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THE WHITE HOUSE

WASHINGTON

February 1, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS 

SUBJECT:

Shift in the Mood of Americans
With Regard to Law Enforcement

James G. Woodall, a district attorney from western Tennessee, has written the President to describe his efforts to obtain death penalty convictions and to applaud the President for helping restore Americans' faith in themselves. I recommend simply a brief reply thanking Woodall for his support.

Attachment

THE WHITE HOUSE

WASHINGTON

February 4, 1985

Dear Mr. Woodall:

Thank you for your letter of January 24 to the President. In that letter you described your experience with death penalty cases in western Tennessee, and expressed the view that the President has helped restore Americans' faith in themselves.

I appreciate your taking the time to share your informed views with us. We are grateful for your supportive comments and hope that our efforts in the law enforcement area will continue to merit your approval.

Again, thank you for writing.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. James G. Woodall
District Attorney General
State of Tennessee,
12th Judicial Circuit
Jackson, Tennessee 38302

FFF:JGR:aea 2/4/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

February 1, 1985

MEMORANDUM FOR CHRISTOPHER HICKS
EXECUTIVE ASSISTANT TO THE SECRETARY
DEPARTMENT OF THE TREASURY

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Heritage Foundation Conference Series

You have inquired concerning White House policy with respect to participation by Administration officials in symposia or panels for which an admission fee is charged. You expressed concern that the organizing group might be seen as selling access to Administration officials.

There is no general rule on participation in such programs. Although a flat prohibition would avoid the problem you noted, it is often in the Administration's own interests to reach the particular audience in question. Accordingly, we address the question on a case-by-case basis, counseling against participation when it appears that the perception of "selling access" outweighs benefits to the Administration in reaching the particular audience. Some cases are fairly easy: addressing the American Bar Association is not qualitatively different than addressing the Heritage group, but the perception problems are obviously of a different magnitude.

RAH:JGR:aea 2/1/85

cc: FFFielding
RAHauser
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

February 2, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS 

SUBJECT:

Correspondence Concerning Report of the
President's Commission on Organized Crime

Michele Sindona has written to offer you the benefit of his expertise on organized crime. He enclosed a copy of a letter he wrote to James Harmon of the President's Commission on Organized Crime, criticizing certain passages in an interim report of the Commission that touched upon Sindona's own activities. This office should not correspond with Sindona about his activities; the letter should be referred to Justice. A draft doing so is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

February 4, 1985

MEMORANDUM FOR CAROL E. DINKINS
DEPUTY ATTORNEY GENERAL

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence Concerning Report of the
President's Commission on Organized Crime

The attached letter from Michele Sindona, objecting to certain aspects of an interim report of the President's Commission on Organized Crime, is referred to you for whatever direct response or other action you consider appropriate. I have not responded to Mr. Sindona in any way.

Many thanks.

Attachment

FFF:JGR:aea 2/4/85

cc: FFFielding

JGRoberts

Subj

Chron

THE WHITE HOUSE

WASHINGTON

February 4, 1985

MEMORANDUM FOR CAROL E. DINKINS
DEPUTY ATTORNEY GENERAL

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Duracell ITC Case

In the attached letter, counsel for Duracell advises that his client plans to litigate the question of the President's authority to disapprove the recent I.T.C. decision involving Duracell. He also suggests a compromise to avoid litigation. In light of the imminent lawsuit I am referring this correspondence, along with a copy of my brief acknowledgment, to the Department.

Attachments

FFF:JGR:aea 2/4/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

February 4, 1985

Dear Mr. Bierman:

Thank you for your letter of January 23, advising that you plan to litigate the question of the President's disapproval of the recent International Trade Commission decision involving your client Duracell. In that letter you also raised the possibility of a "compromise solution."

In light of your announced plans I have referred your correspondence to the Department of Justice for handling as that Department considers appropriate.

Sincerely,

Fred F. Fielding
Counsel to the President

James N. Bierman, Esquire
Foley & Lardner
1775 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-4680

FFF:JGR:aea 2/4/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

February 4, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 
SUBJECT: Reimbursement for Fees Incurred
by the Parents of Baby Jane Doe

Senator Durenberger has written to ask you to assist his effort to obtain attorneys' fees for the parents of Baby Jane Doe. The parents were intervenors on the side of the hospital in the unsuccessful suit by the United States against the hospital to obtain access to Baby Jane Doe's medical records. (A divided panel of the Second Circuit (Winter, J., dissenting) rejected the Government's efforts to obtain the records.)

