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42IGP

DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	ROBERTS TO FIELDING RE ALAN I. MARSHALL <i>Released in whole @ 4/21/06</i>	1	1/25/1984	B6	655

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]
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- B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
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- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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THE WHITE HOUSE

WASHINGTON

January 17, 1984

MEMORANDUM FOR FRED F. FIELDING
RICHARD A. HAUSER

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Maureen Mahoney

Attached is the Martindale-Hubble biography of Maureen Mahoney, currently an associate at Latham Watkins & Hills, whom I think would be an ideal addition to our office. The biography adequately conveys her stellar legal qualifications, but omits the facts that she is extremely personable, charming, and attractive. She exhibits none of the poorer qualities you may associate with current members of your staff from Indiana who clerked for Justice Rehnquist. She is married, has a young son, and resides in Alexandria. I think she plans to leave Latham in the near future to gain litigation experience at a U.S. Attorney's office, but could perhaps be persuaded that a stint in this office would be a good experience before or instead of that.

Attachment

of Columbia). *Education*: Reed College (B.A., 1965); Magdalen College, Oxford University, Oxford, England (B.Phil., 1967; D.Phil., 1968); Yale University (J.D., 1971). Phi Beta Kappa. Rhodes Scholar. Member, Board of Editors, Yale Law Journal, 1969-1971. Author: "The Capability Problem in Contract Law," Foundation Press, 1978; "How Questions Begot Answers in Felix Frankfurter's First Flag Salute Opinion," *The Supreme Court Review*, 1977, p. 257, 1978; "Hadley v. Baxendale: A Study in the Industrialization of the Law" *4 Journal of Legal Studies* 249, 1975; "Towards the Creation of a Complementary Decentralized System of Criminal Justice," *26 Stanford Law Review* 1, 1973, reprinted in: Farr, Liebman and Wood, *Decentralizing City Government: A Practical Study of a Radical Proposal for New York City*, New York, 1972, in American Bar Association "The Causes of Popular Dissatisfaction with Justice," 1976; Feeley and Tomasic, *Neighborhood Justice*, 1981. Associate Professor, Stanford University Law School, 1975-1977. Member of Faculty, Harvard Program in the Law and Humanities, 1976. Visiting Professor of Law, Georgetown Law School, 1980-1982. Law Clerk to Justice Byron R. White, U.S. Supreme Court, 1971-1972. Deputy Assistant Secretary of Defense, 1977-1979. Principal Deputy Assistant Secretary of Defense, 1979-1981. Recipient, Secretary of Defense Distinguished Public Service Award, 1981. *Member*: State Bar of California.

REED E. HUNDT, born Ann Arbor, Michigan, March 3, 1948; admitted to bar, 1974, Maryland; 1975, California; 1980, District of Columbia. *Education*: Yale University (B.A., magna cum laude, 1969; J.D., 1974). Book Review Editor, Yale Law Journal, 1973-1974. Author: "Congressional Provision for Nonjury Trial Under the Seventh Amendment," *83 Yale Law Journal* 401, 1973; "Suing Municipalities Directly Under the Fourteenth Amendment," *70 Northwestern University Law Review* 770, 1975. Law Clerk to the Judge Harrison L. Winter, U.S. Court of Appeals, Fourth Circuit, 1974-1975. *Member*: The District of Columbia Bar; Los Angeles County, Maryland State and American Bar Associations; The State Bar of California.

RESIDENT ASSOCIATES

ROBERT S. METZGER, born St. Louis, Missouri, September 27, 1950; admitted to bar, 1977, California; 1980, District of Columbia. *Education*: Middlebury College (B.A., 1972); Georgetown University (J.D., 1977). Member of Staff, 1975-1976 and Editor, 1976-1977, Georgetown University Law Journal. Research Fellow, Center for Science and International Affairs, Harvard University, 1977-1978. Co-Author: with Paul Doty, "Arms Control Enters the Gray Area," *International Security*, Vol. 3, No. 3, Winter, 1978-1979. Author: "Strategic Arms Control and West European Interests," Aspen Institute-Berlin, 1978. *Member*: The District of Columbia Bar; The State Bar of California.

SCOTT N. WOLFE, born Providence, Rhode Island, December 26, 1950; admitted to bar, 1978, California (Not admitted in District of Columbia). *Education*: Harvard University (A.B., 1973; J.D., 1978; M.B.A., 1978). *Member*: Los Angeles County and American Bar Associations; The State Bar of California.

[REDACTED] born South Bend, Indiana, August 28, 1954; admitted to bar, 1978, Illinois; 1980, District of Columbia. *Education*: Indiana University (A.B., with highest honors, 1974); University of Chicago (J.D., with honors, 1978). Phi Beta Kappa; Order of the Coif. Associate Editor, University of Chicago Law Review, 1977-1978. Author: "State Taxation of the Federal Government: A Reassessment," *45 University of Chicago Law Review* 695-1978. Law Clerk to: Judge Robert A. Sprecher, U.S. Court of Appeals, Seventh Circuit, 1978-1979; Justice William H. Rehnquist, U.S. Supreme Court, 1979-1980. *Member*: The District of Columbia Bar; Illinois State and American Bar Associations.

JAMES R. ASPERGER, born Fresno, California, March 10, 1953; admitted to bar, 1978, California; 1980, District of Columbia. *Education*: University of California at Davis (B.A., with highest honors, 1975); University of California at Los Angeles (J.D., 1978). Phi Beta Kappa; Order of the Coif. Associate Editor, 1976-1977 and Editor-in-Chief, 1977-1978, UCLA Law Review. Author: "California's Energy Commission: Illusions of a One-Step Power Plant Siting Agency," *25 UCLA Law Review* 1313, 1977. Law Clerk to: Justice Stanley Mosk, Supreme Court of the State of Cal-

ifornia, 1978-1979; Justice William H. Rehnquist, U.S. Supreme Court, 1979-1980. *Member*: The District of Columbia Bar; The State Bar of California.

MICHAEL CHERTOFF, born Elizabeth, New Jersey, November 28, 1953; admitted to bar, 1980, District of Columbia. *Education*: London School of Economics, London, England; Harvard College (A.B., magna cum laude, 1975); Harvard University (J.D., magna cum laude, 1978). Editor, 1976-1978 and Note Editor, 1977-1978, Harvard Law Review. Law Clerk to: Judge Murray I. Gurfein, U.S. Court of Appeals, 2nd Circuit, 1978-1979; Justice William J. Brennan, Jr., U.S. Supreme Court, 1979-1980. *Member*: The District of Columbia Bar; American Bar Association.

