THE WHITE HOUSE

WASHINGTON

October 15, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Judicial Salaries

You asked that I draft a memorandum for your signature, raising the issue of judicial compensation along the lines of the attached draft American Bar Association report. The attached draft, tentatively addressed to the legislative strategy group, responds to your request.

Attachment

THE WHITE HOUSE

WASHINGTON

October 22, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Judicial Salaries and Report of the Quadrennial Commission

In 1967, Congress established the Commission on Executive, Legislative, and Judicial Salaries ("the Commission"). 2 U.S.C. § 351. The Commission, composed of three members appointed by the President, two by the President of the Senate, two by the Speaker of the House, and two by the Chief Justice, prepares a report to the President every four years on the appropriate levels of compensation for members of Congress, high-level executive branch officials, and members of the Federal judiciary. The next report is due by January 1, 1985.

The President must recommend, in his next budget submission after receipt of the report, rates of pay for the subject offices. 2 U.S.C. §§ 356-358. The theory underlying establishment of the Commission was to remove the setting of pay for high-level officials from the vicissitudes of politics, and, at least in part, to bring about a needed increase in judicial salaries by linking them to congressional and executive salaries.

In the past the Commission failed to achieve its objective. Recommendations of the Commission are routinely rejected by the President and Congress. One unfortunate consequence is that judicial salaries continue to be so inadequate as to present difficulties in attracting and, more significantly, retaining men and women of high quality for the Federal bench. The problem is significantly more pressing for the judiciary than for the executive or legislative branches, for the simple reason that a career on the bench is -- or should be -- a life-long commitment. One can expect talented men and women to make financial sacrifices for a period of years to serve in the executive branch or legislature, since they can always return to the more lucrative private sector to pursue their chosen calling. The same should not be true for judges. We expect our appointees to the bench to serve the remainder of their professional lives. The current disparity between salaries

paid to judges and what judges could command in the private sector is straining that principle in most instances -- as well it should.

The American Bar Association has been studying the problem, and will recommend to the Commission that it propose not only significant salary increases at all three levels of the Federal judiciary but also that it propose legislation providing for an annual increment to judicial salaries for each year of additional service (up to some limit). This would provide some incentive for judges to stay on the bench, or at least mitigate the financial burden of doing so. This is an important consideration from the perspective of the Administration, since by the end of his second term the President probably will have appointed about 50 percent of the sitting Federal judges. If the philosophy of this President in the legal area is to be reflected in court decisions for the next generation, it is critical that those appointees remain on the bench.

As noted, we will soon appoint a new Commission and by January 1 receive the quadrennial report of the Commission. I recommend that we begin considering a comprehensive response to the Report, which will doubtless call for substantial increases in judicial compensation and perhaps other legislative reform as well. In my view the judicial compensation problem is serious enough to merit our prompt attention. If action is not taken, we will encounter increased difficulty in attracting highly-qualified candidates for judicial office who will reflect the President's philosophy and who will remain on the bench for the remainder of their professional lives.

To that end, I would suggest you consider convening a Legislative Strategy Group meeting shortly after the election to consider this subject.

FFF:JGR:aea 10/22/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

October 15, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Ward Quaal and INS Problem

Ward Quaal, apparently a personal friend of the Reagans, has written the President, you, and Craig Fuller concerning an immigration problem confronting the executive assistant of his attorney. The letters to the President and Fuller have appropriately been referred to you, and Fuller has so advised Quaal. Quaal is in town today and has been calling concerning the status of his letters.

According to information provided by Quaal, the wife of the executive assistant was originally advised that her application for permanent resident status was approved. Subsequently she was told that she had to leave the country by October 14, 1984, or face deportation, because she accepted unauthorized employment prior to filing her application for permanent resident status. There does in fact appear to be an unexplained inconsistency between the two notices received by the wife, although the second notice also appears fully supported by the facts and law.

In any event, the White House should not intervene in this quasi-judicial matter pending before the INS. I am reluctant even to refer all of Quaal's correspondence to the INS, since it is so laden with references to his personal association with the President that the files would be tainted in the view of even the most objective reviewer. I recommend simply advising Quaal that White House policy precludes intervention in pending INS adjudications. A draft letter is attached for your signature.

