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DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	ROBERTS TO JOHN R. SMITH, RE: THREAT AGAINST THE PRESIDENT	1	4/30/1985	B6	863

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]

B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]

B-3 Release would violate a Federal statute [(b)(3) of the FOIA]

B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]

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B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]

B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]

B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

E.O. 13233

C. Closed in accordance with restrictions contained in donor's deed of gift.

THE WHITE HOUSE

WASHINGTON

April 22, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Forum for a Presidential Speech
on his Judicial Philosophy and
Selection of Judges

Pat Buchanan has suggested to you and Attorney General Meese that consideration be given to having the President deliver a major address on his judicial philosophy and the criteria he uses in selecting judges. Buchanan indicated the address could also contain the President's thoughts on recent Supreme Court decisions. He attached to his memorandum a copy of Bruce Fein's 1982 address before the Federal Legal Council on "Executive Branch Criticism of Judicial Decisions: Vindicating the Constitution's Separation of Powers."

I have no objection to an address by the President explaining his belief in judicial self-restraint and discussing the appropriate role of the three branches under the constitutional doctrine of separation of powers. Attorney General Smith wrote and spoke extensively on those subjects (see attachments). I would avoid criticism of specific Supreme Court decisions, however, not only because such criticism is rarely productive but also because it would inevitably overshadow the more important articulation of the President's view on the proper role of the Federal judiciary. Under no circumstances should the President's address proceed along the lines of Fein's unalloyed jurisprudential iconoclasm. In short, Buchanan's suggestion is a good one if we can control the development of the speech. If not, it could be a disaster.

The attached response sketches the appropriate approach to take in such a Presidential address, volunteers the services of our office in preparing a first draft (the best way to control the development of the speech), and suggests the upcoming ABA convention as a possible forum.

Attachment

THE WHITE HOUSE
WASHINGTON

April 22, 1985

MEMORANDUM FOR PATRICK BUCHANAN
ASSISTANT TO THE PRESIDENT
FOR COMMUNICATIONS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Suggested Presidential Address
on Judicial Philosophy

I agree with your suggestion that consideration be given to having the President deliver a major address articulating his judicial philosophy and the criteria he employs in selecting nominees for the Federal bench. Such an address could be expanded to include the President's views on the proper role of the three branches under the constitutional system of separated powers. Attorney General Smith made a major effort to address these themes, as evidenced by the attached, but his message did not reach much beyond the legal community.

As I see it, the key points for the President to make are that the Constitution prescribes a limited role for the Federal judiciary, one that does not infringe on the policy-making prerogatives of the popularly elected and politically accountable branches, and that he will appoint judges who recognize this limited role and will exercise judicial self-restraint. This is hardly to politicize the judiciary, but rather to keep it free from partisan politics by leaving politics to the political branches. Nor is such a view in any sense an attack on the judiciary; quite the contrary. As Robert Jackson put it:

It is precisely because I value the role the court performs in the peaceful ordering of our society that I deprecate the ill-starred adventures of the judiciary that have recurrently jeopardized its essential usefulness.... By impairing its own prestige through risking it in the field of policy, it may impair its ability to defend our liberties.

I do not think it would be wise for the President to criticize specific Supreme Court decisions. Such criticism would alienate certain sitting Justices, and, more importantly,

would doubtless overshadow the articulation of a considered view of the role of the judiciary in the constitutional scheme.

This office would be happy to prepare a first draft of any such address by the President, and work closely with the speechwriting apparatus in developing the speech. For the appropriate forum, the President could appear before the ABA convention later this summer.

FFF:JGR:aea 4/22/85

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

April 22, 1985

MEMORANDUM FOR MARK SULLIVAN
ASSOCIATE DIRECTOR
PRESIDENTIAL PERSONNEL

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Sentencing Commission

The following is from the 1984 Federal Judicial Almanac:

Republicans:

George E. MacKinnon
John L. Smith, Jr.
William W. Wilkins
Warren K. Urbom
James M. Burns
Leland C. Nielsen

Democrats:

Reynaldo G. Garza
Hugh S. Dillin
George N. Leighton
Earl H. Carroll

No Affiliation Listed:

Thomas A. Flannery
Stephen G. Breyer

THE WHITE HOUSE

WASHINGTON

April 23, 1985

Dear Dr. Duignan:

Congratulations on your prospective appointment as Archivist of the United States. In connection with that prospective appointment, it is necessary for you to complete the enclosed forms and return them to me at your earliest convenience.