DAVID A. YORK, born Northville, Michigan, February 20, 1947; admitted to bar, 1979, California; 1980, District of California; 1981, Virginia. *Education*: University of Michigan (B.A., 1969); Northern Michigan University (M.A., summa cum laude, 1974); University of Notre Dame (J.D., cum laude, 1979). Associate Editor, Notre Dame Lawyer, 1978-1979. *Member*: The District of Columbia Bar; The State Bar of California; Virginia State Bar. [1st Lt., U.S. Army, 1969-1971]

EDWARD SONNENSCHIN, JR., born Highland Park, Illinois, June 3, 1954; admitted to bar, 1979, Illinois; 1980, District of Columbia. *Education*: Harvard University (A.B., cum laude, 1976; J.D., cum laude, 1979). Author: "Federal Securities Law Coverage of Note Transactions: The Antifraud Provisions," *35 Business Lawyer* 1567, 1980. *Member*: The District of Columbia Bar.

JAMES F. ROGERS, born Port Deposit, Maryland, October 24, 1952; admitted to bar, 1981, District of Columbia. *Education*: Yale University (B.A., cum laude, 1975); Princeton University (M.P.A., 1979); Columbia University (J.D., 1979). Harlan Fiske Stone Scholar. Editor, Columbia Law Review, 1978-1979. Law Clerk to: Judge Charles Clark, U.S. Court of Appeals, Fifth Circuit, 1979-1980; Judge Ruth Bader Ginsburg, U.S. Court of Appeals, District of Columbia Circuit, 1980-1981. *Member*: The District of Columbia Bar.

PETER L. WINIK, born Stamford, Connecticut, May 12, 1955; admitted to bar, 1980, District of Columbia. *Education*: Stanford University (A.B., 1977; J.D., 1980). Order of the Coif. *Member*: The District of Columbia Bar.

ROGER S. GOLDMAN, born March 26, 1955; admitted to bar, 1980, District of Columbia; 1981, California. *Education*: University of Virginia (B.A., with highest distinction, 1977; J.D., 1980). Member, Editorial Board, 1978-1979 and Articles Editor, 1979-1980, Virginia Law Review. Law Clerk to Judge Dorothy W. Nelson, U.S. Court of Appeals, Ninth Circuit, 1980-1981. *Member*: The District of Columbia Bar; State Bar of California.

BRUCE E. ROSENBLUM, born Boston, Massachusetts, November 1, 1953; admitted to bar, 1981, New York (Not admitted in District of Columbia). *Education*: Yale University (B.A., 1975); Columbia University (J.D., 1980). Articles and Book Review Editor, Columbia Law Review, 1979-1980. Author: Note, "Disproportionate Impact and Discriminatory Purpose: An Assessment after Feeney," *79 Columbia Law Review* 106, 1979. Law Clerk to Hon. Levin H. Campbell, U.S. Court of Appeals, Boston, 1971-1972.

BRIAN G. CARTWRIGHT, born Seattle, Washington, May 29, 1947; admitted to bar, 1981, District of Columbia. *Education*: Yale University (B.S., 1967); University of Chicago (Ph.D., 1971); Harvard University (J.D., magna cum laude, 1980). President, Harvard Law Review, 1979-1980. Judicial Clerkship to Associate Justice Sandra Day O'Connor, U.S. Supreme Court, 1981-1982. *Member*: The District of Columbia Bar.

EDWARD J. SHAPIRO, born San Diego, California, October 15, 1956; admitted to bar, 1981, District of Columbia. *Education*: Princeton University (A.B., 1978); Harvard University (J.D., 1981). *Member*: The District of Columbia Bar; American Bar Association.

EVERETT C. JOHNSON, JR., born Salisbury, Maryland, November 16, 1956; admitted to bar, 1981, District of Columbia. *Education*: Duke University (A.B., summa cum laude, 1978); University of Virginia (J.D., 1981). Order of the Coif. *Member*, 1979-1980

THE WHITE HOUSE

WASHINGTON

January 17, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Ward Room Meeting on D.C. Chadha
Bill (1/17/84; 5:30 p.m.)

You asked that I attend the above-referenced meeting in your stead. The meeting was chaired by Lee Verstandig and attended by C.A. Howlett and Mary Battaile of Intergovernmental Affairs, Constance Horner and Mike Horowitz of OMB, Bob McConnell and Ted Olson of Justice, and Joe di Genova. The impetus for the meeting was a request by Mayor Barry to Mr. Deaver for a meeting to discuss the D.C. Chadha matter. A meeting has been arranged for Friday afternoon with the Mayor, his counsel, and his intergovernmental affairs person and as yet undetermined White House staff members.

Those present at the meeting discussed the status of progress on the D.C. Chadha bill, with di Genova coming out strongly in favor of the recent compromise proposal. You will recall that the compromise would require an objection from the President to activate procedures requiring affirmative approval by Congress of D.C. Council proposals in the criminal law area. I noted that our office objected to that compromise as putting the President in too sensitive a position on what would be, in most cases, local criminal justice matters.

After Horowitz mapped a grand strategy for White House involvement on the issue, I noted that our posture had been to keep the matter at the Department of Justice to the extent possible. Verstandig agreed with our position, and suggested that the White House should not even participate in the planned meeting with the Mayor. After discussion, it was agreed that the meeting should be handled by Justice, as most recognized that the Mayor only raised the matter with Deaver in an attempt to circumvent the Justice Department officials handling the matter. Verstandig asked that I review this conclusion with you to make certain you had no objections. Verstandig also indicated he may try to raise this with you at the morning staff meeting.

As I expressed at the meeting, I think it best to keep this issue away from the President and the White House and at the

Department of Justice to the extent possible. The federal interest in this matter is a law enforcement interest, properly represented by the Department of Justice. There is no need further to involve the President or the White House in sensitive "home rule" matters by taking an active role in meetings with the Mayor on this issue.

THE WHITE HOUSE

WASHINGTON

January 18, 1984

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: William J. Olson

The answer to the question you posed on my memorandum of January 12 is "yes" -- the William J. Olson representing James E. Steiglitz is the William J. Olson we recess appointed to the Legal Services Corporation Board of Directors.