The Civil Rights Division, both in response to the parents' motion for attorneys' fees and in response to letters from Senator Durenberger, has argued that the parents are not entitled to fees because the Government suit, though unsuccessful, was not "frivolous, unreasonable, or without foundation," the appropriate standard articulated in Christiansburg Garment Co. v. E.E.O.C., 434 U.S. 412, 421 (1978). The Second Circuit has in fact denied the parents' application, apparently agreeing with Justice. Senator Durenberger argues that Justice should not oppose the parents' effort to obtain fees, because they were victims of "experimental" litigation and have already incurred large medical expenses to care for Baby Jane Doe. The senator also notes that he introduced a private relief bill in the last session, and will do so again in this Congress.

I see no reason to retreat from the Justice position. The Baby Doe litigation may have been ill-advised, and the courts have thrown it out, but it was hardly "frivolous, unreasonable, or without foundation." Nor do I think the Government should ignore that clearly established legal standard and dispense moneys from the public fisc out of a sense of "compassion" -- the Justice Department has no right to salve its conscience (or quiet Senator Durenberger) with taxpayers' money that is not legally owed to the parents.

THE WHITE HOUSE
WASHINGTON
February 4, 1985

Dear Senator Durenberger:

Thank you for your letter of January 28, concerning the question of attorneys' fees for the parents of Baby Jane Doe. In that letter you requested that I review the decision of the Department of Justice to oppose such an award of attorneys' fees.

Upon consideration I am afraid that I must agree that the Department of Justice has no option but to oppose the award of fees to the parents. The legal standard cited by the Department in its court papers and its prior correspondence with you is well established. Fees are available in cases of this sort only if the Government suit is "frivolous, unreasonable, or without foundation." That cannot be said of the Baby Doe litigation. Since the legal standard for an award of fees has not been met in this case, it would be wholly inappropriate for the Department to acquiesce in an award of fees. Particularly when it comes to obligating public funds, the Department must be guided by established legal standards, not subjective notions of what is fair or compassionate.

I am afraid you will not be pleased with this response, but I hope you will understand the reasons underlying it.

Sincerely,

Fred F. Fielding
Counsel to the President

The Honorable Dave Durenberger
United States Senate
Washington, D.C. 20510

FFF:JGR:aea 2/4/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

February 4, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 
SUBJECT: Agreement With Regard to Appearance
and/or Participation in PANORAMA

Michael Evans has signed an appearance agreement with WTTG Channel 5, concerning his appearance on the "Panorama" television show, "subject to the approval of the White House Counsel's Office." The boilerplate agreement grants WTTG sole rights to the broadcast, and the right to use the fact of Evans's appearance in advertising for the show (e.g., "our guest next week will be Michael Evans..."). It also releases WTTG from any liability arising from Evans's appearance, and Evans agrees to indemnify the station for any liability arising from his appearance. (The latter clauses concern possible libel actions.)

The agreement was dated January 24, 1985, and the live television show aired uneventfully that same day. The agreement reached our office the next day. I recommend taking no action. If any problems do arise out of Evans's appearance (I foresee none), we can disavow the agreement at that time -- it was signed expressly subject to our approval. There is no need for us gratuitously to approve such a blanket waiver at this point.

Attachment

DRAFT

February 4, 1985

Dear Fred:

As I have discussed with members of your staff, I will be taking to the Department of the Treasury extra copies of certain notes and other documents created during my tenure as Chief of Staff. These copies were produced only for convenience of reference, and have been clearly identified as extra copies. They will be segregated in separate files at the Department of the Treasury and will in no way become part of the Treasury filing or records system. Only myself and my immediate staff, acting on my behalf, will have access to these files. I will obtain clearance from the White House Counsel's office or the appropriate officials of a future Reagan Presidential Library before granting others access to the files or permitting them to become public in any manner.

Sincerely,

James A. Baker, III

DRAFT

THE WHITE HOUSE

WASHINGTON

February 4, 1985

Dear Lloyd:

Thank you for your letter of January 10, containing suggestions for a Presidential initiative to prompt discussion on the need for structural reform of the Constitution. You suggested a Presidential advisory committee or mention by the President of the subject in a speech or press conference.