You may respond in memorandum form to the questions on the Personal Data Statement, addressed to Mr. Fielding; the questions need not be repeated. As the questions on the Executive Personnel Financial Disclosure Report (SF-278) have generated many questions, please do not hesitate to contact me if the need arises. My telephone number is (202) 456-7953.

I have also enclosed memoranda outlining how the conflict of interest laws apply to one in your position.

Again, my congratulations.

Sincerely,

A handwritten signature in dark ink, appearing to read "John G. Roberts", written in a cursive style.

John G. Roberts
Associate Counsel to the President

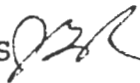
Dr. Peter J. Duignan
939 Casanueva Place
Stanford, CA 94305

THE WHITE HOUSE

WASHINGTON

April 23, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Appeals Appointment of Roger Jepsen
to Post Relating to Celebration of
Bicentennial of the Constitution

Richard Morris of Indiana complained to Senator Lugar upon learning that Roger Jepsen was to head the Commission on the Bicentennial of the U.S. Constitution. Lugar responded with a bland note; Morris then wrote directly to you to voice his concern. Morris's interest apparently stems from his avocation as a serious collector of materials related to the 1787 Constitutional Convention.

The attached draft reply advises Morris that Jepsen will not be involved in the Bicentennial Commission.

Attachment

THE WHITE HOUSE

WASHINGTON

April 23, 1985

Dear Mr. Morris:

Thank you for your letter of April 1. In that letter you objected to reports that former Senator Roger Jepsen was to be appointed to some position related to the Commission on the Bicentennial of the United States Constitution.

Please be advised that Mr. Jepsen will have no role with respect to the Commission. Thank you for taking the time and effort to share your views on this matter with us.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Richard O. Morris
President, The Rytex Company
Post Office Box 786
Indianapolis, IN 46206

FFF:JGR:aea 4/23/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE
WASHINGTON

April 23, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Address: Budget

David Chew has asked that comments on the draft budget address be sent directly to Ben Elliott immediately. The text will go to the President at 3:00 p.m.

I have reviewed the draft and see no legal problem areas. The remarks stress the need to reduce Government spending and resist tax increases. Some specifics of the compromise budget plan -- elimination of SBA and Amtrak subsidies, the two percent cap on pension cost-of-living increases, elimination of export subsidies -- are discussed. The pitch for public support at the bottom of page 13 is very restrained and does not raise anti-lobbying concerns (even assuming that statute applies to the President). I think the address could be very effective.

Attachment

THE WHITE HOUSE

WASHINGTON

April 23, 1985

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Address: Budget

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

cc: David L. Chew

FFF:JGR:aea 4/23/85

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE
WASHINGTON

April 23, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Letters to Congress Regarding Copper

As discussed at this morning's staff meeting, I think this would be better going out under your signature.

Attachment

THE WHITE HOUSE

WASHINGTON

April 23, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Letters to Congress Regarding Copper

Counsel's Office has reviewed the proposed letters to Congress, advising that the President has decided not to undertake to negotiate voluntary production restraint agreements with foreign copper-producing countries. I have no objection to the substance of the decision or to advising Congress of it at this time, well in advance of the October deadline.

I do, however, object to transmitting to Congress the internal deliberative documents used within the Executive branch in arriving at this Presidential decision. Such documents could be protected from even compelled disclosure by a claim of executive privilege. Indeed, since these documents are clearly deliberative and pre-decisional, and were prepared to offer advice concerning a decision that must be made by the President, they lie close to the core of the sort of materials protected by the privilege. We should not gratuitously release such materials, even on a "confidential basis," to Congress. Doing so creates a precedent that will cause problems when we wish not to disclose similar material in the future, and also whets the appetite of Congress for additional protected documents.

