placement of the national flag and a church flag when it enacted the Flag Code. See 36 U.S.C. § 175(k). The pertinent House Report explained this provision thusly:

> Section 3(k) [36 U.S.C. § 175(k)] has been amended to indicate the importance of the guarantee of religious freedom by the U.S. Constitution. The new language of this section affirms that when both the flag of the United States of America and the flag of the church are displayed on staffs, the flag of the United States should hold the position of prominence and the position of honor at the clergyman's right. Any other flag so displayed should be placed on the left of the clergyman or speaker or to the right of the audience.

The Flag Code was not intended to proscribe conduct, and it imposes no penalties. The purpose of Congress in enacting the Flag Code was rather to codify customary practices and usages concerning the flag.

The provision of the Flag Code authorizing the President to prescribe additional rules concerning the flag was designed to permit a response to unforeseen contingencies. In our view it would not be desirable for the President to exercise independent authority under this provision to overturn an explicit Congressional decision, reflected elsewhere in the Flag Code, at least without guidance from Congress. Since Congress has addressed in legislation the question of the placement of the national flag in a church, we think any reconsideration of this rule should come from Congress itself.

Thank you for raising this matter with us.

Sincerely,

Fred F. Fielding
Counsel to the President

The Reverend Don Zook
Pastor
United Methodist Church
Post Office Box 399
Leoti, Kansas 67861

FFF:JGR:aea 12/2/83
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 2, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Presidential Taping "The Last Frontier" Monday, December 5, 1983 (12/1/83; 3:30 p.m.)

Richard Darman has requested that we send any comments on the above-referenced remarks directly to Ben Elliott by noon today. The brief remarks praise the virtues of small business men and women, and their contributions not only to the economy but to the definition of the American Dream as well. I have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

December 2, 1983

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Taping "The Last Frontier"
Monday, December 5, 1983 (12/1/83; 3:30 p.m.)

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

cc: Richard G. Darman

FFF:JGR:aea 12/2/83
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 5, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS JGR

SUBJECT: Brookings Institution Remarks

The following responds to your inquiries of December 3:

1. Quotations on judicial self-restraint:

> "[W]hile unconstitutional exercise of power by the executive or legislative branches of government is subject to judicial restraint, the only check upon our own exercise of power is our own sense of self-restraint."
>
> \- Justice Stone dissenting in United States v. Butler, 297 U.S. 1, 78-79 (1936)

> "[J]udicial self-limitation may be the most significant aspect of judicial action in the American constitutional scheme. Such self-limitation is not abnegation; it is the expression of an energizing philosophy of the distribution of governmental powers."
>
> Felix Frankfurter, The Commerce Clause (1937)

2. Examples of legislative vetoes: There are some 207 separate legislative veto provisions in over 126 different public laws. These ubiquitous legislative vetoes range from the momentous, such as those in the War Powers Resolution and the Foreign Assistance Act, to the picayune, such as those in the Dwight D. Eisenhower Memorial Bicentennial Civic Center Act and the Conveyance of Submerged Lands to Guam, Virgin Islands, and American Samoa Act. In your remarks I would begin by pointing out both the large number of legislative vetoes and the range of areas in which they appear. I would then cite the following examples which may be of particular interest to your audience:

- INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT ("IEEPA") (broad power to regulate economic transactions is triggered by declaration of emergency by President based on "unusual and extraordinary threat" from outside the United States, but emergency may be terminated by concurrent resolution procedure contained in National Emergencies Act)

- o NATURAL GAS POLICY ACT OF 1978 (presidential reimposition of natural gas price controls may be disapproved by concurrent resolution) (Congress may reimpose natural gas price controls by concurrent resolution) (Federal Energy Regulatory Commission amendment to pass through incremental costs of natural gas, and exemptions therefrom, may be disapproved by resolution of either House) (procedure for congressional review established)

- o FEDERAL TRADE COMMISSION IMPROVEMENTS ACT OF 1980 (Federal Trade Commission rules may be disapproved by concurrent resolution)

3. Examples of instances in which the Administration has refused to interpret statutes in a broad manner beyond the discernable intent of the enacting Congress:

- o Bob Jones case: Even though we opposed on policy grounds granting tax exemptions to discriminatory schools, we did not feel Congress had given the IRS the authority to withhold exemptions on that basis. We did not distort our reading of the legislation to fit our policy preferences.

