Ronald Reagan Presidential Library
Digital Library Collections

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

Collection: Roberts, John G.: Files
Folder Title: Chron File (01/11/1984-01/16/1984)
Box: 62

To see more digitized collections visit:
https://reaganlibrary.gov/archives/digital-library

To see all Ronald Reagan Presidential Library inventories visit:
https://reaganlibrary.gov/document-collection

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

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

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

WITHDRAWAL SHEET

Ronald Reagan Library

		Withdrawer	
Collection Name		IGP	8/5/2005
File Folder	CHRON FILE (01/11/1984 - 01/16/1984)	***FOIA***	
		F05-139/01	
Box Number		COOK	
		41IGP	

DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	ROBERTS TO FIELDING RE JAMES STEIGLITZ (PARTIAL)	2	1/12/1984	B6	648
2	MEMO	ROBERTS TO HOLLAND RE PRESIDENT'S ADVISORY COMMITTEE ON WOMEN'S BUSINESS OWNERSHIP (PARTIAL)	1	1/16/1984	B6	649

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.

COPY – Reagan Presidential Record

THE WHITE HOUSE

WASHINGTON

January 11, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Presidential Taping: National Association of Homebuilders Thursday, January 12, 1984

Richard Darman has asked that comments on the above-referenced remarks be sent directly to Ben Elliott by noon today. The remarks review the progress of the economic recovery and the role of the homebuilding industry in fueling that recovery. I have reviewed the brief remarks and have no objections, other than to note that a word is missing on page 2, at line 10.

Attachment

THE WHITE HOUSE

WASHINGTON

January 11, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Taping: National Association of Homebuilders
Thursday, January 12, 1984

Counsel's Office has reviewed the above-referenced remarks, and finds no objection to them from a legal perspective. I would note, however, that a word appears to be missing on page 2, at line 10, between "in" and "were."

cc: Richard G. Darman

FFF:JGR:aea 1/11/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 11, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Letter to Vice President on Constitutional Convention

Eugene J. McMahon of the Long Island Coalition for Life has written the Vice President, arguing that the prerequisites for a Constitutional Convention under Article V of the Constitution have been satisfied. Article V provides in its entirety:

> The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or <u>on the Application of the legislatures of two thirds of the several States, shall call a Convention for proposing Amendments,</u> which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate (emphasis supplied).

Thirty-two of the required thirty-four states have filed an application requesting an Article V convention to propose a balanced budget amendment. Twenty states have filed applications for such a convention to propose an abortion amendment. When the applications on these two subjects are combined, they are from thirty-four different states. McMahon argues that thirty-four states have accordingly called for an Article V convention, and one must be held. He asks the Vice President to introduce an official call for such a convention in the Senate, and inquires if the Vice President would be a plaintiff in a mandamus action to compel Congress to call an Article V convention. McMahon reasons that this would help resolve potential "standing" difficulties.

There are no clear answers to questions concerning Article V, since that route for amending the Constitution has never been taken. A published 1979 Opinion for the Attorney General by the Office of Legal Counsel, however, concluded that Congress should only count similar applications in determining if an Article V convention should be called. 3 Ops. O.L.C. 390, 406-407. This view seems to be supported by the history surrounding the adoption of Article V, and by the vast majority of commentators. The other conclusion of the OLC opinion -- that an Article V convention once called would be limited, and could only consider amendments on the subject of the call -- is less supported and less widely shared, particularly by those who remember the history of the original Constitutional Convention, which was called "for the sole and express purpose of revising the Articles of Confederation." Once convened the Framers, of course, went far beyond this limited mandate.

I do not, however, think we should respond to McMahon by rejecting his legal theory.

The Framers devised the Article V amendment route to provide the States a means of amending the Constitution in the face of an unwilling Congress. Most commentators and the American Bar Association agree that the President has no formal legal role in the convention amendment process, as he has no such role in the more traditional amendment process, _see_ Special Constitutional Convention Study Committee, ABA, _Amendment of the Constitution by the Convention Method Under Article V_, 25-28 (1974). Accordingly, I consider it gratuitous and unwise for the Executive Branch to opine on what is properly characterized as a legal dispute between the States and the Legislative Branch, and recommend against telling McMahon that we do not agree with his legal theory.

We should, of course, decline McMahon's request for involvement by the Vice President, but not because we disagree with his legal theory. The introduction of a resolution is beyond the enumerated and historic powers of the Vice President as President of the Senate. Those powers include only the Constitutional power to break ties, Article I, section 3, and various other powers conferred by statute. The Vice President does not even participate in debate in the Senate, and only addresses the Senate by unanimous consent. _See Senate Procedure, Precedents, and Practices_ 1120-1126 (1981). For these reasons, we should decline McMahon's request that the Vice President introduce a resolution calling for an Article V convention. For the same reasons, and because the Executive Branch has no formal

legal role in the amendment process, we should also decline the request that the Vice President participate as a plaintiff in McMahon's contemplated mandamus action.