Further, I see no need to disclose the actual internal deliberative documents. There is no reason that a document supporting the decision cannot be prepared specifically for transmittal to Congress.

I would also point out that the first paragraph on page four of the draft letter will create an advisory committee subject to the various requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 2. If this is not intended, the paragraph should be deleted or substantially revised to reflect a less formal monitoring process.

FFF:JGR:aea 4/23/85
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 24, 1985

Dear Mr. O'Shea:

Thank you for your letter to the President concerning the purchase of foreign automobiles by certain members of a White House advance team at a discount available to holders of diplomatic passports.

Regulations promulgated by the Department of State generally permit the acceptance of discounts available to holders of diplomatic passports. The offering of such discounts by foreign automobile manufacturers is a long-standing practice in several countries.

The acceptance of such discounts is not illegal, but the practice had never been reviewed by the White House and the White House had never given guidance on it to members of the staff. After review, we decided to prohibit members of the White House staff from accepting such discounts in the future, unless they are out of the country for 30 days or more. This office has alerted members of the staff to this new policy, and has also suggested to other departments and agencies that they review their policies on this question.

With respect to your comments on the particular make of automobile chosen by the individuals in question, I can only state that such decisions are matters of personal consumer preference which it would be inappropriate for the Government to regulate.

I hope the foregoing information responds to your concerns.

Sincerely,



John G. Roberts
Associate Counsel to the President

Mr. Tim O'Shea
9768 Whetstone Drive
Gaithersburg, MD 20879

THE WHITE HOUSE

WASHINGTON

April 24, 1985

Dear Mr. Schipper:

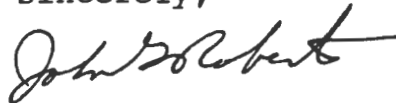
Thank you for your recent letter to the President concerning the purchase of foreign automobiles by certain members of an advance team at a discount available to holders of diplomatic passports.

Regulations promulgated by the Department of State generally permit the acceptance of discounts available to holders of diplomatic passports. The offering of such discounts by foreign automobile manufacturers is a long-standing practice in several countries.

The acceptance of such discounts is not illegal, but the practice had never been reviewed by the White House and the White House had never given guidance on it to members of the staff. After review, we decided to prohibit members of the White House staff from accepting such discounts in the future, unless they are out of the country for 30 days or more. This office has alerted members of the staff to this new policy, and has also suggested to other departments and agencies that they review their policies on this question.

I hope the foregoing information responds to your concerns. Thank you for sharing your views with us.

Sincerely,



John G. Roberts
Associate Counsel to the President

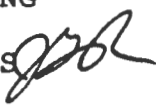
Mr. Alexander Schipper
1000 San Pasqual Street, #27
Pasadena, CA 91106

THE WHITE HOUSE

WASHINGTON

April 24, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 
SUBJECT: Legal Fees Equity Act

OMB is soliciting agency views on Justice's proposal to resubmit "The Legal Fees Equity Act." You will recall that this bill was cleared and introduced in the 98th Congress, over your policy objections. As introduced in early 1984, the bill was viewed as a beguiling package: it raised fees paid to criminal defense attorneys under the Criminal Justice Act and capped fees paid to attorneys prevailing against the Government under the various fee-shifting statutes. This ploy was not too clever for Congress, however, which passed the criminal fee raise separately and let the civil fee cap die.

This version of the bill, accordingly, does not contain the criminal fee increase. It also has two new, potentially controversial provisions. One would specifically impose the \$75 fee cap on awards of attorneys fees under the Independent Counsel statute. The other would apply the fee cap to payment by Federal agencies for private counsel (e.g., perhaps the Burford case).

I am not convinced that applying the fee cap to awards of fees under the Independent Counsel statute is logical. In the other cases covered by this fee cap bill, the fees in question are incurred by plaintiffs in so-called public interest suits against the Government. In the case of fees recoverable under the Independent Counsel law, the individual in question is not a plaintiff who freely chose to bring suit, but an unwilling target.