For your information, at FFF's instruction I have referred the whole Steiglitz matter to Paul Thompson of NSC.

Attachment

THE WHITE HOUSE

WASHINGTON

January 18, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Line-Item Veto

OMB has asked for our views on a proposed Justice Department report on S.J. Res. 178 and S. 1921. The former is a proposed constitutional amendment giving the President the power to veto individual items of appropriation; the latter is a bill purporting to do the same. Justice's proposed report supports the concept of line-item veto authority for the President, but suggests a third alternative superior in its view to either S.J. Res. 178 or S. 1921. The proposed report concludes that S. 1921 would be unconstitutional, in light of the words of the Presentment Clause, Article I, § 7, cl. 2. That clause requires that bills -- not parts thereof -- be presented to the President for his veto or approval.

Justice indicates that it would support a Constitutional amendment, as proposed by S.J. Res. 178, but argues that the same result can be achieved through an alternative statutory approach. Justice's proposal is a statute giving the President the authority not to expend any item of appropriation. If Congress objected to any Presidential decision pursuant to such a statute, it could pass a bill requiring that the money be expended, which the President could veto. The end result would be essentially the same as with a line item veto.

In light of the plan for the President to call for line item veto authority in the State of the Union address, the Justice report should be held in abeyance. The current draft of the address does not specify the form of the desired line item veto authority, although it does state that a constitutional amendment would be "most effective." We will want to consider this language carefully when we review the circulated draft of the State of the Union address. I have alerted Ben Elliott that we may have suggestions concerning the precise form of the request for line item veto authority. For now, we should simply advise OMB to return the proposed report to Justice for revision in light of the State of the Union address.

Attachment

THE WHITE HOUSE

WASHINGTON

January 18, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Line-Item Veto

Counsel's Office has reviewed the proposed Justice Department report on S.J. Res. 178 and S. 1921. We agree that the report should not be cleared at this point. The report should be returned to Justice for revision in light of the State of the Union address.

FFF;JGR:aea 1/18/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 16, 1984

MEMORANDUM à: FRED F. FIELDING

De: JOHN G. ROBERTS *JGR*

A l'égard de: Jacky Reggan

Jacky Reggan, un cantatrice français, a écrit le Président. M. Reggan dit que tout le monde dans le métier du show biz se fait des blagues sur son nom, et dis qu'il est de famille du Président. Il demande une faveur au Président, que le Président l'écrit une lettre. Ça lettre dirait que le Président n'est pas le pere de Jacky.

Je pense que M. Reggan cherche le publicité et la réclame. Ce ne'est pas possible, que quelqu'un pense qu'il est le fils du Président. Et la couverture de son disque dépeinde La Maison Blanche, donc il pairâit que c'est Jacky qui s'associe avec le Président. (Mme. Strudwick, la meilleure étudiante de la Française en votre bureau, a écouté le disque, et elle rapporte que le disque ne cite pas le Président ou La Maison Blanche.)

Mais, on ne peut pas être certain. Il faut rechercher plus. Je recommande que je vais à Paris d'avoir une entrevue avec M. Reggan et ses confrères. Mon passeporte est prêt, comme toujours. Je ne veut pas aller. Mais je sais que la besogne est difficile, mais quelqu'un faut la faire. Alternativement, je recommande que vous ne faisons pas une réponse, parce que j'ai peur que Jacky l'employe pour le publicité.

Allez à Paris _____

Pas de réponse _____

Voyez-moi _____

THE WHITE HOUSE

WASHINGTON

January 17, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Seal Inquiry

The Photo Office has referred to us a letter from the Goree Unit of the Texas Department of Corrections, asking for replicas of the Seal of the President and the Seal of the Vice President. The Goree Unit is putting together a collection of various seals of office, for display in the Administrative Building, along with a collection of state and federal prison uniform shoulder patches.

Executive Order 11649, § 1(c), permits use of the Presidential and Vice-Presidential Seals "in libraries, museums, or educational facilities incident to descriptions or exhibits relating to seals...." It can be argued that use of the seals in a display in a Texas Department of Corrections Administrative Building falls within this exception, since the building is an "educational facility," at least to the extent that it contains an educational display of seals. In any event, the main concern of 18 U.S.C. § 713 -- that the Seals not be used in a manner that suggests Presidential sponsorship or endorsement -- is not implicated by this request. My review of our handling of similar requests suggests that we are willing to provide photographs of the Seal when the contemplated displays are noncommercial and in public buildings or generally open to the public, as opposed to private collections. For example, last fall you approved use of a photograph of the Seal in a display at an American Legion post. Last spring you approved use of the Seal to accompany a collection of Presidential letters on display in the lobby of a Dallas office building. Approval of the proposed use of a reproduction of the Seal by the Goree Unit strikes me as consistent with our treatment of these earlier requests.

A draft reply is attached. The reply reviews the statute and regulations governing use of the Seal, and specifies that the photographs may only be used for the purpose specified.

Attachment

THE WHITE HOUSE

WASHINGTON

January 17, 1984

Dear Mrs. Rash:

Your letter requesting replicas of the Seal of the President and the Seal of the Vice President has been referred to this office for consideration and reply. In that letter you indicated that you were in the process of creating a collection of various seals of office and a collection of state and federal uniform shoulder patches, both collections to be displayed in your Administrative Building.

The permitted uses of the Seal of the President and the Seal of the Vice President are limited by statute and executive order. I have attached a copy of the pertinent provisions for your information. You will notice that the regulations permit the use of the Seal "in libraries, museums, or educational facilities incident to descriptions or exhibits relating to seals." While your contemplated use does not precisely fit this category, it is our understanding that your display of seals will be placed in a public building and that the proposed use of the Seal of the President and the Seal of the Vice President is in no way connected with any commercial activity. In light of these unique circumstances, we are happy to provide you with photographic reproductions of the Seals, solely for the limited use specified.

Thank you for your inquiry, and best of luck with the display.

Sincerely,

Fred F. Fielding
Counsel to the President

Mrs. W. Rash
Goree Unit/Post Office Box 38
Huntsville, Texas 77340

FFF:JGR:aea 1/17/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 19, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Proposed Presidential Radio Talk:
Deficits (1/19/84 - 7:30 a.m.)