The attached draft reply is for C. Boyden Gray's signature. The letter was addressed to the Vice President and raised legal issues and accordingly is appropriately answered by the Vice President's Counsel. This also helps maintain some distance from the President on this sensitive question. The attached proposed cover memorandum transmits the draft reply to Gray, Steve Rhodes, who sent the matter to us in the first place, and Ted Olson, whose views should be obtained before proceeding with the reply.

Attachment

THE WHITE HOUSE

WASHINGTON

January 11, 1984

MEMORANDUM FOR C. BOYDEN GRAY
J. STEVEN RHODES
THEODORE B. OLSON

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Letter to Vice President on
Constitutional Convention

Steve Rhodes asked for our views on the attached letter to the Vice President from Eugene J. McMahon. Mr. McMahon argued that Congress was under a present obligation to call a constitutional convention pursuant to Article V, since two-thirds of the states have applied for such a convention (albeit on different topics). He asked if the Vice President would (1) agree to be a plaintiff in a mandamus action against Congress and (2) introduce a resolution calling for an Article V convention in the Senate.

A 1979 opinion prepared by the Justice Department Office of Legal Counsel concludes that Mr. McMahon's theory is unsound and that Congress need only count similar applications in determining if two-thirds of the States have requested an Article V convention. 3 Ops. O.L.C. 390, 406-407. I do not, however, think it wise for the Executive Branch to opine gratuitously on controversies, such as disputes over the meaning and scope of Article V, that are essentially between the states and the Congress. The attached proposed reply thus declines Mr. McMahon's request not because his legal theory is unsound on the merits (as I agree it is) but because (1) the Executive has no formal legal role in the Article V process and (2) the introduction of a resolution in the Senate goes beyond the enumerated and historic prerogatives of the Vice President as President of the Senate.

I believe the reply would most suitably be sent over Boyden Gray's signature. Any comments would be appreciated.

Attachment

FFF:JGR:aea 1/11/84
cc: FFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 11, 1984

Dear Mr. McMahon:

Thank you for your letter of December 4, 1983 to the Vice President. In that letter you advanced the theory that Congress was presently required to call a convention under Article V to propose amendments to the Constitution, since applications for such a convention on the subject of a balanced budget and on the subject of abortion, when coupled, are from thirty-four different states. You asked whether the Vice President would participate as a plaintiff in a mandamus action to compel Congress to call a convention pursuant to Article V, and also requested that the Vice President, as President of the Senate, introduce an official call for such a convention.

This Administration is clearly on record as favoring both a balanced budget amendment and an amendment to protect the unborn. The convention method of proposing amendments established by Article V has never been tried, however, and accordingly is rife with legal uncertainties. One thing that does seem clear is that the Executive branch has no formal legal role to play in the process, just as the Executive branch has no formal legal role in the other, more traditional method of proposing amendments to the Constitution. See *Hollingsworth v. Virginia*, 3 Dall. 378 (1798). Nor would the introduction of a call for an Article V convention fall within the enumerated or traditional prerogatives of the Vice President as President of the Senate. For these reasons it seems inappropriate for the Vice President to attempt to introduce such a call, or to participate in litigation over whether Congress must at this time call a convention for the purpose of proposing amendments pursuant to Article V.

We do, however, appreciate having the benefit of your considered views on this subject. Our inability to accede to your request that the Vice President introduce an official call for a convention in the Senate or participate

as a plaintiff in a private legal action on this question should in no way be taken as evidence of a diminution in our desire to see amendments providing for a balanced budget and protection for the unborn added to the Constitution.

Sincerely,

C. Boyden Gray
Counsel to the Vice President

Mr. Eugene J. McMahon
Long Island Coalition for Life
Post Office Box 600
North Bellmore, NY 11710

CBG:JGR:aea 1/11/84
bcc: FFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 11, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Request for OLC Opinion on Legal Services Appropriations Bill

Attached, as you requested, is a memorandum for your signature, requesting an OLC opinion on the "Weicker Amendment" to the Legal Services Corporation appropriations bill.

Attachment

THE WHITE HOUSE

WASHINGTON

January 11, 1984

MEMORANDUM FOR THEODORE B. OLSON
ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Restriction in Legal Services Corporation Appropriations Bill

When the President signed Public Law 98-166, the Department of Justice and Related Agencies Appropriation Act, he expressed reservations concerning the provision freezing the level of grants from the Legal Services Corporation in the absence of action taken by directors confirmed by the Senate. As you know, the President stated that this provision:

> raises troubling constitutional issues with respect to my recess appointments power. The Attorney General has been looking into this matter at my request and will advise me on how to interpret this potentially restrictive condition.

We understand that your office has been examining this question, and we would now like to request your opinion on it.