- o Grove City: We read the nondiscrimination and reporting provisions of Title IX as applying only to the particular program receiving federal financial assistance, and not more broadly to the entire school. This narrower view is consistent with the language and history of the statute, regardless of policy preferences.

- o Attorneys fees litigation: We successfully challenged the award of attorneys fees to nonprevailing parties on the ground that the statute did not contemplate such awards. The previous Administration was very "soft" on these issues, accommodating the desires of "public interest" litigants to recover large fees even when they did not clearly prevail.

THE WHITE HOUSE

WASHINGTON

December 5, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Henry Berliner Correspondence Concerning Barbados

Attached, as you requested, is a draft response to Mr. Berliner's two memoranda. My memorandum of November 30 discussed the substance of those memoranda.

Attachment

THE WHITE HOUSE

WASHINGTON

December 5, 1983

Dear Henry:

Thank you for your memoranda on law enforcement assistance in the Eastern Caribbean and the United States - Barbados tax treaty. As you might imagine, recent events have highlighted the importance of this region, and we certainly appreciate having the benefit of your informed views on subjects affecting the area.

It is true that the major hurdle preventing significant foreign aid for police training is section 660 of the Foreign Assistance Act, 22 U.S.C. § 2420, which provides that foreign assistance funds generally may not be used "...to provide training or advice, or provide any financial support, for police, prisons, or other law enforcement forces for any foreign government...." I am advised, however, that there are prospects for increased aid from other foreign sources for the Barbadian police training center, in which we cannot, by law, participate.

Questions concerning the tax treaty are complicated by the fact that the termination and renegotiation of the United States - Barbados treaty is part of a much broader, comprehensive effort governing tax treaties of some 23 countries. These treaties typically date from British colonial days and involve countries not only in the Caribbean but Africa as well. There is understandable reluctance to consider special arrangements with respect to Barbados when any such action could precipitate similar demands from the other affected nations, thereby jeopardizing the entire effort to modernize the tax treaties. In any event, I was pleased to learn that negotiations on a new United States - Barbados tax treaty are scheduled to convene in Washington before the end of the year.

Once again, thank you for sharing your concerns with us.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Henry A. Berliner, Jr.
Berliner & Maloney
1100 Connecticut Avenue, N.W.
Washington, D.C. 20036-4162

FFF:JGR:aea 12/5/83
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 5, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Casket Flag for Law Enforcement Officers

This item, forwarded by Correspondence on November 14, was attached to the same tracking sheet as the letter from Donald Zook concerning the respective placement of religious flags and the American flag. William G. King, Captain of the Louisburg, North Carolina Police Department, and Ralton J. Harris of the Auxiliary Force, have written the President to request that he issue a declaration that will allow deceased law enforcement officers who are not military veterans to be accorded the honor of having their caskets covered by the American flag.

There is no federal law governing the question of when the American flag may be used to cover a casket. The Flag Code specifies the proper manner of draping the flag over a casket, 36 U.S.C. § 175(n), but neither this provision nor its legislative history considers when the honor is appropriately conferred. Another provision, 38 U.S.C. § 901, prescribes when the Administrator of the Veterans Administration shall furnish a flag to drape the casket of a deceased veteran. This provision does not purport to limit the permissibility of the practice to those cases in which flags are furnished free of charge. The Veterans Administration advises that it is aware of no statute or regulation governing the use of flags to drape caskets.

Attachment

THE WHITE HOUSE

WASHINGTON

December 5, 1983

Dear Sirs:

Thank you for your letter of September 7 to the President, which was just recently referred to this office for consideration. Please excuse the tardiness of our response. In your letter you requested the President to issue a declaration that would allow law enforcement officers to be accorded the honor of having the American flag drape their caskets.

Federal law does not govern the question of when it is appropriate to drape a casket with the American flag. There is a statute indicating the proper manner of draping the flag over a casket, 36 U.S.C. § 175(n), and a statute specifying the circumstances under which the Administrator of the Veterans Administration shall furnish a flag for this purpose for deceased veterans, 38 U.S.C. § 901. This latter statute is addressed only to the narrow question of when free flags should be furnished by the Veterans Administration for draping over caskets, not the broader question of when the flag, however furnished, is appropriately used for that purpose. I have enclosed copies of both 36 U.S.C. § 175(n) and 38 U.S.C. § 901 for your information.