I am not certain that an advisory committee would add much to the work currently being done by the private groups, with which you are of course fully familiar. I will, however, keep alert for an opportunity to have this subject considered for inclusion in future Presidential remarks.

Thank you for your suggestions.

Sincerely,

Fred F. Fielding
Counsel to the President

Lloyd N. Cutler, Esquire
Wilmer, Cutler & Pickering
1666 K Street, N.W.
Washington, D.C. 20006

FFF:JGR:aea 2/4/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

February 26, 1985

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS 

SUBJECT: Amendments to the Atomic Energy Act of 1954

Attached at Tab A is a copy of Section 402 of H.R. 28, which would amend those portions of the Atomic Energy Act of 1954 concerning nuclear cooperation with other nations. Current law (Tab B) specifies that proposed nuclear cooperation agreements must meet certain substantive requirements, and must be submitted to the President along with an unclassified "Nuclear Proliferation Assessment Statement" from the Director of the Arms Control and Disarmament Agency. 42 U.S.C. § 2153(a). The President is required to certify that the agreement will promote the common defense and security. 42 U.S.C. § 2153(b). Certain agreements become effective thirty days after submission to the Foreign Affairs and Foreign Relations Committees; others sixty days after submission of the agreement and the Statement to Congress (provided Congress does not adopt a concurrent resolution to the contrary). 42 U.S.C. § 2153(c), 2153(d).

H.R. 28 would require the President to submit the agreement and Statement to the Foreign Affairs and Foreign Relations Committees and wait thirty days before issuing the certification required by 42 U.S.C. § 2153(b). The other report and wait provisions would remain in effect, with "concurrent resolution" in 42 U.S.C. § 2153(d) appropriately changed to "joint resolution."

Some might view this change as giving Congress "two bites" at a proposed agreement (before and after certification required by 42 U.S.C. § 2153(b)). Another way of looking at it is that the amendment would simply lengthen the "wait" period from sixty to ninety days. From either perspective I see no constitutional infirmity. These are merely "report and wait" provisions explicitly recognized in INS v. Chadha to comply with the Constitution.

THE WHITE HOUSE

WASHINGTON

February 19, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Proposed Letter to Nicholas Brady Regarding
Commission on Executive, Legislative, and
Judicial Salaries

David Chew has asked for comments on a proposed letter from the President to the Chairman of the Commission on Executive, Legislative, and Judicial Salaries. The draft letter notes the legislative veto problem in the statute that established the Commission, and the fact that the process mandated by the statute has not worked effectively. The President thereby requests the Commission to consider the effectiveness and validity of its enabling legislation and submit recommendations on necessary legislative changes.

I do not think the letter is a good idea. There is, as we have discussed before, a legislative veto problem with this statute. That problem, however, does not affect the Commission in any way. Briefly, the statute establishes the Commission, which is to submit a report to the President. 2 U.S.C. §§ 351-352, 356, 357. The President is then directed to submit salary recommendations to Congress, after having the benefit of the report prepared by the Commission. Id. § 358. There is, however, no necessary connection between the Commission recommendations and those of the President. The President's independent recommendations -- not those of the Commission -- become effective if approved by majority vote of each House. Id. § 359. This last provision presumably violates the teaching of INS v. Chadha, in that the constitutionally mandated presentment procedure is not followed. The violation is of the most technical sort, however, since the salary recommendations originate with the President in the first place (so he has no real complaint about not having an opportunity to veto them) and must be approved by a majority vote of both Houses (so the bicameral requirement is met).

What is important to note, however, is that the legislative veto problem does not affect the work of the Commission. That work is at an end when the Commission's report -- of no independent legal significance -- is presented to the President. Presidents receiving the report not only can but historically have ignored it. The legislative veto problem goes to the effectiveness of the President's recommendations, not those of the Commission.

Nor is there any reason to suppose that a court would rule the Commission should not exist simply because of uncertainty over the fate of the President's recommendations. Congress established the Commission to advise the President; it does nothing else. That function is not affected by the legislative veto provision. It seems clear to me that a court considering the question would rule that the process remains intact, but that the President's recommendations are just that and must be passed into law consistent with Chadha. As noted, this will result in a technical but not substantive change, since a majority of both Houses must approve the President's recommendations under the statute in any event.