Richard Darman has asked that comments on the above-referenced remarks be sent directly to Ben Elliott by 1:00 p.m. today. The remarks begin by noting how wrong most economic prognosticators were about the current recovery, and suggest that the predictions that deficits will choke off the recovery will prove just as unfounded. The President expresses concern about the deficits, but states that the problem will be solved by spending cuts, not tax increases. The remarks conclude by discussing the Grace Commission report in a general way, although the President avoids committing himself to adopting any particular recommendation of the Commission.

I have no legal objections. Two stylistic ones appear in the attached draft memorandum for Elliott.

Attachment

THE WHITE HOUSE

WASHINGTON

January 19, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Presidential Radio Talk:
Deficits (1/19/84 - 7:30 a.m.)

Counsel's Office has reviewed the above-referenced remarks, and finds no objection to them from a legal perspective. On page 2, line 9, "that" should be inserted between "believe" and "those," to avoid having the sentence read, at the beginning, that the President believes those who underestimated the recovery. On page 3, line 17, we would substitute "the late Senator" for "former Congressman."

cc: Richard G. Darman

FFF:JGR:aea 1/19/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 19, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Draft Letters of Appreciation From the President to U.S. Ambassadors Tambs (Colombia) and Corr (Bolivia)

Richard Darman has asked for comments by 4:00 p.m., Friday, January 20 on the above-referenced draft letters. Carlton Turner recommends sending the letters over the President's signature to our ambassadors to Colombia and Bolivia, respectively, whom he thinks have been particularly helpful in the area of narcotics control. The letter to Ambassador Tambs states that his work in the narcotics field "can complicate your personal relationships with ranking Colombian officials...." Such a statement from the President, if it became public, could well precipitate a crisis in our bilateral relations with Colombia. Both letters heap praise on the ambassadors, which could be embarrassing if, for example, the State Department were planning to demote or reprimand them for poor performance in areas other than narcotics control. I recommend insisting that the letters be reviewed by the State Department. The President is of course free to send such letters, but should have all pertinent information before doing so.

Attachment

THE WHITE HOUSE

WASHINGTON

January 19, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Letters of Appreciation From the
President to U.S. Ambassadors Tambs
(Colombia) and Corr (Bolivia)

Counsel's Office has reviewed the above-referenced proposed letters. We recommend that both letters be reviewed by the State Department. The statement in the letter to Ambassador Tambs that "your work in the narcotics filed can complicate your personal relationships with ranking Colombian officials" could well precipitate a crisis in our bilateral relations if it is ever made public. The State Department can also advise whether the proposed praise for these ambassadors is appropriate in light of their service in areas other than narcotics control.

FFF:JGR:aea 1/19/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 19, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Letters of Appreciation From the
President to U.S. Ambassadors Tambs
(Colombia) and Corr (Bolivia)

Counsel's Office has reviewed the above-referenced proposed letters. We recommend that both letters be reviewed by the State Department. The statement in the letter to Ambassador Tambs that "your work in the narcotics field can complicate your personal relationships with ranking Colombian officials" could well precipitate a crisis in our bilateral relations if it is ever made public. The State Department can also advise whether the proposed praise for these ambassadors is appropriate in light of their service in areas other than narcotics control.

FFF:JGR:aea 1/19/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 23, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Support for Line Item Veto Authority
in State of the Union Address

As you requested, a memorandum to Deaver and Darman on the easiest, constitutionally sound way of obtaining effective line item veto authority is attached. This is consistent with the views of the Department of Justice. In light of the imminence of the State of the Union address, I have added Elliott to the list of addressees. I have also attached a revised memorandum for Greg Jones of OMB for your signature, advising Jones that Justice's proposed report on S. 1921 and S.J. Res. 178 be held until after the State of the Union address.

Attachment

THE WHITE HOUSE

WASHINGTON

January 23, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Line-Item Veto

Counsel's Office has reviewed the proposed Justice Department report on S.J. Res. 178 and S. 1921. We agree that the report should not be cleared at this point. The report should be returned to Justice for final revision in light of the final text of the State of the Union address.

FFF:JGR:aea 1/23/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 23, 1984

MEMORANDUM FOR MICHAEL K. DEEVER
ASSISTANT TO THE PRESIDENT
DEPUTY CHIEF OF STAFF

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

BENTLY ELLIOTT
DEPUTY ASSISTANT TO THE PRESIDENT
DIRECTOR, PRESIDENTIAL SPEECHWRITING OFFICE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Support for Line Item Veto Authority in State
of the Union Address

The contemplated support for line item veto authority in the State of the Union address raises the issue of the appropriate vehicle for obtaining such authority. The Department of Justice has concluded, and I agree, that a bill purporting to give the President the authority to veto individual items of appropriation in an appropriations bill would be unconstitutional. Such a statute would contravene the Veto Clause of the Constitution, Art. I, § 7, cl. 2, which gives the President authority to approve or veto bills, not parts thereof.

A constitutional amendment authorizing the President to veto individual items of appropriation would avoid this concern, but an amendment requires a two-thirds vote of both houses and ratification by three-fourths of the States. Such overwhelming support in Congress for an amendment strengthening the powers of the Executive Branch at the expense of Congress seems highly unlikely.

There is a third alternative approach that in essence gives the President line item veto authority, but can be accomplished in statutory form without running afoul of the Constitution. Congress could enact a statute giving the President the authority not to expend any item of appropriations. A decision by the President pursuant to such a statute could be overridden by legislation enacted by Congress, which would in turn be subject to Presidential veto. By this means the President would have line item veto

authority, but the statute providing this authority would survive constitutional challenge because it would not purport to authorize the President directly to veto particular items of appropriation in a broader bill.

I have attached suggested language outlining this option. This language could be included in the State of the Union address if the President is going to discuss particular means of obtaining line item veto authority.

Attachment

FFF:JGR:aea 1/23/84

cc: FFFielding/JGRoberts/Subj/Chron

Attachment

A constitutional amendment is not required for the President to have effective veto authority over individual budget items. A bill giving the President authority not to expend funds appropriated for particular projects, if he determines this to be in the national interest, would achieve the desired result. Congress could pass a bill requiring that the funds be spent if it disagreed with the President, and that bill would be subject to Presidential veto.