Nor should the fee cap necessarily apply to private counsel retained by Federal agencies. Federal agencies can negotiate concerning fees before retaining private counsel, and the circumstances in which private counsel are needed may well be such that \$75 per hour will be insufficient to retain qualified counsel. In short, why restrict by law agency flexibility in paying whatever it considers necessary for outside private counsel? The fact that there is to be a \$75 cap on public interest attorneys fees is, as with the Independent Counsel provision, quite irrelevant.

When this bill was introduced in the 98th Congress, you objected to the timing, noting that the fee cap bill would have its greatest impact in the civil rights and welfare entitlement areas, and would likely be viewed as another Administration effort to limit the delivery of legal services to minorities, the poor, the aged, etc. I do not think this is a particularly bad time to introduce the bill, though I doubt it has much chance for passage in any event.

The attached memorandum for your signature questions the extension of the fee cap to the Independent Counsel and Federal agency retained counsel situations. I think we are at least entitled to hear Justice's justification on this point.

Attachment

THE WHITE HOUSE

WASHINGTON

April 24, 1985

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: DOJ Draft Bill, "The Legal Fees Equity Act"

Counsel's Office has reviewed the proposed "Legal Fees Equity Act." I am not convinced of the wisdom of the two new provisions added to the version of the Act previously cleared and submitted. The present proposal would extend the \$75 fee cap to awards under the Independent Counsel statute and to fees paid by Federal agencies for retained private counsel. Both situations are quite different from the typical fee-shifting provision involved in so-called public interest cases, and there is no logical reason to extend the \$75 fee cap imposed on plaintiffs bringing suit against the Government to fees awarded to targets of an unfounded Independent Counsel inquiry or to fees paid by agencies for retained counsel. With respect to the latter situation, I see no reason to restrict agency action by law. Agencies can negotiate fee levels with retained counsel, and a \$75 fee cap set by law may prevent Federal agencies from securing qualified counsel.

FFF:JGR:aea 4/24/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

April 25, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Appointments to the Commission
on the Bicentennial of the United
States Constitution

Pursuant to Section 4(a) of Public Law 98-101, 97 Stat. 719 (1983), the President is authorized to appoint 20 of the 23 members of the Commission (the Chief Justice, Speaker of the House, and President pro tempore of the Senate are appointed by statute). Of the 20 Presidential appointees, four are to be chosen from recommendations submitted by the Speaker, four from recommendations submitted by the President pro tempore, and four from recommendations submitted by the Chief.

Recommendations of the Speaker

° Lynne Cheney, Senior Editor of The Washingtonian, wife of Congressman Dick Cheney of Wyoming.

° Thomas Henry O'Connor, Professor of History at Boston College.

° William Joseph Green, Philadelphia attorney, former Congressman and Mayor of Philadelphia.

° Congressman Philip M. Crane (R-IL).

The only difficulty with these appointments involves the appointment of Crane, a sitting member of Congress. As you know, the President stated when he signed the bill establishing the Commission that "in view of the Incompatibility Clause of the Constitution, any member of Congress appointed by me pursuant to section 4(a) (1) of this Act may serve only in a ceremonial or advisory capacity." (This concern is distinct from the concerns surrounding the role of the Chief Justice, which did not involve the Incompatibility Clause but separation of powers more generally.)

Recommendations of the President pro tempore

° Harry M. Lightsey, Dean of the University of South Carolina School of Law.

- Edward P. Morgan, sole practitioner in Washington, D.C.

- Senator Ted Stevens (R-Alaska).

- Senator Wendell Ford (D-KY).

I have reviewed the Personal Data Statements submitted by Messrs. Lightsey and Morgan, and have no objection to proceeding with their appointments. I have received nothing from the Senators. They would be subject to the same limitations discussed above with respect to Congressman Crane.

Recommendations of the Chief Justice

- Charles Wiggins, U.S. Circuit Judge, Ninth Circuit.

- Cornelia Kennedy, U.S. Circuit Judge, Sixth Circuit.

- Herbert Brownell, Of Counsel to Lord, Day & Lord, former Attorney General.