In light of the foregoing, I see no reason for the President to ask the Commission for legal guidance on the legislative veto problem. That's what we're here for. There remains the issue of the effectiveness of the statutory scheme, a policy question. On that score, I do not see why the President would want to solicit formal recommendations from an entity to which he appoints only three of the nine members. If we want to recommend changes in the scheme, our policy operations should be able to generate recommendations themselves, without abdicating to an independent agency.

The attached memorandum for Chew embodies the foregoing.

Attachment

THE WHITE HOUSE

WASHINGTON

February 19, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Letter to Nicholas Brady Regarding
Commission on Executive, Legislative, and
Judicial Salaries

You have asked for my views on a draft letter from the President to the Chairman of the Commission on Executive, Legislative, and Judicial Salaries. In the proposed letter the President notes the legislative veto problem in the statute establishing the Commission, and also notes that the statutory scheme has not worked effectively. He requests that the Commission review these problems and submit recommended legislative changes.

I recommend that the letter not be sent. The legislative veto problem referred to in no way affects the legitimacy of the Commission or the nature of its work. Under the statutory scheme the Commission submits recommendations to the President and the President thereafter submits independent recommendations to Congress. The so-called legislative veto problem -- in 2 U.S.C. §§ 359-360 -- concerns the legal effect of the President's independent recommendations, not those of the Commission. The Commission exists only to make non-binding recommendations to the President, and that function can be discharged regardless of the effectiveness of any recommendations the President may make. (Incidentally, the legislative veto problem with this statute is purely technical and non-substantive. Under the statute the President's recommendations become law only if approved by both Houses. The problem is that the recommendations should, under INS v. Chadha, be presented to the President after passage by both Houses for approval or disapproval -- a foregone conclusion, since the recommendations were submitted by the President in the first place.)

Aside from the legislative veto problem, the letter also solicits recommendations on a more effective statutory scheme. I see no reason for the President to request such formal guidance from an entity to which he appoints only three of the nine members. The recommendations of the

- 2 -

Commission will carry considerable weight and legitimacy, yet we do not know if they will be palatable to this Administration. We should not increase the potential for future embarrassment by requesting recommendations we may have to oppose.

FFF:JGR:aea 2/19/85

cc: FFFielding

JGRoberts

Subj

Chron

THE WHITE HOUSE

WASHINGTON

February 19, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Memorandum for the President Prepared
by Alfred Kingon Regarding "60 Minutes"
Broadcast on the Kilpatrick Tax Case

David Chew has asked if we have any problem with forwarding to the President a memorandum from Al Kingon regarding the "60 Minutes" segment on United States v. Kilpatrick, the tax fraud case currently pending before the United States Court of Appeals for the Tenth Circuit. I reviewed this case in an October 26, 1984 memorandum for you (Tab A), prompted by a letter from Bo Callaway. You will recall that Kilpatrick is one of the largest tax fraud prosecutions in U.S. history, involving \$122 million. The twenty-seven count indictment was dismissed last fall by the district court, with two Federal judges involved in the case criticizing Tax Division prosecutors for prosecutorial misconduct and unethical behavior ranging from violations of grand jury secrecy to courtroom tantrums. A review of the matter by Justice's Office of Professional Responsibility concluded that the prosecutors did at certain points fail to comply fully with the Federal Rules of Criminal Procedure but that those failures did not warrant disciplinary action of any sort and did not prejudice the defendants. Justice is appealing the dismissal of the indictment. (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 one of the opinions criticizing them.)

Kingon's memorandum strikes me as inadequate in failing to note that an OPR investigation took place, and that the investigation generally cleared the prosecutors. The President probably wants to know if something should be done about the allegations in the judges' opinions and the "60 Minutes" segment, and the memorandum should tell him that something -- the OPR review -- has already been done. The draft memorandum attached at Tab B suggests a suitable addition to the Kingon draft.

More generally, the fact that this memorandum was prepared by Kingon rather than our office troubles me. He apparently gathered information from Justice about a pending Federal

case, in what I assume was an inadvertent violation of established policy with respect to communications with the Department of Justice (White House Staff Manual, Standards of Conduct 8.B., page F-10). I will leave it to you whether and if so how to raise this concern, but I think this might be a good opportunity to alert the new staff members to applicable restrictions on communications. If you agree, something along the lines of the draft memorandum at Tab C could be sent.