FFF:JGR:aea 1/11/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 11, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Presidential Tapings 1) Health Insurance Association of America's "Wellness and the Bottom Line"

Richard Darman has asked that comments on the above-referenced remarks be sent directly to Ben Elliott by noon today. The brief remarks commend the insurance industry for conducting a conference on employee health, and urge executives to take the lead in promoting greater health awareness among employees. Cigarette smoking is singled out as a bad habit with adverse health effects. I have reviewed the remarks and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

January 11, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Tapings 1) Health Insurance Association of America's "Wellness and the Bottom Line"

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 1/11/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 12, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: James E. Steiglitz

James E. Steiglitz is a former Special Forces medic, son of a famous New York photographer, and a free-lance photographer himself. In a private capacity Steiglitz used his medical background to gain access to areas in Nicaragua where Miskito Indians were being held, taking photographs not only of their deplorable conditions but also of significant strategic locations such as military installations and oil refineries. Steiglitz, through his attorney William J. Olson, maintains that two NSC staff members, Oliver North and Alfonso Sapia-Bosch, and two unidentified CIA agents, ordered him to obtain professional quality enlargements of some of the photographs. Steiglitz did so, allegedly at a cost of $10,970.17, and now wants reimbursement. [redacted] b6

and threatened litigation if the matter is not resolved quickly, warning that during such litigation it may be necessary to disclose sensitive and embarrassing security-related information.

I discussed the matter with Bob Kimmitt, Paul Thompson, North, and Sapia-Bosch. North and Sapia-Bosch provided statements to Thompson, which are attached. According to North, Steiglitz came to him with the photographs in early July. North ascertained from DIA that the photographs lacked intelligence value, but he did tell Steiglitz that a larger copy of one of the photographs, of a malnourished Miskito child, would be useful. Steiglitz returned with an enlargement, which he provided to North along with several other photographs, on the condition that North not publish the prints and give Steiglitz credit whenever they were used. North gave Steiglitz a signed note embodying these conditions, without retaining a copy. North has used the photograph in briefings, always giving Steiglitz credit. North asserts that he never discussed paying Steiglitz for anything, and did not imply in any way that Steiglitz would be paid.

According to Sapia-Bosch, Steiglitz approached him when North was away from the office. Sapia-Bosch reviewed the

COPY – Reagan Presidential Record

photographs and told Steiglitz that they were of bad quality. Steiglitz asked if Sapia-Bosch would be interested if he could get better copies, to which Sapia-Bosch replied that he would. Sapia-Bosch was later given some 30 photographs by Steiglitz, which he has retained but never used. In response to Steiglitz's repeated inquiries, Sapia-Bosch told him he would try to help him obtain money from private sources. Sapia-Bosch did so, unsuccessfully. Sapia-Bosch asserts that he never promised Steiglitz payment.

Steiglitz's version of the facts is different from the foregoing. In Steiglitz's version North and Sapia-Bosch "order" enlargements of various prints, saying such things as that expenses "will be taken care of" and that "two guys will be calling with the money." Assuming the accuracy of the North/Sapia-Bosch version, it seems that the case comes down to Steiglitz interpreting North's and Sapia-Bosch's statements that something would be "useful" as an order for that to be done, with reimbursement for expenses to follow. This may have been naive on Steiglitz's part, but it also strikes me as disingenuous for North and Sapia-Bosch to claim they never implied they would cover Steiglitz's costs when they did tell him that they would "like" certain things and that certain things would be "useful." My impression is that anyone dealing with Steiglitz would know that he could easily misinterpret such remarks. In the case of the photograph of the Miskito child, Steiglitz at least has something of a quantum meruit claim, since that enlargement has been used extensively by the Administration. I would not be averse to offering Steiglitz his expenses associated with that enlargement and, pending more precise information on what photographs were given to Sapia-Bosch after he said he would like better copies, perhaps the expenses associated with those as well. This would be far less than the $11,000 demanded by Steiglitz, but may be enough to settle the claim, particularly since Steiglitz would have great difficulty prevailing in court on a theory of implied contract with the Government.

Paul Thompson is checking to determine if NSC has authority to provide any money to Steiglitz. If such authority exists, I would recommend telling NSC that we think it advisable to try and settle the claim for an amount equal to or less than the documented expenses Steiglitz incurred to obtain items North and Sapia-Bosch indicated they would "like" to have, and then retained. Presumably actual negotiations would be handled by NSC and/or OA rather than our office.

COPY – Reagan Presidential Record

THE WHITE HOUSE

WASHINGTON

January 12, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Draft Presidential Radio Talk: National Bipartisan Commission on Central America -- (January 12 -- 1:30 p.m. draft)

Richard Darman has asked that we provide comments directly to Ben Elliott by 4:00 p.m. today on the above-referenced draft radio address. In the remarks the President announces his decision to recall our Ambassador to Nicaragua, expel the Nicaraguan Ambassador the United States, and suspend all trade with Nicaragua, in response to the killing of Warrant Officer Jeffrey Schwab. These actions are to remain in effect until the killing is investigated and we receive an explanation and apology.

In the rest of the remarks the President reviews the work of the Kissinger Commission, and announces that he will send to Congress a comprehensive plan to achieve the Commission's objectives. The plan is to be known as the Jackson Plan, after the late Senator.