THE WHITE HOUSE

WASHINGTON

January 23, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

MARGARET TUTWILER
SPECIAL ASSISTANT TO THE PRESIDENT
EXECUTIVE ASSISTANT TO THE CHIEF OF STAFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Remarks: NRC's
Third Inaugural Anniversary
Thursday, January 26, 1984

Our office has advised Ben Elliott that we have no legal objection to the above-referenced draft remarks. I would point out, however, that under applicable guidelines Reagan-Bush '84 will be required to pay for the President's limousine to and from the event, and for any other travel costs not associated with the security of the President.

cc: John F. W. Rogers
Assistant to the President
for Management and Administration

FFF:JGR:aea 1/23/84

bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 24, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Response to Letter to Vice President
on Constitutional Convention

Attached is a draft memorandum to Boyden Gray and Steve Rhodes, advising them that the Department of Justice has approved our proposed reply (for Boyden's signature) to the letter to the Vice President from Eugene J. McMahon of the Long Island Coalition for Life.

Attachment

THE WHITE HOUSE

WASHINGTON

January 24, 1984

MEMORANDUM FOR C. BOYDEN GRAY
COUNSEL TO THE VICE PRESIDENT

J. STEVEN RHODES
ASSISTANT TO THE VICE PRESIDENT
FOR DOMESTIC POLICY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Response to Letter to Vice President
on Constitutional Convention

You will recall that on January 11 I submitted a draft reply for Boyden's signature to the letter sent to the Vice President by Eugene J. McMahon of the Long Island Coalition for Life. The Department of Justice has advised me that it approves of the draft reply. If you also approve the reply may be sent.

FFF:JGR:aea 1/24/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 24, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Proposed Draft of Economic Report
of the President (Prepared by CEA)

Richard Darman has asked for comments on the above-referenced draft report by noon January 24. Under 15 U.S.C. § 1022(a), the President must transmit to Congress, in the first twenty days of each regular session, an economic report, along with the annual report of the Council of Economic Advisers (CEA) to him. The pertinent statutory provisions specify that the Economic Report shall include certain five-year numerical goals, 15 U.S.C. § 1022a, analyses concerning the composition of the goals and appropriate apportionment of national production among certain specified components, 15 U.S.C. § 1022b, and the principal elements of the President's budget, 15 U.S.C. § 1022d(c).

In fact, this material has historically appeared not in the Economic Report of the President but in the CEA annual report to the President, which, pursuant to 15 U.S.C. § 1022(a), is submitted to Congress along with the Economic Report of the President. The Economic Report of the President is generally devoid of the dry statistical analyses and econometric models filling the CEA annual report, and is rather a broad overview of the Administration's economic program for the layman. This has been true of the Economic Reports submitted not only by this Administration but by prior administrations as well. According to Geoffrey Carliner, Special Assistant to CEA Chairman Feldstein, CEA has always placed the statutorily required statistical analyses in its annual report rather than the Economic Report of the President.

It makes no practical difference whether the statistics appear in the CEA annual report or in the Economic Report of the President. Both documents are required to be submitted to Congress at the same time. 15 U.S.C. § 1022(a). The above-cited statutory provisions, however, can only be read to require the statistics to appear in the Economic Report. I do not recommend insisting on technical compliance with the statute and upsetting the time-honored practice, repeatedly acquiesced in by Congress, of putting

the dry numbers and analysis in the CEA annual report rather than the Economic Report. No practical purpose would be served by such insistence, and such a departure would ill-serve the President's interest in effectively presenting his economic program to the Congress and public.

I have no objections to the substance of the Economic Report. On the most sensitive issue, control of the deficit, the Report notes Congress has been unwilling to reduce spending as urged by the President. Accordingly, the President states he is compelled to wait until after the election to propose basic reform to obtain significant deficit reductions.

Attachment

THE WHITE HOUSE

WASHINGTON

January 24, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Draft of Economic Report
of the President (Prepared by CEA)

Counsel's Office has reviewed the above-referenced draft report. The statutory provisions requiring submission of the Economic Report of the President to Congress, together with the annual report to the President of the Council of Economic Advisers, specify that the former should include various statistics and numerical analyses. See 15 U.S.C. §§ 1022a, 1022b, 1022d(c). It has been the practice of this and prior administrations, however, to include the statutorily required material in the CEA annual report rather than, as would be technically correct, in the Economic Report of the President. Since this time-honored practice has been repeatedly acquiesced in by Congress, and since inclusion of the statutorily required material in one report rather than the other has no practical significance, we interpose no objection.

On page 1, line 8, either "our" or "the" should be deleted.

On page 7, line 15, "incomes" should be "income."

One or more lines appear to be missing between pages 10 and 11.

FFF:JGR:aea 1/24/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 24, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Statement of Alfred S. Regnery Before
Juvenile Justice Subcommittee and Senate
Judiciary Committee, January 25, 1984
Regarding School Discipline and School Crime

Al Regnery proposes to deliver the attached testimony on school discipline tomorrow, before Senator Specter's Subcommittee on Juvenile Justice of the Senate Judiciary Committee. The testimony argues that violence in schools is a serious problem, that it directly affects educational quality, and that it contributes to the decay of inner city schools. The testimony contends that greater discipline rather than more money or programs will solve the problem. It concludes by reviewing plans for the Justice Department National School Safety Center, announced by the President in his January 7 radio address.

Much of the testimony is based on the memorandum to the President and the Cabinet Council on Human Resources prepared by the Cabinet Council on Human Resources Working Group on School Violence and Discipline. Regnery advised me that the report had been distributed to the press by Secretary Bell. Accordingly, I have no objection to Regnery referring to it in his testimony.

On page 1, Regnery begins his testimony by snidely chiding Congress for "seeing fit" to address the issue of school discipline at this time. On the same page, however, he notes that the Subcommittee held hearings on the subject beginning in 1975. In the attached proposed memorandum, I recommend changing the "are pleased that Congress has now seen fit to address this issue" language to something like "look forward to working with Congress in addressing this serious issue."

On page 5, the testimony states that "school discipline is a civil rights issue," and supports this statement by citing statistics that minority students are more likely than others to be the victims of violence. The basis of our whole effort in the civil rights area, however, has been to move away from contentions that disparate impacts are evidence of discrimination. School violence, regardless of

its statistical impact on minorities, is a civil rights issue only if minority students are attacked more than non-minority students because of their race. There is no evidence that this is so. The point of the greater proportional impact of school violence on minorities can be made, but it should not be labelled a "civil rights issue."