Attachments

THE WHITE HOUSE
WASHINGTON

February 19, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Memorandum for the President Prepared
by Alfred Kingon Regarding "60 Minutes"
Broadcast on the Kilpatrick Tax Case

You have asked for our views on a proposed memorandum from Al Kingon to the President concerning United States v. Kilpatrick, the subject of a recent "60 Minutes" segment. I recommend that the memorandum be revised to note that the Justice Department Office of Professional Responsibility conducted an independent investigation of the allegations in the judicial opinions. That investigation concluded that the prosecutors failed to comply fully with certain rules of criminal procedure, but that the failures did not prejudice the defendants and did not warrant any disciplinary action. The President should know that the proper action in response to allegations of the sort involved here has already been taken.

Accordingly, I recommend adding the following at the end of the penultimate paragraph:

The internal watchdog unit of the Department of Justice, the Office of Professional Responsibility, conducted an independent review of the allegations made against the Justice Department prosecutors. The investigation concluded that the prosecutors failed to comply fully with certain rules of criminal procedure, but that the failures did not prejudice the defendants and did not warrant any disciplinary action.

FFF:JGR;aea 2/19/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

February 19, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Memorandum for the President Prepared
by Alfred Kingon Regarding "60 Minutes"
Broadcast on the Kilpatrick Tax Case

You have asked for our views on a proposed memorandum from Al Kingon to the President concerning United States v. Kilpatrick, the subject of a recent "60 Minutes" segment. I recommend that the memorandum be revised to note that the Justice Department Office of Professional Responsibility conducted an independent investigation of the allegations in the judicial opinions. That investigation concluded that the prosecutors failed to comply fully with certain rules of criminal procedure, but that the failures did not prejudice the defendants and did not warrant any disciplinary action. The President should know that the proper action in response to allegations of the sort involved here has already been taken.

Accordingly, I recommend adding the following at the end of the penultimate paragraph:

The internal watchdog unit of the Department of Justice, the Office of Professional Responsibility, conducted an independent review of the allegations made against the Justice Department prosecutors. The investigation concluded that the prosecutors failed to comply fully with certain rules of criminal procedure, but that the failures did not prejudice the defendants and did not warrant any disciplinary action.

In light of your staffing responsibilities I should take this opportunity to alert you to certain restrictions on communications with the Department of Justice contained in the Standards of Conduct for members of the White House Staff. A copy of the pertinent provision is attached. In view of these restrictions, any inquiries, such as the instant one, concerning pending Federal cases should be referred in the first instance to the Counsel's Office. Similar restrictions apply to contacts by White House staff members with independent regulatory agencies, investigative

and intelligence departments and agencies, procurement agencies, and the Department of the Treasury. These restrictions are designed to preserve public confidence in the effective and impartial administration of the laws, and operate to protect the White House staff from allegations of undue interference in particular pending matters. If you feel that some action is necessary to ensure that new members of the staff are fully cognizant of these restrictions published in the Staff Manual, please advise.

FFF:JGR;aea 2/19/85

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

February 20, 1985

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS 
SUBJECT: Commission on the Bicentennial
of the U.S. Constitution

Pursuant to Section 4(a) of Public Law 98-101, 97 Stat. 719 (1983), the President is to appoint 20 of the 23 members of the Commission, as follows:

- A. 4 -- from recommendations submitted by the Speaker of the House
- B. 4 -- from recommendations submitted by the President pro tempore of the Senate
- C. 4 -- from recommendations submitted by the Chief Justice
- D. 8 -- unspecified.

Personnel has submitted the names of four people identified as from category A (Speaker), three from category B (Thurmond), and two from category C (Chief Justice). Of this total of nine prospective appointees, I have received Personal Data Statements from six.

Thus, there remain:

- A. 0 -- slots for the Speaker
- B. 1 -- slot for Thurmond
- C. 2 -- slots for the Chief Justice
- D. 8 -- slots for the President, unguided by recommendations from others.