Serious legal questions are raised by the proposal to suspend all trade with Nicaragua. This can only be accomplished under the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§ 1701 et seq. Exercise of authority under IEEPA must be predicated on an "unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat."

I have alerted Paul Thompson of NSC to this fact, and noted that if the remarks remain in their present form, NSC must be prepared to recommend the declaration of a national emergency under IEEPA. He indicated that he would review the problem. It should also be noted that 50 U.S.C. § 1703(a) requires that the President consult with Congress, if possible, before exercising his authorities under IEEPA, and 50 U.S.C. § 1703(b) requires an immediate report to Congress whenever the President does exercise those authorities.

A memorandum highlighting these concerns is attached for your review and signature.

Attachment

THE WHITE HOUSE

WASHINGTON

January 12, 1984

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

FROM: FRED. F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Presidential Radio Talk: National Bipartisan Commission on Central America -- (January 12 -- 1:30 p.m. draft)

Counsel's Office has reviewed the above-referenced draft remarks. The proposed announcement of the suspension of all trade with Nicaragua raises serious legal issues. Such action may only be taken under the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§ 1701 *et seq.*, and must be predicated upon a declaration of a national emergency. My office has raised this concern with NSC, and advised NSC that the proposed announcement should remain in the remarks only if NSC is prepared to recommend that the President declare the existence of a national emergency under IEEPA. IEEPA requires that any such declaration be based on an "unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States...." It should also be noted that 50 U.S.C. § 1703(a) requires that the President consult with Congress *before* exercising his authorities under IEEPA, if possible, and that 50 U.S.C. § 1703(b) requires an immediate report to Congress whenever the President exercises those authorities.

cc: Richard G. Darman
Robert Kimmitt
Paul Thompson

FFF:JGR:aea 1/12/84
cc: FFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 12, 1984

MEMORANDUM FOR NANCY PALMER
STAFF ASSISTANT
LEGISLATIVE AFFAIRS

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Anti-Nepotism Statute

As we discussed, I am attaching a copy of the anti-nepotism statute, 5 U.S.C. § 3110. I should point out that the statute has, over the years, been interpreted by the courts, the Department of Justice, other federal agencies, and this office. In light of this fact, it would be imprudent to rely on a reading of the statute without consulting this office. Please do not hesitate to let us know if we may be of any assistance.

Attachment

THE WHITE HOUSE

WASHINGTON

January 12, 1984

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

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

SUBJECT: Proposed Endorsement by President of the Efforts of the "Friends of the William Howard Taft Birthplace"

You have asked for our views on a proposed message from the President endorsing the efforts of the "Friends of the William Howard Taft Birthplace." We have reviewed the proposed message, and the related materials, and have no objections.

Thank you for raising this question with us.

THE WHITE HOUSE

WASHINGTON

January 9, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Portal to Portal Transportation

Mike Horowitz, purportedly at the behest of Joe Wright, is pressing for a decision on how to respond to the June 3, 1983, Comptroller General opinion on 31 U.S.C. § 1344, the portal to portal statute. Horowitz first raised this issue in November, at which point we discussed it in a general way but reached no resolution.

You will recall that the Comptroller General opinion concluded that the interpretation of 31 U.S.C. § 1344 by most agencies was too permissive, and that many Executive Branch officials who now receive Government-provided transportation between home and work were not legally entitled to the service. Recognizing that agencies may have relied on apparent Congressional acquiescence in a broader view of 31 U.S.C. § 1344, as well as "dicta" in earlier GAO decisions, the opinion noted that GAO would not seek reimbursement for past portal to portal misuse of vehicles and would apply the restrictive reading of the statute only after the close of the current Congress. GAO recommended that Congress consider clarifying legislation on this topic in the interim.

Horowitz has been advised that GAO has fixed the date for enforcement of the opinion at the time Congress adjourns for the elections, probably in early October. His concern is that unless action is taken GAO may create an election eve issue by enforcing the statute against political appointees in October. Horowitz recommends initiating negotiations with the Comptroller General and Congressman Jack Brooks on a broad portal to portal bill that would provide such transportation to all senior EOP officials, Cabinet officers, and others down to Undersecretary or comparable rank. He considers the issue urgent since such legislation, to have any chance of passage, would have to be acted upon well in advance of the election.

In my view, an Administration initiative for expanded portal to portal authority would be just as politically costly as the potential actions for reimbursement feared by Horowitz. If Congress is willing to enact clarifying legislation, as

recommended by GAO, we should not block it, but I do not think we should take an affirmative, leading role in an effort to obtain such legislation, as recommended by Horowitz. The problem envisioned by Horowitz -- reimbursement actions on election eve -- can be readily avoided by following GAO's restrictive interpretation of 31 U.S.C. § 1344, at least for the relatively brief period between the close of Congress and the election. After that we can consider whether to seek legislation, to disagree with the GAO opinion and act on one of our own, or simply to follow a more restrictive portal to portal practice for the second term. In sum, I do not share Horowitz's sense of urgency, nor do I concur in his view that we should take affirmative steps to secure "corrective" legislation.