On page 11, Regnery cites the President's direction in the radio address to the Justice Department to file amicus briefs in school discipline cases. In our comments on the radio address (copy attached), we suggested adding the phrase "when appropriate" to this sentence. Our advice was not heeded. Nonetheless, I think we should recommend the addition to Regnery's testimony.

I have alerted McConnell's office that we have concerns about this testimony. I should be advised as soon as you have reviewed this memorandum, so that I can telephone the changes to McConnell's office in a timely fashion.

Attachments

[After this memorandum was prepared, I received a call from an attorney in McConnell's shop, who advised me that the testimony had already been re-written in a manner that responded to most of the concerns raised above. The opening paragraph now "welcomes Congress' interest," and the "civil rights issue" language is out. Our suggestion concerning the amicus brief language was accepted. The paragraph on busing on page 6 is also to be deleted, over Mike Horowitz's objections but at the insistence of Justice's Civil Rights Division. There is now no need for any action on our part.]

THE WHITE HOUSE

WASHINGTON

January 24, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Presidential Remarks: Meeting With
Republican Members of the House
Friday, January 27, 1984

Richard Darman has asked that comments on the above-referenced remarks be sent directly to Ben Elliott by 1:00 p.m. today. The brief remarks review the progress of the economic recovery and our improved posture in international affairs. The President thanks the House Republicans for their efforts, and pledges to do everything within his power to increase their numbers. He also states that "we must pass the line-item veto." These remarks will be delivered after the State of the Union, and we have presented our views on what the State of the Union should say about the vehicle for obtaining line-item veto authority. I think the phrase "we must pass the line-item veto" is broad enough to embrace our suggested vehicle. I have no objection.

Attachment

THE WHITE HOUSE

WASHINGTON

January 24, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Remarks: Meeting With
Republican Members of the House
Friday, January 27, 1984

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

cc: Richard G. Darman
Assistant to the President

FFF:JGR:aea 1/24/84

bcc: FFfielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 24, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Portal to Portal Transportation

You asked that I prepare a memorandum to Baker, Meese, Deaver, and Darman -- copy to Oglesby -- on the portal to portal issue, recommending that it be discussed in a legislative strategy meeting. A draft is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

January 24, 1984

MEMORANDUM FOR EDWIN MEESE III
COUNSELLOR TO THE PRESIDENT

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

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

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Portal to Portal Transportation

Last summer the General Accounting Office issued an opinion adopting an interpretation of the statute governing use of Government vehicles for transportation between home and work far more stringent than that prevailing in most Federal agencies. The so-called Portal to Portal statute, 31 U.S.C. § 1344, specifies that Government vehicles may be used only for official purposes and that an official purpose "does not include transporting officers or employees of the Government between their domiciles and places of employment." The statute does not apply to vehicles for the official use of the President, the heads of Executive departments listed in 5 U.S.C. § 101 (the twelve Cabinet departments), or principal diplomatic and consular officials. The GAO analysis rejected arguments advanced over time by various Federal agencies permitting portal to portal service for officials other than the President and the twelve Cabinet department heads. For example, under the GAO interpretation, no one in the Executive Office of the President would be permitted portal to portal service.

GAO recognized that its interpretation of the statute was a departure not only from earlier GAO opinions but also from the established practice apparently acquiesced in by Congress. Accordingly, GAO announced that it would not seek reimbursement based on its new reading of the statute for past misuse of Government vehicles for portal to portal

service, and would apply its new interpretation only after the close of the current session of Congress. GAO noted that existing law, as interpreted by it, may be too restrictive, and urged Congress to consider meliorative legislation during the "grace period." That period ends when Congress adjourns, probably by early October.

We need to consider whether to seek legislation overriding the GAO view, which GAO itself has indicated may be desirable. If no legislation is passed and we continue current portal to portal practices, there is the danger that GAO may seek reimbursement from prominent Administration officials on the eve of the election. Seeking legislation also raises concerns, since it will likely be perceived and attacked as an effort by the Administration to expand the availability of portal to portal service. If no legislation is passed, we will either have to alter existing portal to portal practices by the time Congress adjourns, or commit to a challenge to GAO's reading of the law at a very sensitive time.

I recommend that this matter be discussed in a legislative strategy meeting at the earliest opportunity.

cc: M.B. Oglesby, Jr.
Assistant to the President
for Legislative Affairs

FFF:JGR:aea 1/24/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 25, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Further Correspondence from Paul M. Walters

You may recall that Mr. Walters wrote you last August, inquiring whether Article I, § 10 of the Constitution, which provides that "[n]o state shall...make any thing but gold or silver coin a tender in payment of debts," was still binding on the states. Walters needed the information to assess the validity of a judgment expressed in "paper dollars." In our reply we noted that we could not give legal advise to private parties, although we did indicate that the provision was still binding on the states. We also suggested that Walters may be interested to know that Congress, not any state, had made Federal Reserve notes legal tender, and that the above-quoted provision did not apply to Congress.

Walters has now sent you and 99 other public officials a form letter, criticizing your response and reiterating his theory that use of paper dollars as currency is unconstitutional. He asks you to respond to his theory, warning that if you do not he will go "to the public about your lack of concern toward the people whom you represent, and who voted you into office."

We gave Walters a full answer in response to his first letter, and I see no need to respond further to this latest form letter.

Attachment

THE WHITE HOUSE

WASHINGTON

January 25, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Alan I. Marshall

Alan I. Marshall was convicted of mail fraud and wire fraud in December of 1981. As his case progressed through the appellate process, he filed charges with Justice's Public Integrity Office against the prosecutors, FBI agents, and trial judge involved in his case. Marshall, who has exhausted his appeals and must soon report to begin serving his sentence, has been dissatisfied with the Justice investigation. His attorney has now written Justice, threatening to pursue other avenues for relief, specifically litigation and taking the matter to the press. Marshall has sent a copy of this letter to the President, with a cover letter objecting to the lack of response from Justice and the White House.

In the past Marshall has copied our office on his correspondence to Justice, and we have not responded to him, leaving the matter entirely in Justice's hands. On October 21 Marshall called you and was referred to me. My records indicate I told Marshall I could do no more than relay his concerns to the Public Integrity attorneys, without recommendation, which I did. I recommend that we adhere to the course of leaving this entirely in Justice's hands. No response.