- O.C. Tanner, founder and chairman of O.C. Tanner Company, attorney.

I have reviewed Personal Data Statements submitted by all of the foregoing and have no objection to the appointments. Service of sitting Federal judges does raise separation of powers concerns, but as those were overcome in appointing the Chief as Chairman I see no purpose to be served by raising them now.

Presidential Choices

- Bernard Siegan, Professor of Law, University of San Diego School of Law.

- Fred Biebel, Executive Vice President of the International Republican Cooperation Fund.

- Betty S. Murphy, partner in Baker & Hostetler.

- Phyllis Schlafly, President of Eagle Forum.

- Ron Walker, partner in Korn/Ferry International.

- Charles Alan Wright, Professor of Law, University of Texas.

° Russel Kirk, author.

° ?

Kirk has yet to submit a PDS. Of the others, some, such as Schlafly, will obviously be controversial. Siegan's writings on the Constitution advance a theory of economic liberty that will be controversial to many constitutional law scholars. Wright is an attorney for Tavoulareas in the controversial Tavoulareas v. Washington Post case. Ron Walker was a consultant in 1975 for Saudi Arabia. I telephoned him to alert him to the prohibitions of 18 U.S.C. § 219, and he advised that he was not now registered as a foreign agent and saw no likelihood that he would be in a position to register in the future.

In sum, we can proceed with the appointments of Cheney, O'Connor, Green, Crane, Lightsey, Morgan, Wiggins, Kennedy, Brownell, Tanner, Siegan, Biebel, Murphy, Schlafly, Walker, and Wright. We can add Senators Stevens and Ford if you wish to dispense with PDS's from them. Kirk should not be announced until he submits a PDS. Finally, there is still a remaining slot on which I have no information.

THE WHITE HOUSE

WASHINGTON

April 26, 1985

MEMORANDUM FOR CLAUDIA KORTE
PRESIDENTIAL MESSAGES

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

SUBJECT: Requested Message for Ted Howard

You have asked for this office's views on a proposed Presidential message for Ted Howard, President of Automated Business Systems and Services, on the occasion of that company's "graduation" from the SBA's 8(a) program. I think it would be extremely inadvisable for the President to participate in a ceremony celebrating an instance of "success" in the SBA grant and loan program at a time when he is proposing to abolish those programs -- and the SBA itself -- as inappropriate activities for the Federal Government. No message should be sent.

THE WHITE HOUSE
WASHINGTON

April 29, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*
HUGH HEWITT *HH-H*

We have reviewed the attached binder on Presidential succession. In addition to providing the draft letters called for at Appendices 8 and 10, we have made two substantive changes.

First, the discussion of the oath required by the Vice President or the Speaker upon assuming the Presidency, Tabs A and F respectively, has been changed. The earlier discussion stated that 5 U.S.C. § 2904(c) required that the oath be administered by a competent official acting within the United States or a territory or possession of the United States. Not only did this discussion reference the incorrect section -- it is § 2903(c) -- we have determined that § 2903(c) does not apply to the oath for the Office of the Presidency. The Vice President or Speaker, even if he is away from the United States, may simply swear the oath although considerations of decorum would probably suggest that an appropriate official perform the act. The crucial consideration is that the Vice President or the Speaker does not have to wait to return to the United States to swear the oath.

Second, we have added a cautionary paragraph to the discussion of the procedures of the Twenty-Fifth Amendment contained at Tab B. At page 3 of that discussion we have included the paragraph:

Consideration should always be given to whether the procedures of the 25th Amendment need to be activated. If the President's disability will be brief and it is doubtful that any of his non-delegable powers will have to be exercised, it may be preferable not to employ the elaborate and untested procedures of Section 3.

This caution reflects our belief that Section 3 need not be used whenever a President undergoes a brief period of disability such as surgery. Quick resort to Section 3 may establish precedent that will be difficult to avoid in future years when a President would prefer not to pass power -- however briefly -- to a Vice President.

Attachment

THE WHITE HOUSE
WASHINGTON

April 30, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*
SUBJECT: Portal-to-Portal Legislation

As discussed at this morning's staff meeting.