THE WHITE HOUSE

WASHINGTON

January 13, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Arthur Goldberg Correspondence on Grenada

Former Supreme Court Justice Arthur Goldberg is associated with an organization known as the Historic Southern Tenant Farmers Union. That organization is supporting an effort to impeach the President over the alleged unconstitutionality of the rescue mission in Grenada. Goldberg has written the co-founder of the organization, H.L. Mitchell, protesting the organization's stance on Grenada and disassociating himself from it. Goldberg sent a copy of his letter to James A. Baker III, who has referred it to you for appropriate action.

In his letter to Mitchell Goldberg notes that he has expressed grave doubt over the constitutionality of the invasion, in light of the fact that only Congress may declare war. He goes on to state, however, that the invasion was a great success, permitting Grenada to resume an orderly path to democratic self-government. With respect to the law, he argues that a good faith exercise of Executive power that turns out to be a violation of the Constitution is not grounds for impeachment, citing Lincoln's suspension of habeas corpus during the Civil War and Truman's seizure of the steel mills. Both actions were struck down by the Supreme Court, but neither led to calls for impeachment. (In the case of Lincoln, Goldberg's logic is something less than pristine: Ex parte Milligan, 4 Wall. 2, 139 (1866), concluding that Lincoln's action violated the Constitution, was decided several months after Lincoln was assassinated, so it could hardly have been the basis of calls for his impeachment.) Goldberg concludes that even if the Grenadian action was unconstitutional, the President should not be impeached because he "acted in good faith and in the belief that this served our national interest."

In our reply we should thank Goldberg for defending the President but at the same time note that we do not share his doubts concerning the constitutionality of the invasion. Goldberg is correct that the Constitution vests the authority to declare war in the Congress, Article I, section 8. The President, however, also has inherent authority in the international area to defend American lives

and interests and, as Commander-in-Chief, to use military force in doing so. This has been recognized at least since the time President Jefferson sent the Marines to the shores of Tripoli. While there is no clear line separating what the President may do on his own and what requires a formal declaration of war, the Grenada mission seems to be clearly acceptable as an exercise of executive authority, particularly when it is recalled that neither the Korean nor Vietnamese conflicts were declared wars. A draft reply is attached, which notes our disagreement without extended analysis.

Attachment

THE WHITE HOUSE

WASHINGTON

January 13, 1984

Dear Mr. Justice:

Thank you for your letter of January 10 to James A. Baker III, which Mr. Baker has referred to me for consideration and reply. Along with that letter you enclosed a copy of a letter you wrote to Mr. H.L. Mitchell, co-founder of the Historic Southern Tenant Farmers Union. In that letter you disassociated yourself from the efforts of the Historic Southern Tenant Farmers Union to impeach the President over his recent actions with respect to Grenada.

We appreciate the supportive comments in your letter, and are grateful that you took the time and initiative responsibly to disassociate yourself from the misguided effort to impeach the President. The President's actions in Grenada not only protected American lives but also restored to the people of Grenada the opportunity for democracy. The mission was in every sense a rescue mission, rescuing not only the endangered American medical students but also the future of liberty in Grenada.

I must, however, respectfully note that I do not share your doubts concerning the constitutionality of the rescue mission. There are, of course, few clear guideposts in confronting what the Supreme Court has referred to as "the never-ending tension between the President exercising the Executive authority in a world that presents each day some new challenge with which he must deal and the Constitution under which we all live and which no one disputes embodies some sort of system of checks and balances." Dames & Moore v. Regan, 453 U.S. 654, 662 (1981). Indeed, in the opinion just cited, the Court was compelled to reiterate Justice Jackson's observation thirty years earlier, in the historic case in which you so prominently participated, concerning "the poverty of really useful and unambiguous authority applicable to concrete problems of Executive power as they actually present themselves." Id., at 660, quoting Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 634 (1952)(concurring opinion).

While the Constitution does confer on Congress the authority to declare war, it has also long been recognized that the President has certain inherent authority in international affairs to take action to protect American lives and defend American interests and, as Commander-in-Chief, to use the military when necessary in discharging these

responsibilities. There is no clear line demarking the authority of the President and the authority of Congress in this area, but it seems clear to me that the exercise of Executive authority in connection with Grenada falls comfortably on the legitimate side of the line.

We do appreciate having the benefit of your considered and informed views on this subject. Once again, thank you for your supportive comments. They mean a great deal to us.