In short, we are aware of nothing in federal law that would prohibit use of the American flag to drape the caskets of deceased law enforcement officers, although you should be aware that there may be state laws addressed to this question. I hope this information is helpful. Thank you for writing.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. William G. King
Mr. Ralton J. Harris
122 Johnson Street
Louisburg, NC 27549

Enclosures
FFF:JGR:aea 12/5/83

bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 6, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Railroad Retirement Board

On November 4, 1983 Becky Norton Dunlop alerted us to a potential problem with an appointment to the Railroad Retirement Board. As I explained in my memorandum to you of November 7, the President appoints the three members of the Board, by and with the advice and consent of the Senate. One member is appointed from recommendations by representatives of employees and one from recommendations by representatives of carriers. The carriers have recommended [redacted]

b6

[redacted] b6 our previous advice concerning the President's authority.

Attachment

THE WHITE HOUSE

WASHINGTON

December 6, 1983

MEMORANDUM FOR BECKY NORTON DUNLOP
DEPUTY ASSISTANT TO THE PRESIDENT
PRESIDENTIAL PERSONNEL

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Railroad Retirement Board

On November 4, 1983, you asked our advice concerning the authority of the President to nominate members of the Railroad Retirement Board. Specifically, you asked whether the President could nominate [redacted]

b6

John Roberts of this office advised you on November 9 that the President need not proceed with [redacted] nomination, and that if your office wanted to nominate someone else you should solicit new recommendations from representatives of employers, as provided in 45 U.S.C. § 231f(a). That statute specifies that the President shall appoint the three members of the Board, by and with the advice and consent of the Senate, and that: b6

> One member shall be appointed from recommendations made by representatives of the employees and one member shall be appointed from recommendations made by representatives of employers as defined in paragraph (i) of section 231(a)(1) of this title, in both cases as the President shall direct, so as to provide representation on the Board satisfactory to the largest number, respectively, of employees and employers concerned.

[redacted]

b6

We reiterate our advice that the President is not required to nominate [redacted]

b6

FFF:JGR:aea 12/6/83
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 6, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Proposed Executive Order Entitled Interagency Committee on Handicapped Employees

Richard Darman has asked for comments on the above-referenced proposed Executive Order by close of business December 7. The Executive Order simply adds the Secretary of HHS to the membership list of the Interagency Committee on Handicapped Employees. The Committee, as established by 29 U.S.C. § 791(a), was composed of named officers, including the Secretary of HEW as co-chairman, and other members "as the President may select." The membership of the Committee, including both the statutory members and additional members selected by the President, was designated in Executive Order 11830 (January 9, 1975). The responsibilities of the Secretary of HEW under 29 U.S.C. § 791(a) were, however, transferred to the Secretary of Education by 20 U.S.C. § 3441(a)(4)(A), although Executive Order 11830, listing the Secretary of HEW and not the Secretary of Education, was not changed. This explains why the decision to add the Secretary of HHS to the Committee is accomplished rather circuitously by amending the old Executive Order to change "Secretary of HEW" to "Secretary of Education" and adding "Secretary of HHS" as an additional member.

The Office of Legal Counsel has approved the proposed Executive Order as to form and legality, and OMB recommends that the President sign it. I have reviewed the proposed Executive Order and the accompanying materials, and see no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

December 6, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
CCUNSEL TO THE PRESIDENT

SUBJECT: Proposed Executive Order Entitled Interagency Committee on Handicapped Employees

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

FFF:JGR:aea 12/6/83
cc: FFFielding/JGRoberts/Subj/Chron

Olson

THE WHITE HOUSE

WASHINGTON

December 6, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Enrolled Bill H.R. 4185 -- Department of Defense Appropriation Bill 1984

Richard Darman has asked for comments on the above-referenced enrolled bill by 10:00 a.m. tomorrow. This bill provides $249.8 billion for Defense and related agencies, some $11.1 billion less than requested. Most requested systems are funded, except for procurement of binary chemical weapons. A $24 million cap is put on funds for operations in Nicaragua. The bill contains the usual anti-lobbying riders (§§ 702 and 777), a ban on the use of funds to perform abortions except when the life of the mother is endangered (§ 751), and a funding ban on the use of dogs or cats to train Defense medical students in the treatment of wounds (§ 791).