Attachment

THE WHITE HOUSE

WASHINGTON

April 30, 1985

MEMORANDUM FOR JOSEPH WRIGHT
DEPUTY DIRECTOR
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Portal-to-Portal

You have asked if I have any objections to requesting a Department of Justice opinion to counter the General Accounting Office opinion on the portal-to-portal statute. In light of our representations to the Hill in this area, I think such a course of action would be regarded by the Hill as duplicitous and would exacerbate rather than help solve the problems in this area.

As you know, we have succeeded in obtaining a somewhat extended moratorium on GAO "enforcement" of its opinion on the basis of our representations that we would submit a legislative cure for the problems caused by that opinion. To shift gears suddenly and request a Justice opinion that could undermine the GAO position would, I think, show bad faith, and cause not only the Hill members with whom we have been dealing but also GAO officials to feel that they have been "taken" in granting the moratorium. The result could well be immediate and vigorous GAO enforcement efforts that would cause considerable embarrassment to the Administration.

The fact that we would also submit the legislative package as we pursued the Justice opinion strikes me as likely to be insufficient to mollify the Hill and GAO, both of which have hitherto been cooperative. It seems to me that we have chosen a legislative solution to this problem and, to coin a phrase, we should "stay the course."

FFF:JGR:aea 4/30/85

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

April 30, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*
SUBJECT: Alumni Newsletter Article

Charles Heatherly, Director of the President's Commission on White House Fellowships, has asked for your views on a book review tentatively slated to be published in the Alumni Newsletter. The review, which lists no author, is of Lincoln Caplan's The Insanity Defense and the Trial of John W. Hinckley, Jr. (The review was apparently written by a part-time employee of the Commission, Denise Liebowitz.) Caplan was a White House Fellow with the 1979-1980 class.

The review notes that the Hinckley acquittal prompted calls for reform of the insanity defense by William French Smith and Edwin Meese, but that Caplan questions the need for any reform "in a highly sensitive and comprehensive fashion." The review of the book is a very favorable one, containing no critical analysis of Caplan's positions. For example, the review notes that Caplan documents how infrequently the insanity plea is invoked, and how rarely it is successful, but does not note that, even rarely invoked, the plea imposes staggering costs on the judicial system and, since it is often invoked in celebrated cases, has an effect on public confidence in the law far out of proportion to the number of cases in which it figures. The book is clearly at odds with Administration policy in this area, and the review, since it is so favorable, could be considered to be so as well.

The attached memorandum for Heatherly notes that the White House does not want to get into the business of reviewing the Alumni Newsletter for consistency with Administration policy, and suggests that the surest way of according prominence to the book and the review would be to attempt to block the review. (The memorandum also advises Heatherly not to use "confidential" on his memoranda.)

Attachment

THE WHITE HOUSE

WASHINGTON

April 30, 1985

MEMORANDUM FOR CHARLES L. HEATHERLY
DIRECTOR, PRESIDENT'S COMMISSION
ON WHITE HOUSE FELLOWSHIPS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Alumni Newsletter Article

You have asked for my views on a proposed book review to be published in the Alumni Newsletter. I do not think the White House should get into the business of reviewing the Alumni Newsletter for consistency with Administration policy. The surest way to accord the book and the review prominence would be to attempt to stop publication of the review. I suggest you handle the review in the same manner you handle all items submitted for publication in the Newsletter.

Incidentally, I would caution you not to use "confidential" on your memoranda. "Confidential" is a formal classification applied to information requiring protection in the interest of national defense and foreign policy. It may be applied to documents only by persons granted classifying authority by the President and only in accordance with the procedures outlined in Executive Order 12356.

FFF:JGR:aea 4/30/85

cc: FFFielding
JGRoberts
Subj
Chron

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pages tions

1 MEMO

1 4/30/1985 B6

863

ROBERTS TO JOHN R. SMITH, RE: THREAT
AGAINST THE PRESIDENT

Freedom of Information Act - [5 U.S.C. 552(b)]

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E.O. 13233

C. Closed in accordance with restrictions contained in donor's deed of gift.