THE WHITE HOUSE

WASHINGTON

February 21, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 
SUBJECT: "An Teach Ban" Letterhead

We have been asked if we have any legal objections to the President delivering a brief letter to the Irish Ambassador under a special letterhead reading "An Teach Ban" -- supposedly "The White House" in Gaelic. The idea is a little cute for my tastes, but I have no legal objection. The attached memorandum for Ryan, copy to Kimmitt, notes that we have no objection but that the translation of "An Teach Ban" should be verified. (For all I know it means "Free the IRA.")

Attachment

THE WHITE HOUSE

WASHINGTON

February 21, 1985

MEMORANDUM FOR FREDERICK J. RYAN, JR.
SPECIAL ASSISTANT TO THE PRESIDENT
DIRECTOR, PRESIDENTIAL SCHEDULING

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: "An Teach Ban" Letterhead

Counsel's Office has no legal objection to the proposal to have the President deliver a brief letter to the Irish Ambassador on stationery with a special letterhead reading "An Teach Ban," supposedly Gaelic for "The White House." The translation should, of course, be rigorously verified.

cc: Robert Kimmitt
National Security Council

FFF:JGR:aea 2/21/85

bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

February 21, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Commission on the Bicentennial
of the U.S. Constitution

The President is to appoint 20 of the 23 members of the Bicentennial Commission, including four from recommendations of the Speaker, four from recommendations of the President pro tempore of the Senate, and four from recommendations of the Chief Justice. (Each of these three officials is also a member in his own right.) Presidential Personnel has submitted the names of four people recommended by Speaker O'Neill, three recommended by Senator Thurmond, and two recommended by the Chief Justice. One of O'Neill's recommendations is Congressman Phillip Crane; one of Thurmond's is Senator Ted Stevens.

When he signed Public Law 98-101 creating the Commission on September 29, 1983, the President issued a signing statement noting that the Speaker, President pro tempore, and Chief Justice would "be able to participate only in ceremonial or advisory functions of the Commission...." The statement also noted that "in view of the Incompatibility Clause of the Constitution, any member of Congress appointed by me...may serve only in a ceremonial or advisory capacity." Thus, it is possible to proceed with the appointments of Congressman Crane and Senator Stevens, but they should clearly understand that they will have only a limited role on the Commission. I can draft a letter to them for your signature explaining this after I have received and reviewed their Personal Data Statements.

The appointments of Congressman Crane and Senator Stevens would result in five of the 23 members of the Commission having only ceremonial or advisory roles. A quorum of this Commission is 12, Public Law 98-101 Section 4(e), 97 Stat. 720, so there is no problem on that front, assuming that the remaining, unchosen appointees are not Congressmen.

THE WHITE HOUSE

WASHINGTON

February 21, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS 

SUBJECT:

Presidential Letter for the Marine
Mobilization Training Unit

Your office requested that I draft a letter for the President's signature, congratulating the Marine Mobilization Training Unit (MTU) for winning the 1984 American Bar Association Young Lawyers Division Award of Achievement Competition, Military Category. The idea for such a letter was suggested in a letter to the President from W. David Watkins, Immediate Past Chairperson of the YLD. The MTU consists of 12 Marine Reservists who meet twice monthly to plan and coordinate the provision of pro bono legal services to the Corps and individual Marines. They were recognized for providing legal aid to Marines, working to improve housing opportunities for Marines, preparing a booklet on legal issues to be distributed to new Marines arriving in Washington, assisting the Department of Defense in the areas of military law review and minority officer recruitment, and aiding in the annual Marine Corps Marathon. An appropriate draft is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

February 21, 1985

Dear Colonel Hilton:

I would like to extend my congratulations to all of the members of the Marine Mobilization Training Unit - Virginia (05) for winning the 1984 American Bar Association Young Lawyers Division Award of Achievement Competition, Military Category.

The MTU has provided a broad range of legal assistance to the Corps and individual Marines, and the recognition you have received from the American Bar Association is well deserved. Whether aiding individual Marines with particular legal problems, improving housing opportunities for members of the military, promoting recruitment of minority officers, assisting in the review of military law, preparing an informative booklet on legal issues, or helping to organize the successful Marine Corps Marathon, the members of the MTU identified areas in which legal assistance was needed and filled that need. All this assistance was rendered pro bono, in a unique combination of the finest traditions of the bar and of the Corps. Let me add my personal thanks to the recognition you have already received from the organized bar.