OMB and Defense recommend approval. I have reviewed the memorandum for the President prepared by OMB Director David Stockman, and the bill itself, and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

December 6, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 4185 -- Department of Defense Appropriation Bill 1984

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

FFF:JGR:aea 12/6/83
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Textile Proposals

Department of Commerce Acting General Counsel Irving P. Margulies has sent you a letter and accompanying materials explaining his opinion that a textile industry/labor proposal for the exercise of U.S. rights under international textile agreements would, if implemented, be consistent with our international legal obligations. The current controversy on this subject within the Administration was precipitated by a countervailing duty case filed by the textile industry and unions against the Peoples Republic of China (PRC), see 19 U.S.C. §§ 1303, 1671. The petition alleged that the PRC subsidized its textile exports, which, if true, would require imposition of a duty equal to the amount of the subsidy. The pendency of the petition, and the potential for an adverse decision, have been extremely sore points in our bilateral relations with the PRC.

A decision was due on the petition by midnight last night. The PRC refused to participate in the case, although it did issue dire threats affecting the whole range of bilateral relations if petitioners were to prevail. I am advised that the facts of the case support a ruling in favor of the petitioners, and the imposition of a 30-40 percent countervailing duty. At the last minute Commerce convinced the petitioners to "suspend" their petition for 10 days to permit a compromise to be arranged. The new deadline is Friday, December 16, by which time Commerce must either issue its decision (probably adverse to the PRC) or the Administration must agree to the textile industry/labor proposal.

This proposal, annex I to Margulies' letter, specifies a range of steps the Government will take with respect to textile imports, not simply from the PRC but from other countries as well. If the President commits himself to the terms of this proposal (by Executive Order, memorandum, letter, etc.), the textile industry and unions will withdraw their petition. The proposal is acceptable to Commerce, the Labor Department, the PRC, apparently the State Department, and of course the textile industry and unions. USTR opposes.

Legal questions have been raised concerning whether the proposal would violate the Arrangement Regarding International Trade in Textiles (the Multifibre Arrangement or MFA). The MFA, in articles 3 and 4 and more specifically annex A, requires a finding of "market disruption" before the imposition of new trade restrictions. The MFA lists several vague factors to consider in making such a finding. Paragraphs 3 and 4 of the proposal require Government action to restrict imports on the basis of a formula. The legal question is whether commiting to action whenever the formula is triggered is a violation of the MFA provisions limiting action to responses to "market disruption."

Margulies concludes that there is no inconsistency between the proposal and the MFA, largely because the MFA does not define how "market disruption" is to be determined (beyond listing vague factors) and because the formula represents a reasonable determination of market disruption. In any event, the fact that particular application of the formula in a specific case down the road may result in a violation of the MFA does not mean the proposal itself is in any sense "illegal."

If the President is to commit himself to the proposal, this legal question will have to be resolved in some fashion. OLC has begun looking into the matter, but Commerce is concerned that OLC has no expertise in this area and may be insufficiently sensitive to the somewhat less precise manner in which international law functions (e.g., by giving undue weight to the vague definition of "market disruption" in MFA, as if the language were that of a statute or Supreme Court opinion). USTR is also looking into it, and Commerce's concern on that score is that USTR may seek to cloak its policy disagreement as a legal objection. I have thus far not talked with Justice or USTR, so concededly have only one side of the story. I think we should discuss this ASAP, with a view to establishing the process for resolving the legal question. Since the President will be called upon to sign some document to implement the proposal, if that course is taken, our office will ultimately have to give advice on the question.

THE WHITE HOUSE

WASHINGTON

December 8, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Letter to Craig Fuller Requesting Meeting to Discuss the Orion North Atlantic Project

Orion Satellite Corporation has pending before the FCC a very controversial application to provide satellite communications service to the North Atlantic area. If Orion is permitted to proceed with its plan it would be the first breach in the profitable Intelsat monopoly. The FCC is awaiting an Executive branch position before issuing a decision; that position is still in utero.

Ward L. Quaal, a "friend of the President" and Mr. Deaver, called Craig Fuller's office to arrange a meeting between Orion officials and Fuller. Karen Hart suggested that the officials put their request in letter form, which they have now done. Fuller has asked for a draft response.