With best wishes,

Sincerely,

Fred F. Fielding
Counsel to the President

The Honorable Arthur J. Goldberg
2801 New Mexico Avenue, N.W.
Washington, D.C. 20007

FFF:JGR:aea 1/13/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 13, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Presidential Radio Talk: National Bipartisan Commission on Central America -- Saturday, January 14, 1984 (1/12/84 -- 7:00 p.m. draft)

Richard Darman has asked that comments on the above-referenced draft, which has gone forward to the President, be sent directly to Ben Elliott by 10:00 a.m. today. This is a revised version of the draft which we reviewed last evening. Our main concern with the earlier draft was the announcement of suspension of all trade with Nicaragua, since it appeared that insufficient attention had been paid to what would be required under the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq.*, to achieve that objective. This draft omits any announcement of suspension of trade and also deletes the originally proposed recall of our Ambassador to Nicaragua and eviction of their Ambassador to the United States. The draft is otherwise substantially unchanged. I have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

January 13, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Radio Talk: National Bipartisan Commission on Central America -- Saturday, January 14, 1984 (1/12/84 -- 7:00 p.m. draft)

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

cc: Richard G. Darman

FFF:JGR:aea 1/13/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 13, 1984

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS

SUBJECT: Appointment of Robert H.B. Baldwin to the President's Commission on Industrial Competitiveness

The President's Commission on Industrial Competitiveness was established by Executive Order 12428 (June 28, 1983). The purposes of the Commission are to review means of increasing the competitiveness of United States industry, with particular emphasis on high technology, and provide appropriate advice to the President. The Commission was established in such a fashion that its members from the private sector would not be considered government employees for purposes of the conflicts laws. Thus, members are not paid for their services and those from the private sector "shall represent elements of industry, commerce, and labor most affected by high technology, or academic institutions prominent in the field of high technology." Under the Executive Order, members must also "have particular knowledge and expertise concerning the technological factors affecting the ability of United States firms to meet international competition at home and abroad."

Mr. Baldwin retired as Chairman of the Board of Morgan Stanley Inc. on December 31, 1983, but will continue as a consultant to Morgan Stanley during his retirement. His education and experience satisfy the expertise requirements of the Executive Order, and both his prior service and continuing association with Morgan Stanley permit him to be considered representative of an element of commerce deeply affected by high technology. In light of the structure of the Advisory Committee, Mr. Baldwin's associations and holdings do not represent a conflict of interest. I have reviewed Mr. Baldwin's PDS and have no objection to proceeding with this appointment.

Attachment

THE WHITE HOUSE

WASHINGTON

January 13, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: FOIA Request

A New York law firm has sent an FOIA request to the President, seeking documents pertaining to a Jobs Corps Program Center in the South Bronx. According to the request, the documents would be from the Carter years.

I recommend our usual response, that the White House Office is not subject to FOIA. I do not recommend any referral to the Carter people, since I think it is important for us to stay as completely out of the FOIA business as possible. If the requestors want to pursue the matter with the Carter archives people they are free to do so, but we should not become involved as a middle-man.

Attachment

THE WHITE HOUSE

WASHINGTON

January 13, 1984

Dear Mr. Unger:

This is written in response to your letter to the President of December 12, 1983. In that letter you requested, pursuant to the Freedom of Information Act, certain documents pertaining to the South Bronx Jobs Corps Center.

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, and must respectfully decline.

Sincerely,

Fred F. Fielding
Counsel to the President

Melvin D. Unger, Esquire
Weg and Myers, P.C.
116 John Street
New York, NY 10038

FFF:JGR:aea 1/13/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 13, 1984

MEMORANDUM FOR FRED F. FIELDING
RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: Nixon Files and Library Disputes

In preparation for our meeting Monday at 10:00 a.m., I have compiled the following list of pending items concerning President Nixon's files and library:

1. Decision on whether to appeal Allen v. Carmen. Time for filing an appeal expires in late February. The Archivist and the Civil Division are recommending an appeal; the Office of Legal Counsel is opposed. At some point the matter will be presented to the Solicitor General for his input. Appealing will avoid any criticism that we are not zealously seeking to open the Nixon files to public access, but will leave us with the existing regulations. Those regulations do not protect or even isolate executive privilege material and make no provision for certain privacy interests. Not appealing will afford an opportunity to redraft the regulations to be more sensitive to Executive Branch concerns, but will probably precipitate criticism that our actions are based on a desire to shield politically embarrassing documents from public disclosure.

2. If it is decided not to appeal, we will have to confront the question of the process of revising the public access regulations, and also what the new regulations should provide. The Archivist will resist any effort to issue new regulations restricting access, and will also resist any revision that would require going through the files once again. A decision to isolate executive privilege material and/or to protect the privacy interests of those named in the files will require another page-by-page review of the files.

3. The Archivist is refusing to process the Nixon library package until Nixon agrees to drop all claims concerning his files. Walter Annenberg and William Simon have written the President requesting that he direct the Archivist to file the statutorily required report to Congress on the Nixon library package. A decision must be made whether to comply with the Annenberg/Simon request, which has piqued the President's interest. We owe Annenberg and Simon a reply.