Attachment

THE WHITE HOUSE

WASHINGTON

October 24, 1984

Dear Mr. Quaal:

Thank you for your letter of October 1, 1984, concerning Mr. Inder M. Kashyap and the Immigration and Naturalization Service proceedings involving members of his family. Your letters to the President and Craig Fuller of the same date have also been referred to this office for consideration and direct response.

I regret to advise you that established policy approved by the President precludes White House intervention on behalf of private parties in pending Immigration and Naturalization Service cases. This policy is designed to preserve public confidence in the impartial administration of our immigration laws.

I am sorry we cannot be more responsive to your request for assistance in this particular matter. I trust, however, that you will understand the reasons for this policy and our adherence to it.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Ward L. Quaal
401 North Michigan Avenue
Suite 3140
Chicago, Illinois 60611

FFF:JGR:aea 10/24/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

October 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Recess Appointments for Marine Mammal Commission Nominees

Senator Packwood has asked that the President not recess appoint two nominees, Karen Pryor and Robert Elsner, to the Marine Mammal Commission. Susan Borchard of Presidential Personnel has asked whether the statute governing the Marine Mammal Commission prohibits recess appointments.

The question practically answers itself. A mere statute cannot prohibit the President from exercising his constitutional power to make recess appointments. In this case, it is far from clear that Congress even presumed to act in such an unconstitutional manner. Prior to 1982, appointments to the Marine Mammal Commission did not require Senate confirmation. Public Law 92-522, 86 Stat. 1043. The statute was amended in 1982 to provide that "the Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate." Public Law 97-389, 96 Stat. 1951. Senator Packwood now contends that the change evinces an intent to bar recess appointments. But of course the very question of recess appointments only arises with respect to offices requiring Senate confirmation in the first place. To read a provision requiring Senate confirmation as implying an intent to bar recess appointments would mean all recess appointments were prohibited.

Even if Packwood is correct that Congress intended to bar recess appointments when it passed the 1982 amendments, such action by Congress rather clearly contravenes the Constitution. For it is the Constitution, and not any act of Congress, that grants the President the power "to fill up all Vacancies that may happen during the Recess of the Senate." Art. II, § 2, cl. 3. We have never conceded the constitutionality of indirect restrictions on the President's recess appointment power, such as the Pay Act or the effort to draw distinctions between the authority of confirmed and recess-appointed directors of the Legal Services Corporation. We should certainly oppose Packwood's direct effort to prohibit recess appointments.

THE WHITE HOUSE

WASHINGTON

October 16, 1984

MEMORANDUM FOR SUSAN BORCHARD
ASSOCIATE DIRECTOR
OFFICE OF PRESIDENTIAL PERSONNEL

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Recess Appointments for Marine Mammal Commission Nominees

You have inquired whether the statute governing the Marine Mammal Commission prohibits recess appointments to the Commission. The statute not only does not do so but could not do so consistent with the Constitution. The statute in question simply provides that members shall be appointed to the Commission by the President, with the advice and consent of the Senate. 16 U.S.C. § 1401(b)(1). This hardly evinces an intent to prohibit recess appointments, since the very issue of recess appointments only arises with respect to positions requiring Senate confirmation.

Even if Congress did intend to prohibit recess appointments when it added the requirement of Senate confirmation in the 1982 amendment to the above-referenced statute, it cannot constitutionally do so. The President's power to make recess appointments is granted by the Constitution, Art. II, § 2, cl. 3, and cannot be taken away by a mere statute. I have no doubt that the President is empowered to make recess appointments to the Marine Mammal Commission.

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

FFF:JGR:aea 10/16/84
bcc: FFFielding/JGRoberts/SUbj/Chron

THE WHITE HOUSE

WASHINGTON

October 17, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Enrolled Bill S. 905 -- The National Archives and Records Administration Act of 1984 -- and Signing Statement

Richard Darman has asked for comments by 3:00 p.m. today on the above-referenced enrolled bill. This is the bill that would free the Archives from GSA. The Administration was heavily involved in preparing the bill. According to OMB, the bill simply severs the Archives from GSA, without any increase in the authority of the Archivist.

All affected agencies, with the exception of the Justice Department, recommend approval or have no objection to the bill. The position of the Justice Department is amazing in light of its previous position on the bill. You may recall that our office objected at some length back in May to a proposed letter of Administration support for this bill. (See attached memorandum of May 16, 1984 from Fielding for Darman.) The basis of our objection was the provision in Section 102(a)(2) of the bill, which we thought limited the President's removal power. As noted in my memorandum for you of May 16 (also attached), the Justice Department (per Larry Sims of OLC) expressly declined to agree with our views or support our position. Partly as a result of this, our concerns were not heeded, and the Administration supported the bill.