Pursuant to our established policy, White House staff members should not meet with private petitioners to discuss a case pending before the FCC, an independent regulatory agency. I have drafted a response for Fuller's signature advising the Orion officials of this policy.

Attachment

THE WHITE HOUSE

WASHINGTON

December 8, 1983

MEMORANDUM FOR CRAIG L. FULLER
ASSISTANT TO THE PRESIDENT
FOR CABINET AFFAIRS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Letter to Craig Fuller Requesting Meeting to Discuss the Orion North Atlantic Project

You requested a draft response to the letter you received from officials of the Orion Satellite Corporation, requesting a meeting to discuss their pending application before the FCC. A draft denying their request is attached.

FFF:JGR:aea 12/8/83
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 8, 1983

Dear Sirs:

Thank you for your letter of November 28, requesting a meeting to discuss the Orion North Atlantic project. That letter referred to Orion's pending application before the Federal Communications Commission for a license to provide satellite communications services in the North Atlantic.

I must advise you that established White House policy does not permit members of the White House staff to meet with private parties to discuss cases those parties have pending before an independent regulatory agency, such as the Federal Communications Commission. This policy is based on a concern to avoid even the appearance of interference with the independence of the regulatory agency. Accordingly, it will not be possible for me to accede to your request for a meeting.

I trust that you will understand the reasons for this position.

Sincerely,

Craig L. Fuller
Assistant to the President
for Cabinet Affairs

Mr. Thomas K. McKnight
Mr. Christopher J. Vizas, II
Orion Satellite Corporation
2000 L Street, N.W., Suite 200
Washington, D.C. 20036

CLF:JGR:aea 12/8/83
bcc: FFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 8, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Proposed Article for Legislative Policy Magazine

Richard Darman has asked for comments by noon tomorrow on the above-referenced draft magazine article by Lee L. Verstandig on enterprise zone legislation. The article will appear in the first issue of Legislative Policy, a magazine funded by a conservative organization. According to Verstandig, the magazine goes to every state legislator and member of Congress. The article reviews the President's support for enterprise zone legislation, the theory of the pending Administration bill and its major provisions, and the status of the bill in Congress. Hearings on the bill have been held by the House Ways and Means Committee but no action has been taken, even though a majority of the House cosponsored the proposal.

I have reviewed the article and have no objections to it. There is no violation of the Anti-Lobbying Act, 18 U.S.C. § 1913, or the pertinent anti-lobbying appropriation rider, as those provisions have been interpreted by the Department of Justice and this office. Dissemination of Administration views to the media is clearly not prohibited by the anti-lobbying provisions, and submission of a magazine article for publication falls within this category. Circulation of the article to individuals who might lobby Congress is not being done by the Government at all, but by the magazine publisher, so the concern underlying the anti-lobbying provisions is not even implicated.

As stated in your memorandum of February 23, 1981 for the White House staff, "it is not improper for an Executive Branch employee to provide legitimate informational background and material to the public in support of an Administration policy effort." That memorandum notes that staff members may provide "letters on specific subjects written by Executive Branch officials" to outside organizations for reproduction and distribution by the organization. Certainly no more (and in fact considerably less) than that is involved in this case. The memorandum contained the caveat that "the materials must not suggest that the recipients contact Members of Congress urging support of particular positions; also the decision to publish or distribute any such material must be left to the independent organization." The article does not urge a lobbying effort, and publication and distribution of the article is the prerogative of the magazine.

Attachment

THE WHITE HOUSE

WASHINGTON

December 8, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Article for Legislative Policy Magazine

Counsel's Office has reviewed the above-referenced draft article by Lee Verstandig on enterprise zones, and finds no objection to it from a legal perspective. The article does not run afoul of the Anti-Lobbying Act, 18 U.S.C. § 1913, or the pertinent anti-lobbying appropriation rider. These provisions do not cover the submission of Administration views to the media, so long as the publication and distribution decisions remain those of the media organization. In addition, the article does not urge readers to contact their Congressional representatives.

On page 12, line 1, "Reagan" should be "Regan," and on line 5, "the" should be inserted between "report" and "bill."