Attachment

THE WHITE HOUSE

WASHINGTON

January 25, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Letter to the President Enclosing a Copy
of a Report Adopted by the Committee on
Federal Legislation of the New York County
Lawyers Association on H.R. 4043

Richard A. Givens, on behalf of the New York County Lawyers' Association, has sent the President a copy of a report adopted by the Association's Committee on Federal Legislation on H.R. 4043, as proposed to be amended by the House Committee on Science and Technology. H.R. 4043 as introduced was the Administration's proposal to encourage joint research ventures by reducing the risk of antitrust liability and eliminating the threat of treble damages for such ventures. The Association issued a generally supportive report on the Administration proposal. The present report reiterates the previous recommendations of the Association, urging greater efforts to promote particularly risky and expensive research in areas deemed vital to the national interest.

I recommend a brief letter thanking the Association for the report and advising that we have sent it along to Justice and Commerce. A draft is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

January 25, 1984

Dear Mr. Givens:

Thank you for your letter of January 3 to the President. That letter transmitted a copy of the report of the Committee on Federal Legislation of the New York County Lawyers' Association on H.R. 4043.

We appreciate having the benefit of the views of the Association on this important topic. I have taken the liberty of sharing the report with officials at the Department of Commerce and the Department of Justice. As you know, those are the agencies most involved in our effort to secure legislation promoting the research necessary to improved productivity and economic development.

Once again, thank you for providing us with the informed views of the Association.

Sincerely,

Fred F. Fielding
Counsel to the President

Richard A. Givens, Esquire
Botein, Hays, Sklar & Herzberg
200 Park Avenue
New York, NY 10017

FFF:JGR:aea 1/25/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 25, 1984

MEMORANDUM FOR IRVING P. MARGULIES
ACTING GENERAL COUNSEL
U. S. DEPARTMENT OF COMMERCE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Letter to the President Enclosing a Copy
of a Report Adopted by the Committee on
Federal Legislation of the New York County
Lawyers Association on H.R. 4043

Attached for your information and whatever action you consider appropriate is a copy of a report by the Committee on Federal Legislation of the New York County Lawyers' Association on pending proposals to promote joint research projects. The report was sent to the President by the Committee.

Many thanks.

Attachment
FFF:JGR:aea 1/25/84
cc: FFfielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 25, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Letter to the President Enclosing a Copy
of a Report Adopted by the Committee on
Federal Legislation of the New York County
Lawyers Association on H.R. 4043

Attached for your information and whatever action you consider appropriate is a copy of a report by the Committee on Federal Legislation of the New York County Lawyers' Association on pending proposals to promote joint research projects. The report was sent to the President by the Committee.

Many thanks.

Attachment
FFF:JGR:aea 1/25/84
cc: FFFieldjng/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 25, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Raoul Wallenberg and the
"Hostage Act"

Morris H. Wolff, a Professor at the Delaware Law School of Widener University, has written the President concerning Raoul Wallenberg, the Swedish diplomat whose courageous efforts saved many Hungarian Jews during World War II. Many believe that Wallenberg is still alive, held captive in a Soviet prison. Wolff, who states that he has been retained by the Wallenberg family to help secure Raoul's release, suggests that the President take action to that end under 22 U.S.C. § 1732. This provision directs the President to demand and take steps to secure the release of American citizens unjustly imprisoned abroad. The Act provides:

Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.

On October 5, 1981, President Reagan signed a law conferring honorary U.S. citizenship on Wallenberg (an honor Wallenberg shares only with Winston Churchill). Pub. L. No. 97-54, 95 Stat. 971. Wolff now contends that Wallenberg, as a citizen, is entitled to action under 22 U.S.C. § 1732.

This statute was enacted in 1868, in response to the practice of several European countries of refusing to recognize the citizenship of naturalized Americans traveling abroad, repatriating them against their will. The statute was largely dormant until the Iranian hostage crisis, when it suddenly surfaced as the "Hostage Act," a convenient if inaccurate sobriquet coined by the government lawyers seeking to rely upon the law as support for action taken to secure the release of the hostages. See Dames & Moore v. Regan, 453 U.S. 654 (1981). The Supreme Court ruled that the "Hostage Act" did not by itself provide authority for the suspension of private claims against Iran, although it was pertinent in assessing, under Justice Jackson's famous criteria in Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 637-38 (1952) (concurring opinion), whether Congress may be considered to have acquiesced in such an exercise of executive authority. What little case law exists indicates that exercise of authority under 22 U.S.C. § 1732 is committed to the discretion of the Chief Executive (despite the "shall" language) and is not subject to mandamus. See Worthy v. Herder, 270 F.2d 905 (D.C. Cir.), cert. denied, 361 U.S. 918 (1959); Redpath v. Kissinger, 415 F. Supp. 566 (D.C. Tex.), aff'd, 545 F.2d 167 (5 Cir. 1976) (American held prisoner in Mexican jail).

The President has frequently demanded an accounting concerning Wallenberg from the Soviets. See, e.g., 19 Weekly Compilation of Presidential Documents 177 (Feb. 2, 1983); id. 533 (April 11, 1983). While the President has never asserted a belief that Wallenberg is still alive, he has recognized the possibility. At the Holocaust ceremony at the White House on April 20, 1982, the President said of Wallenberg:

But the one man who I think must be remembered above all was Raoul Wallenberg. One such man, at incredible risk, saved tens of thousands. And on this day of remembrance let us especially recall this man, and if he's alive, as some suggest, let his captors know they'll be forgotten long before Raoul Wallenberg is forgotten.

However unenforceable in court and however committed to unreviewable discretion, 22 U.S.C. § 1732 does, by its terms, impose a duty on the President. The nature of the duty is admittedly very vague. The duty to demand the release of a citizen and to take action to secure his release is triggered if he is being held by the foreign power "in violation of the rights of American citizenship," a peculiarly difficult concept. If Wallenberg is alive and

imprisoned in the Soviet Union, is his imprisonment "in violation of the rights of American citizenship?" The Supreme Court doubted that the imprisonment of the Iranian hostages satisfied this prerequisite for action under 22 U.S.C. § 1732, see Dames & Moore v. Regan, supra, and the Soviets, if they are holding Wallenberg, are probably not doing so because they fail to recognize his newly-conferred American citizenship.