Now Justice recommends a veto for precisely the same reason we originally objected to the bill. The bill specifies that the President may remove the Archivist, but requires the President to notify Congress of his reasons for doing so. The language of the bill is slightly different from that to which we objected in May, but the basic problem is the same. Justice saw no problem then (though I struggled mightily to point it out to them), and we are really estopped from doing anything about it now. As Stockman notes, the Administration advised Congress that it had no objection to the provision in May.

Justice also objects to a provision, Section 203 of the bill, requiring the Archivist to ask the Attorney General to initiate an action to recover records it believes have been

unlawfully removed, and to advise Congress of the request. Justice contends that this infringes on the Attorney General's authority to conduct litigation. I disagree. The Attorney General can still decline to prosecute, or can prosecute without receiving a request from the Archivist. I would rather not have this provision in the bill, but cannot argue for a veto because of it.

A draft signing statement has also been submitted for our review. It notes at the outset that the bill would establish the Archives as "an independent agency within the Executive branch," but at several later points simply applauds "independence for the Archives." As you know there was (and still is) a strong movement to grant the Archives real independence, i.e., from the President. I would reiterate "within the Executive branch" whenever the signing statement praises "independence" for the Archives, to avoid any possible misinterpretation.

The attached memorandum for Darman recommends this change. It also notes that we share Justice's concerns -- concerns we noted back in May -- but do not recommend a veto, because of the Administration's previous representations to Congress.

Attachment

THE WHITE HOUSE

WASHINGTON

October 17, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 905 -- The National Archives and Records Administration Act of 1984 -- and Signing Statement

Counsel's Office has reviewed the above-referenced enrolled bill and proposed signing statement. I share the concerns that the Department of Justice now has with respect to possible limitation on the President's removal power in Section 102(a) of the bill. Indeed, I raised those concerns in my memorandum for you of May 16, 1984. In light of the Administration's previous representations to Congress, however, I do not recommend disapproval on this ground.

I do recommend several changes in the draft signing statement. The statement should make absolutely clear that we support independence for the Archives within the Executive branch. There is a movement to make the Archives independent of the President, a move fraught with constitutional difficulty. As presently written the praise for "independence for the Archives" in the signing statement is subject to misinterpretation. I would add "within the Executive branch" at the end of the third paragraph and after the final word of the last sentence.

FFF:JGR:aea 10/17/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

October 18, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Enrolled Bill S. 607 - Public Broadcasting Amendments Act of 1984

Richard Darman has asked for comments by noon today on the above-referenced enrolled bill. On August 29, the President vetoed a predecessor bill, S. 2436, because the authorized appropriations of $920 million were excessive. He indicated he would accept a bill authorizing $694 million (the levels in the so-called Oxley Amendment). This bill authorizes $775 million, and both OMB and Commerce recommend disapproval.

Our office is of course not expert in setting budget levels, and I do not recommend second-guessing OMB and Commerce. I would note, however, that the instant bill shaves $145 million off the original bill, leaving the spending only $81 million above the President's request. In other words, Congress has met the President considerably more than half way, and the President by vetoing this bill again will antagonize a large and influential group, to gain only $81 million - the equivalent of a few Air Force coffee makers. The attached memorandum for your signature notes no legal objection to the recommendation of disapproval, or to the memorandum of disapproval. If you wish to weigh in on the policy decision, I will be happy to provide a memorandum along the lines of the discussion above.

Attachment

THE WHITE HOUSE

WASHINGTON

October 18, 1984

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill S. 607 - Public Broadcasting Amendments Act of 1984

Counsel's office has reviewed the above-referenced enrolled bill, and has no legal objection to the recommendation of OMB and Commerce that the President disapprove this bill. I also have no legal objection to the draft memorandum of disapproval.