Well done!

Sincerely,

Colonel David L. Hilton, USMCR
9311 Georgetown Pike
Falls Church, VA 22066

RR:JGR:aea 2/21/85
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 25, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 
SUBJECT: Request for Remarks About Charles Kuralt
to be Published in "On the Road with Charles
Kuralt"

The publisher of a forthcoming book by Charles Kuralt has written the President to ask that he "contribute a few words about Charles for use in our publicity, promotion, and advertising." The attached draft reply for your signature advises the publisher that White House policy precludes such commercial endorsements by the President.

Attachment

THE WHITE HOUSE

WASHINGTON

February 25, 1985

Dear Mr. Nyren:

Thank you for your letter of February 11 to the President. That letter described a forthcoming book by Charles Kuralt, and requested that the President contribute a few words concerning Mr. Kuralt for use in promoting the book.

Please be advised that established White House policy generally prohibits any use of the name, likeness, photograph, or signature of the President in any manner that suggests or could be construed as endorsement of a commercial product or enterprise. Adherence to this policy requires us to decline your request. I trust you will understand that our response is in no sense an adverse reflection on Mr. Kuralt.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Neil S. Nyren
Senior Editor
The Putnam Publishing Group
200 Madison Avenue
New York, New York 10016

FFF:JGR:aea 2/25/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

February 28, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Congressman Dymally Correspondence
Concerning MSPB Special Counsel

Congressman Dymally (D-CA), Chairman of the House Subcommittee on Postal Personnel and Modernization, has written the President to protest the prosecution of three presidents of Federal employee unions for violations of the Hatch Act. The three are and have been for several years on unpaid leave from their Federal jobs. K. William O'Connor, Special Counsel of the Merit Systems Protection Board (MSPB), has concluded that the union presidents violated the Hatch Act through their political activities during the recent national election. He gave them until February 26 to resign or retire, or face prosecution. None of the three resigned or retired, and charges were filed before the MSPB on February 26. The case is pending before the Board.

Congressman Dymally requests the President "to halt the actions threatened against the three union presidents." In fashioning a reply to Dymally, it is important to recognize that the President legally could do what he requests. The Special Counsel, while clearly independent of the MSPB, is not independent of the President, and is fully subject to Presidential control, extending up to removal at will. It is true that the pertinent statute specifies that the Special Counsel serves for a term of five years and may be removed by the President "only for inefficiency, neglect of duty, or malfeasance in office." 5 U.S.C. § 1204. The Office of Legal Counsel, however, has determined that the Special Counsel -- as distinct from the MSPB itself -- performs largely executive functions (enforcement of the laws), and that Congress may not restrict the President's power to remove him. 2 O.L.C. Ops. 120 (1978). Accordingly, the attached draft reply does not forswear Presidential responsibility for the actions of the Special Counsel. Rather, it states that interference by the President would be inappropriate given the fact that a prosecution is pending -- the same reply that would be given with respect to a case brought by a U.S. Attorney. The distinction will probably be lost on Congressman Dymally who, in any event, would be the first to scream about Presidential interference in any other MSPB case.

THE WHITE HOUSE

WASHINGTON

February 28, 1985

Dear Mr. Dymally:

This is written in response to your letter of February 25 to the President. In that letter you requested that the President take action to halt the prosecution of three Federal employees by the Special Counsel of the Merit Systems Protection Board for alleged violations of the Hatch Act.

The Special Counsel is specifically authorized by statute to investigate and prosecute allegations of political activity prohibited by the Hatch Act. 5 U.S.C. § 1206. It is my understanding that complaints against the three individuals referred to in your letter were filed by the Special Counsel on February 26. Those complaints are now pending before the Merit Systems Protection Board, as provided by statute. Any employee subject to a final order of the Board imposing disciplinary action may obtain judicial review of the order. In short, the statutory procedure for handling cases of this sort has been invoked, and it would be inappropriate for the President to interfere with such pending prosecutions.

Sincerely,

Fred F. Fielding
Counsel to the President

The Honorable Mervyn M. Dymally
Chairman, Subcommittee on Postal
Personnel and Modernization
Committee on Post Office and Civil
Service
United States House of Representatives
Washington, D.C. 20515

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bcc: FFFielding/JGRoberts/Subj/Chron