4. Legislation is pending to make the Archivist an independent entity within the Executive Branch. Any action with respect to either the files or library could give momentum to this proposal. The proposal is rife with constitutional difficulties, since courts have frequently upheld the authority of the Archivist with respect to Executive Branch records by stressing that he was subject to Presidential direction. The clearest example of this is, interestingly, in the Supreme Court case upholding the Nixon Records Act, wherein the Court stressed that:

> the control over the materials remains in the Executive Branch. The Administrator of General Services, who must promulgate and administer the regulations that are the keystone of the statutory scheme, is himself an official of the Executive Branch, appointed by the President. The career archivists appointed to do the initial screening for the purpose of selecting out and returning to appellant his private and personal papers similarly are Executive Branch employees. Nixon v. GSA, 433 U.S. 425, 441 (1977).

5. Questions on all of these issues may arise during confirmation hearings for our nominee to be Administrator of GSA, if not overshadowed by issues more intrinsic to the nominee. We should brief Sawyer before his hearings.

THE WHITE HOUSE

WASHINGTON

January 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Cabinet Council on Legal Policy: Status of Administration's Anti-Crime Legislation

The status of the Administration's anti-crime legislation has been included on the agenda of today's meeting of the Cabinet Council on Legal Policy. The attached memorandum from the Deputy Attorney General focuses on S. 1762, which includes all of the President's anti-crime proposals except habeas corpus reform, exclusionary rule reform, the death penalty, and the Tort Claims Act amendments. The bill has been reported out of the Senate Judiciary Committee and is co-sponsored by Senators Thurmond, Laxalt, Biden, and Kennedy, pursuant to an agreement that the four would resist all amendments to the bill. Senator Baker was willing to let S. 1762 reach the floor last year, but only if a time agreement could be reached. Senator De Concini would not agree to a time agreement that did not allow floor consideration of the death penalty, and death penalty opponents would not agree to a time agreement allowing debate on that issue.

Schmults argues that the best chance for passage of significant anti-crime legislation is to secure Senate passage of S. 1762 (virtually assured if it can be brought to a vote) and then use S. 1762 as a vehicle for putting pressure on the House. If the House refuses to act, at least the blame for failure to secure anti-crime legislation will be squarely placed on the Democrat-controlled House as the election approaches. Putting the ball in the House's court by fall, however, requires prompt Senate action. Schmults recommends that the question be put on the agenda of the legislative strategy group, so the members of that group can consider what steps to take to urge Senator Baker to bring S. 1762 to the Senate floor, a move that will probably require time for debate on the death penalty issue.

In sum, there is nothing new to report on the fate of the Administration's anti-crime legislation. Justice has included it on the agenda in an effort to secure a greater commitment of White House energy and resources to its passage.

Attachment

THE WHITE HOUSE

WASHINGTON

January 16, 1984

MEMORANDUM FOR FRED F. FIELDING
RICHARD A. HAUSER

FROM: JOHN G. ROBERTS JGR

SUBJECT: Appointment of Archivist

A question arose at our meeting this morning concerning the appointment of the Archivist. The Archivist is appointed by the Administrator of GSA, 44 U.S.C. § 2102. The current incumbent, Robert Warner, was appointed on July 15, 1980.

THE WHITE HOUSE

WASHINGTON

January 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Request For a Federal Investigator to Go to Lincoln County, Oregon to Check into the Board of Engineering Report

Reuben Embree of Toledo, Oregon has written the President, demanding that a federal investigator be sent to Lincoln County, Oregon to examine an alleged "cover-up" involving the plotting of certain properties on the county tax maps. Mr. Embree has corresponded with numerous federal officials, including those at the Justice Department, on this issue in the past. Your notation on the correspondence tracking sheet directed a referral to Justice; an appropriate memorandum is attached for your signature.

Attachment

THE WHITE HOUSE

WASHINGTON

January 16, 1984

MEMORANDUM FOR EDWARD C. SCHMULTS
DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Request For a Federal Investigator to Go to Lincoln County, Oregon to Check into the Board of Engineering Report

The attached letter to the President from Reuben Embree, demanding that a federal investigator be sent to Lincoln County, Oregon, is referred to you for whatever consideration and direct reply you deem appropriate.

Many thanks.

Attachment
FFF:JGR:aea 1/16/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Swafford Correspondence

You initialed the memorandum referring this correspondence to the Deputy Attorney General, but changed the interim reply to Swafford so that it would be sent over my signature. The memorandum for Schmults, however, refers to your interim reply. I have changed that memorandum to refer to "the interim reply from this office."

Attachment

THE WHITE HOUSE

WASHINGTON

January 16, 1984

MEMORANDUM FOR EDWARD C. SCHMULTS
DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Swafford Correspondence Concerning Jesse Jackson

The attached correspondence from Carl Swafford to the President, together with a copy of the interim reply from this office, is submitted for your review and whatever action you deem appropriate.

Many thanks.