THE WHITE HOUSE

WASHINGTON

October 18, 1984

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

FROM: JOHN G. ROBERTS, JR.
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 4025 - Transfer of General Post Office Building to Smithsonian Institution

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

bcc: Dianna Holland

THE WHITE HOUSE

WASHINGTON

October 18, 1984

MEMORANDUM FOR BEN ELLIOTT
DEPUTY ASSISTANT TO THE PRESIDENT AND
DIRECTOR OF SPEECHWRITING

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

SUBJECT: Proposed Presidential Remarks:
Reagan-Bush Rally, Kansas City, Missouri

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

cc: Richard G. Darman

bcc: Dianna Holland

THE WHITE HOUSE

WASHINGTON

October 18, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Request for Use of the Presidential Box at the Kennedy Center for an Auction Item to Benefit Community Service to the Mentally Retarded/Emotionally Handicapped Young People

The Rock Creek Foundation, a local charitable organization active in the mental health area, has written you to request the use of the President's box as an item to be auctioned off to raise funds. An auction of celebrity items to benefit the Foundation will be held on December 1.

It is our established policy not to approve the use of Presidential memorabilia as auction items, since the lending of such items would constitute endorsement of the fundraising. The White House adheres to a policy of generally not endorsing particular fundraising efforts, because we receive so many requests and cannot fairly approve some but not others. In addition, the White House has no capability to supervise fundraising by private entities, which would be necessary to some extent were the White House to endorse the fundraising. Finally, auctioning off Presidential memorabilia is basically selling the prestige of the Office, and that is not for sale, not for any price, not for any cause.

Attachment

THE WHITE HOUSE

WASHINGTON

October 18, 1984

Dear Ms. Falgitano:

Thank you for your letter of October 1, 1984. In that letter you requested permission to use the Presidential box at the Kennedy Center as an auction item to raise funds to benefit The Rock Creek Foundation.

I must decline to grant your request. The White House generally adheres to a policy of not lending items associated with the President to be auctioned off to raise funds, no matter how worthy the cause. As you might imagine, the President receives countless requests for such items. He cannot grant them all, and fairness dictates that he not arbitrarily grant some while denying others. In addition, the White House has no capability to supervise the activities of private charitable organizations, which would be necessary to some extent were the President to endorse particular fundraising projects.

I trust you will understand the reasons for our response, and that it in no way constitutes an adverse reflection on the fine work of The Rock Creek Foundation.

Sincerely,

Fred F. Fielding
Counsel to the President

Ms. Kathleen Falgitano
The Rock Creek Foundation
8435 Georgia Avenue
Silver Spring, MD 20910

FFF:JGR:aea 10/18/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

October 18, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Enrolled Bill H.R. 6248 -- Armed Criminal Act of 1984

Richard Darman has asked for comments by 5:00 p.m. today on the above-referenced enrolled bill. As you are aware, the provisions of this bill have already been enacted into law as Chapter XVIII of Title II of H.J. Res. 648, the Continuing Resolution, signed by the President on October 12, 1984 (Public Law 98-473). There is, accordingly, no legal purpose to be served by signing this bill. Justice recommends disapproval, contending that signing the bill would create needless confusion. I suspect vetoing it will also create needless confusion, and I do not think it matters much whether the President signs or not. On balance, I suppose the President should not act gratuitously, and therefore I agree with the OMB and Justice recommendation of disapproval. The proposed disapproval memorandum appropriately notes that the President is declining to approve this bill solely because it duplicates existing law and is unnecessary.

Attachment

THE WHITE HOUSE

WASHINGTON

October 18, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 6248 --
Armed Criminal Act of 1984

Counsel's Office has reviewed the above-referenced enrolled bill, and has no legal objection to the Justice and OMB recommendation that the President withhold his approval. I also have no objection to the proposed memorandum of disapproval. This situation is of course bizarre, and frankly it probably makes no difference whether the President signs this bill or not.

FFF:JGR:aea 10/18/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

October 19, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Deed of Gift for Photographic Prints

Mike Evans has given the International Museum of Photography at George Eastman House seven White House photographs of the President. The Museum has asked the White House to execute a boilerplate deed of gift conveying all right, title, and interest in the photographs to the Museum.

The photographs in question have been released into the public domain, and accordingly the Government has no right, title, or interest in them. Pursuant to 17 U.S.C. § 105, the Government can have no copyright in the photographs. The Museum is free to display the photographs, reproduce them, and even sell the reproductions. Since the deed of gift is unnecessary, I recommend that it not be executed. Signing the deed may suggest to others that the White House had an interest in the photographs, which it assigned to the Museum. In fact, the Museum has no more and no less right to use the photographs than anyone else. A letter to the Museum incorporating the above is attached for your review and signature.