Of course, we can contend that we have already done what the statute envisions. The President has demanded an accounting from the Soviets, and has done so repeatedly. In this regard it is also worth noting that the law conferring honorary citizenship on Wallenberg itself requested the President "to take all possible steps to ascertain from the Soviet Union the whereabouts of Raoul Wallenberg and to secure his return to freedom."

I called Dan McGovern, Deputy Legal Adviser at State, to obtain his views on Wolff's request. McGovern asked for a copy of Wolff's incoming, which I provided. McGovern has now responded, rather facetiously dismissing Wolff's 22 U.S.C. § 1732 theory on the ground that since there were no honorary citizens when that statute was passed, it cannot apply to honorary citizens. McGovern presumably also thinks that the Commerce Clause does not apply to air travel, that the First Amendment is irrelevant with respect to television and radio, and that the President has no authority to send ambassadors to countries that did not exist in 1787. On a more substantive ground, McGovern noted that during hearings on Public Law 97-54 the State Department took the position that the law would not give the United States any new rights under international law with respect to Wallenberg.

I recommend a reply to Wolff over your signature, essentially dodging the question of the applicability of 22 U.S.C. § 1732. Not only am I not convinced that the statute does not apply to Wallenberg, but I am institutionally disposed against adopting a limited reading of a statute conferring power on the President. We can provide Wolff with a copy of the State and Justice testimony at the hearings on Public Law 97-54, note that the law was intended to be symbolic, and stress all that has been done by the President to promote the cause of Wallenberg. We can also note that we have referred his letter to the State Department, which has raised the Wallenberg issue in the past and will continue to do so.

A draft reply is attached. I have also attached a cover memorandum transmitting a copy of the reply to Faith Whittlesey. Wolff wrote Whittlesey asking for her assistance in bringing the matter to the appropriate office, and Whittlesey referred it to us. Wolff has received a telephonic interim reply from Whittlesey's office, advising him that his letter was being considered.

Attachment

THE WHITE HOUSE

WASHINGTON

January 25, 1984

MEMORANDUM FOR DANIEL W. MCGOVERN
DEPUTY LEGAL ADVISER
U.S. DEPARTMENT OF STATE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence from Professor Wolff
Concerning Raoul Wallenberg

As you know, Professor Wolff of Delaware Law School has written the President concerning Raoul Wallenberg. Attached for your information is a copy of my reply to Professor Wolff. You will notice that I have advised Professor Wolff that I would refer his correspondence to the State Department for appropriate review and consideration.

Attachment

FFF;JGR:aea 1/25/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 25, 1984

MEMORANDUM FOR FAITH R. WHITTLESEY
ASSISTANT TO THE PRESIDENT
FOR PUBLIC LIAISON

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence from Professor Wolff
Concerning Raoul Wallenberg

You asked for our guidance concerning a response to a letter to the President from Professor Morris H. Wolff of the Delaware Law School. Professor Wolff's letter discussed the case of Raoul Wallenberg, and raised questions concerning the applicability of a particular statute to Wallenberg. After consulting with the Department of State, we prepared and sent the attached reply.

Attachment

FFF:JGR:aea 1/25/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

January 25, 1984

Dear Professor Wolff:

This is written in response to your letter to the President concerning Raoul Wallenberg. In that letter you referred to Public Law 97-54, 95 Stat. 971, signed on October 5, 1981 by the President, which conferred honorary citizenship on Wallenberg. You suggested that now that Wallenberg was an honorary citizen, the President could take action under 22 U.S.C. § 1732 to secure his release.

At the hearings on the bill to confer honorary citizenship on Wallenberg, Deputy Assistant Secretary of State Allen Holmes testified that the bill:

would serve to underscore the seriousness with which the American Government and people view Soviet behavior in the Wallenberg case. Conferral of honorary U.S. citizenship on Wallenberg would also serve to reaffirm to the Government of Sweden that the United States firmly supports the quest to resolve Wallenberg's fate.

Assistant Attorney General Theodore Olson testified that the bill "is essentially symbolic in nature." The testimony at the hearings suggests that the bill was not intended to affect legal rights but rather to serve the important purpose of reaffirming our national commitment not only to the values epitomized by Wallenberg but to a clarification of his fate as well. I have enclosed for your information a copy of the hearings.

Quite apart from any question of the applicability of 22 U.S.C. § 1732, section 2 of Public Law 97-54 requests the President "to take all possible steps to ascertain from the Soviet Union the whereabouts of Raoul Wallenberg and to secure his return to freedom." Not only the State Department but the President personally have spared no effort to obtain information about Wallenberg and, if he is alive, secure his release. The President has repeatedly referred to Wallenberg and demanded an accounting of his fate from the Soviets. To cite just a few instances, on February 2, 1983, the President remarked that if the Soviets truly want better relations with the West "they could give us an accounting of one of mankind's true heroes, Raoul Wallenberg." On April 11, 1983, the President again stated: "I would affirm, as President of the United States and, if

you would permit me, in the names of the survivors [of the Holocaust], that if those who took him from Budapest would win our trust, let them start by giving us an accounting of Raoul Wallenberg."

The Department of State has raised the matter with representatives of the Soviet Union on several occasions, including at the Conference on Security and Cooperation in Europe and before the United Nations Human Rights Commission. That Department will continue to raise the Wallenberg issue whenever such an initiative would be useful. I have taken the liberty of referring your correspondence to the State Department for their appropriate review and consideration.

This Administration shares your concern for Wallenberg and your commitment not only to help him if he is alive but to preserve his memory whatever his fate. As the President noted in 1982, on the Day of Remembrance:

But the one man who I think must be remembered above all was Raoul Wallenberg. One such man, at incredible risk, saved tens of thousands. And on this day of remembrance let us especially recall this man, and if he's alive, as some suggest, let his captors know they'll be forgotten long before Raoul Wallenberg is forgotten.

Thank you for sharing your views on this important question with us.

With best wishes,

Sincerely,

Fred F. Fielding
Counsel to the President

Professor Morris H. Wolff
The Delaware Law School
Widener University
Post Office Box 7474
Concord Pike
Wilmington, Delaware 19803

Enclosure

FFF:JGR:aea 1/25/84

bcc: FFFielding/JGRoberts/Subj/Chron