Memorandum

Subject	Date
Post Op-ed Piece	June 22, 1982

To The Attorney General From John Roberts

This responds to your request for my views on your redraft of June 21. In general your redraft focuses more on the particular details of the transactions, and the Post reporting of them, than did the previous draft. In the previous draft the effort was to deal with the general problems associated with investigative journalism. That draft only used the particular instances with which we are familiar as supporting examples. The difficulties with focusing on the particular instances themselves are that it appears defensive and keeps the debate on the merits of the transactions rather on press practices. I think a more persuasive case is presented to the reader when a general observation is supported by particular facts than when a chronology of facts is presented and the reader is to draw various conclusions from the chronology. The latter approach -- the one in your redraft -- presents the underlying facts more effectively and completely, but the former approach -- the one in the previous draft -- is more effective in making the general points about the abuses of investigative journalism. This may reflect a tension between a desire to make a complete record concerning the transactions and the reporting of them and a desire to highlight the problems with certain press practices. My concern is that in a complete recounting of the facts the reader may loose sight of the forest for the trees. Specific comments follow:

Page 3-4, carryover paragraph: I find nothing objectionable in the Post reporting the "flashed off the page" comment, for the simple reason that Walter in fact said it. Walter was wrong to have said it, but the fact that he did was legitimate news for the Post to report. If a NASA scientist says the earth is flat, and the Post quotes that, I do not think we can fault the Post for reporting something it knows is not true on the merits: the fact that the statement was made is news in itself, considering the source. The blame here goes to Walter, not the Post.

Page 4-5, carryover paragraph, and page 5, first full paragraph: There is a problem in your defending the tax deductions, particularly to the extent of noting that the IRS ruling

has been rejected by courts of appeals. The concern that was raised was whether you as Attorney General, whose Department would have to defend the IRS ruling, should have relied on court of appeals decisions rejecting that ruling. It may be best to note the reliance on tax counsel and the congressional purpose to encourage energy investment, and leave the issue of the IRS ruling out.

Page 5, lines 1-2: It may be too strong to say that "for all practical purposes [the Post] ignored the assumption of potential liability." The Post certainly did not explain the theory supporting the deductions to the same extent it harped on the 4-for-1 aspect. It did, however, note that "Yale-Quay builds the base for the large deductions on future liabilities," that "Smith is formally committed to pay other sums to those drilling the wells," and that "the IRS allows deductions beyond the cash investment made by a taxpayer if it can be shown that there is an actual financial obligation or risk to the taxpayer roughly equivalent to the deduction."

Page 6, lines 18-19: O'Melveny and Myers did not actually determine that the payment was "entirely proper." Rather, it reviewed the payment and concluded that a severance payment for past services would be proper. It did not opine on the factual question whether this payment was or was not for past services.

Page 6-7: It may be too strong to assert flatly that the Post did not accurately report points (2) and (4). The Post did report the length of your service both on the board and the audit committee in its May 15 story, and the fact that you were the only lawyer on the audit committee in its May 20 story. Kraft's May 20 column also noted your length of service on the board and "special service on the audit committee." It is true that the Post did not report the comparison in circumstances to the previous lawyer member of the audit committee, who received generous fees as counsel.

Concerning point 4, the Post in its May 20 story did note the award of a gold watch to other directors, and the "continuation of annual director's fees" to another director who resigned. It did not, however, note the fact that your situation was unique, or that the "director emeritus" fees approximated your own severance payment.

cc: Kenneth Starr
Tom DeCair
Tex Lezar

Caom 513/

Memorandum

Subject	Date
Meeting with Ed Harper, Deputy Director of OMB; October 19, 3:30	October 16, 1981

To: The Attorney General

From: John Roberts JR
Special Assistant to
the Attorney General

Ed Harper, Deputy Director of OMB, has requested a meeting with you to discuss the education and civil rights functions and the organization of the civil rights activities of the federal government in general. Ed Meese requested that Harper arrange such a meeting. The purpose of the meeting is apparently two-fold: to discuss the appropriate devolution of various civil rights functions currently performed by the Department of Education, in the likely event that Deparment is abolished; and to discuss more efficient ways of organizing the civil rights functions throughout the federal government.

Department of Education Civil Rights Functions.

Eighteen percent of the Department of Education employees work in the Office of Civil Rights (OCR). OCR's responsibilities are largely administrative, monitoring compliance with the civil rights requirements imposed on recipients of federal funds in the education area under such provisions as Title VI (race) and Title IX (gender). If OCR determines that an educational institution receiving federal funds is not complying with these nondiscrimination provisions, it can seek voluntary compliance and, failing that, can begin administrative proceedings to cut off federal funds. This involves proceedings before an administrative law judge, with appeals within the Department of Education. Alternatively, upon a finding of noncompliance, OCR can refer the matter to the Department of Justice for litigation. Any case in which the contemplated relief would require busing must be referred to the Department of Justice.

The general view of the Civil Rights Division is that it would not be desirable to transfer the administrative operations of OCR to the Department of Justice. Although both OCR and the Department of Justice are involved in enforcing the same non-discrimination provisions, OCR's administrative activity -- involving continuous monitoring and the provision of technical assistance to recipients of federal funds -- is far removed from the traditional litigation responsibility of the Department of Justice.

General Reorganization of Civil Rights Functions.

Apart from the civil rights activities of the Department of Education, OMB is also interested in exploring a general reorganization of the civil rights functions of the federal government. These functions are currently spread among several different agencies. Under Title VII, EEOC enforces nondiscrimination in private employment, while the Department of Justice has responsibility for public sector employment. The Office of Federal Contract Compliance within the Department of Labor polices compliance with nondiscrimination requirements imposed on recipients of federal contracts, and the Department of Housing and Urban Development has some responsibility for fair housing laws. There has been considerable activity directed to reorganizing civil rights enforcement responsibilities, both within the Executive Branch and in Congress. A group of congressmen know as the "House Wednesday Group," for example, has been working on a proposed Civil Rights Code which would give the Department of Justice responsibility for enforcing, both administratively and by litigation, all of the federal civil rights laws. The Department's initial reaction to this proposal is negative, primarily because acceptance of administrative responsibilities would constitute a departure from the Department's traditional role as litigator. OMB's proposals are likely to be more modest, but since no specifics have been provided by OMB it is difficult to formulate any responses. In general the Department should be willing to accept any litigation responsibility for which it has adequate resources, and should probably avoid becoming involved in more administrative tasks such as continuous monitoring of contracts and provision of technical assistance. Such administrative activities would seem more appropriately placed in agencies with substantive responsibility and expertise in the particular area.