Attachment

THE WHITE HOUSE

WASHINGTON

October 22, 1984

Dear Mr. Mayer:

The White House Photography Office has asked us to review a deed of gift submitted by the International Museum of Photography at George Eastman House in connection with the gift to the Museum of seven chromogenic prints of the President by Michael Evans. I am returning the deed of gift unsigned.

The photographs in question have all been released into the public domain by the White House. Pursuant to 17 U.S.C. § 105, the Government can have no copyright interest in the photographs. Accordingly, there is no right, title, or interest to be conveyed. The Museum, like any other entity, is free to use the photographs for any legitimate purpose. There is no need for a deed of gift.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Robert A. Mayer
Director
International Museum of Photography
at George Eastman House
900 East Avenue
Rochester, New York 14607

cc: Michael Evans
Personal Photographer to the President

Billie Shaddix
Director, Photographic Services

FFF:JGR:aea 10/22/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

October 19, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: FOI/PA Request of Mark Allen FBI/FOI/PA #211, 326 Regarding House Select Committee on Assassinations (HSCA)

By two separate memoranda, both dated October 9, the FBI has asked for our views on the release of documents originating in the White House that are responsive to the above-referenced FOIA request. The first item is a 1975 letter to President Ford from a private citizen, explaining a theory about the assassination of President Kennedy. I see no reason to withhold the letter. The second item is a telegram dated May 22, 1967 to the President from Marguerite Oswald, and a note of the same date from a White House staffer simply transmitting the telegram to the FBI. In her telegram Mrs. Oswald complains about FBI surveillance in connection with a visit to Dallas by Vice President Humphrey. I see no reason to object to the release of this item. An appropriate memorandum is attached for your review and signature.

Attachment

THE WHITE HOUSE

WASHINGTON

October 19, 1984

MEMORANDUM FOR JAMES K. HALL
CHIEF, FOI/PA SECTION
FEDERAL BUREAU OF INVESTIGATION

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: FOI/PA Request of Mark Allen
FBI/FOI/PA #211, 326 Regarding
House Select Committee on
Assassinations (HSCA)

By separate memoranda dated October 9, 1984, you requested our views on two items originating in the White House that are responsive to the above-referenced FOIA request. The items are a letter to President Ford from R.B. Cutler and a telegram of May 22, 1967 to the President from Marguerite Oswald, together with a transmittal note sending the telegram from the White House to the Bureau. I have no objection to the release of these items.

FFF:JGR:aea 10/19/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

October 23, 1984

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: Civil Aeronautics Board Decisions in Eastern Air Lines, Inc.; Universal Airlines, Inc.; United Air Carriers, Inc.; and United States-Venezuela Allcargo Proceeding

This memorandum is addressed to Mr. Hauser because of the involvement of Eastern Air Lines, Inc., in one of the subject decisions.

Richard Darman's office has asked for comments by close of business October 24 on the above-referenced CAB decisions, which were submitted for Presidential review as required by § 801(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 1461(a). Under this section, the President may disapprove, solely on the basis of foreign relations or national defense considerations, CAB actions involving either foreign air carriers or domestic carriers involved in foreign air transportation. If the President wishes to disapprove such CAB actions, he must do so within sixty days of submission (in these cases, by October 30, November 9, October 28, and October 29 respectively).

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

The Eastern order would authorize that carrier to serve a city in Colombia. The Universal order would authorize that carrier to engage in charter transport of property and mail, while the United order authorizes service to Hong Kong. Finally, the Venezuela proceeding order authorizes Flying Tiger to carry property and mail between Venezuela and the United States, with backup authority to Southern Air Transport.

A memorandum for Darman is attached for your review and signature. The memorandum notes that Mr. Fielding did not participate in the review of this matter.

Attachment

October 23, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decisions in Eastern Air Lines, Inc.; Universal Airlines, Inc.; United Air Carriers, Inc.; and United States-Venezuela Allcargo Proceeding

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

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

Mr. Fielding did not participate in the review of this matter.

RAH:JGR:aea 10/23/84
cc: RAHauser/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

October 24, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Correspondence Urging the President to Sign S. 607

You were sent a copy of a letter to the President, urging him to sign S. 607, the appropriations bill for the Corporation for Public Broadcasting. The letter was signed by 22 education and broadcasting figures. As you know, the President vetoed S. 607. Under the circumstances, I see no purpose to be served by your responding to the letter, which is actually more a petition than a letter in any event.