Attachment

FFF:JGR:aea 1/16/84

cc: FFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

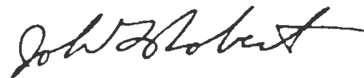
WASHINGTON

January 16, 1984

Dear Mr. Swafford:

Thank you for your letter of November 21, 1983 to the President, inquiring why the Departments of Education, Labor, Health and Human Services, and Commerce have not initiated litigation against the Reverend Jesse Jackson for alleged misuse of funds secured by him for Operation Push, Inc. and Push for Excellence, Inc. Please be advised that your letter has been referred to the Department of Justice, the Department responsible for federal litigation, for review and whatever action that Department considers appropriate.

Sincerely,



John G. Roberts
Associate Counsel to the President

Carl A. Swafford, Esquire
Swafford & Mitchell
Ninth Floor, Maclellan Building
Chattanooga, TN 37402

THE WHITE HOUSE

WASHINGTON

January 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Cabinet Council on Legal Policy: Status of the Administration's Immigration Reform Legislation

The status of the Administration's immigration reform legislation has been placed on the agenda of the Cabinet Council on Legal Policy meeting scheduled for 2:00 p.m. today. The Deputy Attorney General has prepared a memorandum for the members of the Cabinet Council, reviewing the background and current status of the Simpson-Mazzoli bill, and outlining the major unresolved differences between the Senate and House versions. The legislation has passed the Senate, and the House version has been favorably reported out of the House Judiciary Committee. Three other House committees have reviewed the bill and recommended substantive amendments. The House Rules Committee must now establish a procedure for floor consideration. Speaker O'Neill, in a volte-face, has promised to bring the bill to the floor in early 1984.

The two principal differences between the Senate and House versions are money and timing of legalization. The Senate bill would establish a block grant program to aid the States in meeting the welfare costs of legalized aliens. The Administration has committed to fund this program at $1.4 billion for five years. The House bill authorizes full Federal reimbursement to the States of the cost of legalization, at an OMB-estimated cost of $11.2 billion for five years.

With respect to the related issue of timing of legalization, the Senate bill provides permanent resident status for illegal aliens who continually resided in the United States since before 1977, and temporary resident status for aliens who arrived before 1980. Ineligibility for federal benefits would extend for three years after permanent resident status, six years after temporary resident status. The House bill would provide permanent resident status to any alien who arrived in the United States before 1982. Schmults's memorandum reviews the other, less significant differences between the Senate and House bills, primarily in the details of the temporary worker program and the administration of employer sanctions. The memorandum

concludes on an optimistic note, contending that the strength of the Senate vote on the Administration-favored version (76-18) augurs well for resolving many of the differences between the Senate and House bills in the Administration's favor in conference.

David Stockman has sumbitted a memorandum of his own, raising serious budgetary and policy concerns about both the Senate and House bills. His main concern is the multi-billion dollar cost of either version. Stockman argues that the conference outcome is likely to be an "unacceptable" $11.7 billion for 1984-89, and that unless the Administration acts forcefully before the bill is scheduled for House action, it will be "too expensive."

Stockman's language strikes me as irresponsibly loose, in light of the circumstances surrounding the fate of the Simpson-Mazzoli bill. Speaker O'Neill torpedoed the bill last year because of an alleged plan by the President to veto it, and only agreed to floor consideration this year after assurances that his fears were absurd. Now Stockman circulates a memorandum on the bill laced with words such as "unacceptable" and "too expensive." Perhaps it would be wise to admonish the Cabinet Council participants to be particularly circumspect concerning the confidentiality of the memorandum, if that will do any good. Obviously the Administration should work to eliminate the expensive House amendments, but the President is committed, as a practical matter, to signing anything that reaches his desk and looks remotely like Simpson-Mazzoli.

Attachment

THE WHITE HOUSE

WASHINGTON

January 16, 1984

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS /s/

SUBJECT: Appointments of Malcolm A. MacKillop, Corlene H. Cathcart and Clara Giordano to the President's Advisory Committee on Women's Business Ownership

By Executive Order 12426 (June 22, 1983) the President is authorized to appoint no more than 15 members to the President's Advisory Committee on Women's Business Ownership, which is to review the status of businesses owned by women, foster private sector support for women entrepreneurs, and advise the President and the Small Business Administration on these issues. Members "shall have particular knowledge and expertise concerning the current status of businesses owned by women in the economy and methods by which these enterprises might be encouraged to expand."

Corlene Cathcart, [redacted] b6 [redacted] She is Vice-President and Comptroller of Majo Ranch. Clara Giordano recently retired after 18 years of owning and operating a pizza parlor. Both clearly satisfy the expertise requirement of the Executive Order. Malcolm MacKillop is Senior Vice President for Corporate Relations at Pacific Gas and Electric. He is less obviously associated with women's business issues, but may be considered to possess the requisite expertise in light of his broad business and legal background and service on numerous advisory panels on business issues. Neither MacKillop nor Giordano have any financial interests likely to present a conflict of interest. Cathcart, of course, has interests in businesses owned by women, the subject matter of the advisory committee. In light of the general advisory role of the committee, however, these interests should not be considered a bar to her appointment.

As we have discussed, I have not yet received a PDS from Donald Seibert or Paula Brown.

Attachment

COPY – Reagan Presidential Record