FFF:JGR:aea 12/8/83
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 8, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Enrolled Bill H.R. 2968 -- Intelligence Authorization Act for FY 1984

Richard Darman has asked for comments on the above-referenced enrolled bill by close of business December 8. The bill authorizes appropriations for the various intelligence agencies for fiscal year 1984. As in the Defense Appropriation Act, a limit of $24 million for Nicaraguan operations is imposed. This bill also contains an assortment of personnel provisions requested by the Administration, such as a provision permitting detailees to receive incentive awards available to CIA employees. Section 501 of the bill authorizes the Director of the Defense Intelligence Agency to provide certain Foreign Service benefits to defense attachés. Regulations to implement this provision "shall be submitted to the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on Armed Services and the Select Committee on Intelligence of the Senate before such regulations take effect." This is not an unconstitutional "legislative veto" since no provision is made for committee action to block the regulations.

OMB, CIA, Defense, NSC, Energy, and State recommend approval; Justice and OPM have no objection. I have reviewed the memorandum for the President prepared by OMB Director David Stockman, and the bill itself, and have no objection.

Attachment

THE WHITE HOUSE

WASHINGTON

December 8, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 2968 -- Intelligence Authorization Act for FY 1984

Counsel's Office has reviewed the above-referenced enrolled bill, and finds no objection to it from a legal perspective. We have not yet received and accordingly have not had an opportunity to review the signing statement submitted by the Central Intelligence Agency.

FFF:JGR:aea 12/8/83
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 9, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Textile Proposals

To recap the events of last evening: I received at approximately 8:00 p.m. a call from Shirley Coffield, an attorney in the General Counsel's office at the Department of Commerce, advising that Commerce Undersecretary Lionel Ohlmer had telephoned Commerce General Counsel Irving Margulies from Brussels to obtain our opinion on the legality of Commerce's proposed settlement of the Chinese countervailing duty case. According to Ohlmer, Baldrige had received a commitment from you to provide such an opinion within 24 hours. The opinion was needed in order that Secretaries Baldrige, Brock, Block, and Schultz could discuss the policy question at a meeting in Brussels at 7:00 a.m. December 9 (EST). After putting a call in to you, I telephoned Margulies, who conceded that it had not been his understanding that you were expected to deliver such an instantaneous opinion, but that it was the Secretary's understanding and that the Secretary now required that your views be obtained that evening.

After our first telephone discussion, I telephoned Bob Shanks, Deputy Assistant Attorney General, OLC, and reviewed the matter with him. Shanks expressed his opinion that we would be on "solid ground" if it were clear that the formulae in the industry/labor proposal triggered only a "call," and did not speak to the level of limits ultimately imposed. In Shanks' view, a commitment by the Government to the formulae could be defended if CITA retained complete discretion after the triggering of a call in setting actual limits and, in an unusual case, even withdrawing the call. The theory underlying this view is that the factors that must be considered under the MFA or pertinent bilateral agreement that are not embraced by the formula can be considered prior to setting the ultimate limits. Shanks also recommended that the personal involvement of the President be kept at a minimum. He indicated that there was no legal necessity for the President to be involved at all, although he recognized that this was a condition insisted upon by industry and labor before they would drop the countervailing duty case.

We then had our second telephone conversation, and I telephoned Margulies to give him our advice. I told Margulies that it must be made clear to the Secretary that our office was expressing no view on the policy question, about which we had very serious concerns. I then told him that it was our view, based on the Commerce legal opinion and our necessarily brief review of the matter and consultations with the Department of Justice, that the Commerce proposal was defensible if and only if it were made explicit that the formulae triggered only a "call," and did not speak to the level of limits, if any, ultimately imposed by CITA. It must be made explicit and understood that CITA retains complete discretion in setting ultimate limits, and, in an unusual case, pulling a "call." I pointed out to Margulies that this course of action had its risks, primarily making the pending litigation by importers against the entire program more problematic, and making the defense before TSB of any limits ultimately imposed more difficult. Finally, I advised Margulies that it was our view that the direct involvement of the President should be kept at the absolute minimum necessary to secure the agreement of industry and labor, if it is determined to pursue this course. In no event would an Executive Order be issued, and the President's involvement should be as informal and nonsubstantive as possible. I then called you for the third time and repeated to you the advice I had given to Margulies.