Attachment

THE WHITE HOUSE

WASHINGTON

October 24, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Indictment Announcement

Associate Deputy Attorney General Roger Clegg advises that the Attorney General will announce today at 2:00 p.m., in New York, the indictment of essentially the entire leadership of the Colombo organized crime family. The 51-count indictment charges extortion, mob-control of various unions, embezzlement of union funds, heroin trafficking, multi-million dollar thefts, gambling, loan-sharking, and a variety of other illegal activities. The indictment covers all three Colombo family "bosses" of the past ten years, as well as four high-ranking "capos." Justice has sent over a copy of the Attorney General's statement; the attached memorandum gives Mike Baroody a "heads up."

Attachment

THE WHITE HOUSE

WASHINGTON

October 24, 1984

MEMORANDUM FOR MICHAEL E. BARODY
DEPUTY ASSISTANT TO THE PRESIDENT
DIRECTOR, PUBLIC AFFAIRS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Indictment Announcement

Today at 2:00 p.m. the Attorney General will announce, in New York, the indictment of the leadership of the Colombo organized crime family. The 51-count indictment charges a variety of offenses, including extortion, mob-control of unions, embezzlement of union funds, heroin trafficking, theft, gambling, and loan sharking. It covers the three bosses of the family over the past ten years as well as four high-ranking "capos."

Attached is a copy of the statement the Attorney General will make; it should be held until 2:00 p.m.

Attachment

FFF:JGR:aea 10/24/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

October 24, 1984

Dear Mr. Masters:

Thank you for your recent letter to the President concerning the decision to commute the sentence of Gilbert L. Dozier to six years imprisonment. In light of your expressed concerns about that decision, you may be interested in more information about the facts of the case and the procedures that were followed.

Gilbert L. Dozier was convicted in the United States District Court for the Middle District of Louisiana in 1980 for violations of Federal law involving extortion and bribery. Dozier was convicted of soliciting money from individuals and businesses that were, or might have been, affected by actions of the Louisiana Department of Agriculture while he was Commissioner of Agriculture. In 1982 Dozier was also found to have committed additional criminal acts, including obstruction of justice, and to have thereby violated the conditions of a court ordered probationary term. On June 24, 1982, he commenced service of an aggregate sentence of from 58 months to 18 years imprisonment, followed by five years probation, and was fined $25,000.

In January 1983, Dozier filed an application for Executive clemency with the Office of the Pardon Attorney in the Department of Justice. In accordance with standard procedures, the Office of the Pardon Attorney, headed and staffed by experienced career attorneys, obtained and evaluated pertinent information, reports, and advice concerning Dozier's application. The office recommended that Dozier's sentence be reduced, and on March 20, 1984, the Department of Justice advised the President to modify the sentence of imprisonment and probation to six years imprisonment.

The Department of Justice recommendation was based on the disparity between Dozier's original sentence and sentences imposed in similar circumstances on like offenders for

similar offenses. The disparity became evident through an evaluation of relevant data compiled by the Administrative Office of United States Courts on sentences imposed in Federal courts. Not only was Dozier's sentence comparatively long, but the convictions for racketeering and extortion that made up the pertinent statistics generally involved behavior even more severe than the acts of extortion committed by Dozier. Generally, they included offenders with serious prior criminal records whose offenses involved violence. Sentencing statistics pertaining to defendants convicted of bribery suggest an even greater disparity of sentence. In addition, sentences imposed in comparable cases in recent years upon a number of public officials in in the Federal criminal justice system were reviewed, and this review again demonstrated the disparity of Dozier's sentence.

The recommendation of the Department of Justice was also based on Dozier's cooperation with law enforcement authorities after his conviction. Such cooperation provided with respect to ongoing law enforcement efforts is, as I am certain you will understand, a very important consideration in matters of this kind. Also taken into account were the guidelines of the United States Parole Commission, the length of incarceration to date, the fact that Dozier paid his fine, and the minimal additional deterrent effect to be achieved by completion of the original sentence.

The President accepted the advice of the Department of Justice and on June 22, 1984 reduced Dozier's sentence to six years. While the recommended sentence of six years imprisonment will permit Dozier to become eligible for parole consideration after two years imprisonment, any actual release date will be determined by the United States Parole Commission in its discretion and in accordance with its applicable guidelines. Unless the Parole Commission releases him sooner, Dozier will remain incarcerated until the expiration of his six-year sentence, subject to statutory release procedures (including good time) applicable to all Federal prisoners.

It is important to recognize that the President has <u>not</u> pardoned Dozier for the very serious criminal conduct that resulted in his conviction and incarceration. The reduction of sentence, approved for the reasons outlined above, in no way minimizes the seriousness of the crimes committed by Dozier.

We appreciate your taking the time to share your views on this matter with us. I hope the foregoing responds to your concerns.

Sincerely,

Richard A. Hauser
Deputy Counsel to the President

Mr. Burton J. Masters
6138 Del Canto
San Jose, CA 95119

RAH:JGR:aea 10/24/84
cc: FFFielding/RAHauser/JGRoberts/Subj/Chron

October 26, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Allegations of Misconduct by Justice Prosecutors and IRS Officials

Bo Callaway has written Mr. Baker concerning United States v. Kilpatrick, the somewhat celebrated tax fraud case in Federal district court in Colorado. In an opinion issued September 24, 1984, Judge Kane dismissed all twenty-seven counts of the indictment in a scathing opinion charging the Justice Department Tax Division prosecutors with misconduct and unethical behavior. Judge Kane wrote that the prosecutors abused the grand jury process, violated grand jury secrecy, improperly used "letters of assurance" rather than the statutory immunity process, mischaracterized evidence, and mistreated witnesses. He relied heavily on a prior opinion in the case by now-retired Judge Winner, which was even more vituperative in its treatment of the Tax Division attorneys. Judge Winner's opinion contains several remarkable allegations of "discourtesy" directed at the judge by the prosecutors, including shouting and obscenities, "glowering," and throwing jackets on the floor. (You may recall that this case first achieved notoriety after an ill-advised and improperly cleared motion was filed by the prosecutors to prevent the printing of Judge Winner's opinion.)

Callaway's letter assumes the accuracy of the two opinions, and urges the President to call for a thorough investigation of the charges against the prosecutors. The matter is urgent because "60 Minutes" has been preparing a segment on the case, which Callaway thinks will air either this Sunday or next.

The Justice Department has issued a statement to "60 Minutes." The statement notes that, in the view of the Department, the opinions of Judges Winner and Kane are "extreme and unjustified." (The Department has filed a protective notice of appeal, but may decide to proceed by re-indictment instead.) The statement also notes that the Office of Professional Responsibility has reviewed the charges of prosecutorial misconduct, and concluded that while there were instances in which the attorneys failed to comply fully with certain rules of criminal procedure, the failures did not prejudice the defendants and did not warrant any disciplinary action.

There is no need for the President to call for an investigation as suggested by Callaway; that investigation has already taken place and has essentially "cleared" the Tax Division attorneys. A reply advising Callaway of this is attached.

Attachment

October 26, 1984

Dear Mr. Callaway:

Your letter of October 10 to White House Chief of Staff James A. Baker, III has been referred to me for consideration and direct response. In that letter you reviewed the Justice Department tax fraud prosecution United States v. Kilpatrick, noting the charges of prosecutorial misconduct featured in the two opinions in that case. You suggested that the President call for a thorough investigation of those charges, prior to the airing of a "60 Minutes" segment on the case.

Such an investigation has already taken place. The Justice Department watchdog unit, the Office of Professional Responsibility, has conducted an extensive and independent investigation. According to the Department of Justice, that Office concluded that while there may have been instances in which the prosecutors did not fully comply with rules of criminal procedure, those instances did not prejudice the rights of the defendants and did not warrant disciplinary action. The Department considers the statements of Judges Winner and Kane to be extreme and unjustified, and, on October 24, filed a notice of appeal in the case. "60 Minutes" has been apprised of the foregoing.

Thank you for sharing your concerns about this matter with us.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Howard H. Callaway
State Chairman
Colorado Republicans
1275 Tremont Place
Denver, CO 80204

FFF:JGR:aea 10/26/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

October 30, 1984

MEMORANDUM FOR LYNN PIROZZOLI
OFFICE OF THE SECRETARY
U.S. DEPARTMENT OF THE INTERIOR

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Sample Executive Orders/Proclamations

As we discussed, I am sending over some sample executive orders and proclamations that might be useful as you proceed with your plans for a conservation award program. As I mentioned when we talked, you should contact John Cooney of the Office of Management and Budget General Counsel's office concerning the clearance process for executive orders and proclamations.

Please let me know if I can be of any further assistance.

Attachments