Shirley Coffield telephoned me this morning to confirm that Margulies had conveyed our views to the Secretary last evening. I reiterated those views to her to ensure that there was no misunderstanding. Bob Shanks also called and we confirmed our mutual understanding of the advice to Margulies, as outlined above.

THE WHITE HOUSE

WASHINGTON

December 9, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: FOIA Request for Presidents' Addresses

You requested that I alert the Secret Service to the Shabazz FOIA request for the home addresses of the former Presidents and President Reagan, and obtain the views of that agency before mailing your memorandum concerning the disposition of that request to GSA. I called John Kelleher, Secret Service Chief Counsel, provided him with a copy of the Shabazz request, and outlined our proposed response. Kelleher has now advised me that he approves of our contemplated response, and that he has alerted the appropriate Secret Service offices concerning Shabazz, his FOIA request, and the proposed response by GSA.

I have updated our proposed response to GSA by changing the last paragraph to note the concurrence of the Secret Service in our views. The separate memorandum to Kelleher need no longer be sent, although we should provide him a copy of our memorandum to GSA for his files.

Attachment

THE WHITE HOUSE

WASHINGTON

December 9, 1983

MEMORANDUM FOR WILLIAM W. HIEBERT
FOIA OFFICER, GENERAL SERVICES ADMINISTRATION

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: FOIA Request From Malik Rahmaan Shabazz

By memorandum dated November 16 you transmitted to this office an FOIA request directed to the General Services Administration by Malik Rahmaan Shabazz. The FOIA request sought the home addresses of former Presidents Nixon, Ford, and Carter and President Reagan, and the addresses of any agents appointed to receive service of process for them.

The White House Office is not subject to the Freedom of Information Act, Kissinger v. Reporters Committee for Freedom of the Press, 445 U.S. 136, 156 (1980), and accordingly we do not respond to FOIA requests. In your response to Mr. Shabazz, care should be taken not to portray the White House as responding in any way to the FOIA request he filed with GSA. With respect to your reply, Mr. Shabazz may be satisfied with the business addresses only of the three former Presidents and President Reagan. These are:

The Honorable Richard M. Nixon
26 Federal Plaza
New York, New York 10007

The Honorable Gerald R. Ford
Post Office Box 927
Rancho Mirage, California 92270

The Honorable Jimmy Carter
Richard B. Russell Federal Building
75 Spring Street, S.W.
Atlanta, Georgia 30303

The Honorable Ronald Reagan
The President of the United States
Washington, D.C. 20500

Mr. Shabazz should be directed to contact each office for information concerning service of process.

In light of the sensitivity of any request for the home addresses of the former Presidents, we provided John Kelleher, Secret Service Chief Counsel, with a copy of Mr. Shabazz's letter. Mr. Kelleher concurs in our recommendation that Mr. Shabazz be provided with the business addresses of the former Presidents and President Reagan.

cc: John Kelleher
Legal Counsel, U.S. Secret Service

FFF:JGR:aea 12/9/83
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 9, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Section 332 Investigation of the Foundry Industry (Brock Recommendation)

Richard Darman has asked for comments by noon Monday, December 12 on a proposal by Ambassador Brock that the President authorize an investigation by the United States International Trade Commission (ITC) into the competitive conditions of the foundry industry. Under 19 U.S.C. § 1332(g) the ITC "shall make such investigations and reports as may be requested by the President...." Brock's memorandum to the President contends an ITC investigation is needed because ~~of~~ declines in foundry production and employment and because pertinent data to assess this decline is not readily available. A request for an investigation does not legally commit the Administration to any action.

Brock has attached a draft letter from himself to ITC Chairman Alfred Eckes requesting the investigation. The letter notes that the request is "at the direction of the President...pursuant to section 332(g) of the Tariff Act of 1930." I have reviewed the letter and have no legal objection to it.

Attachment

THE WHITE HOUSE

WASHINGTON

December 9, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Section 332 Investigation of the Foundry Industry (Brock Recommendation)

Counsel's Office has reviewed the proposed letter from Ambassador Brock to Chairman Alfred Eckes of the United States International Trade Commission (ITC), and finds no objection to it from a legal perspective. That letter conveys a request by the President that the ITC investigate competitive conditions in the foundry industry. Such a request is authorized under 19 U.S.C. § 1332(g).

FFF:JGR:aea 12/9/83
cc: FFielding/JGRoberts/Subj/Chron