WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name Roberts, John

Withdrawer CAS 8/12/2005

File Folder CHRON FILE (5/15/85-5/31/85)

FOIA F05-139/01 COOK 33CAS

Box Number 65

DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	ROBERTS TO FRED FIELDING RE PROSPECTIVE APPOINTMENT	2	5/22/1985	B6	1268
2	MEMO	ROBERTS TO FIELDING RE POTENTIAL PROBLEM APPOINTEES Released in part 4/21/06	1	5/28/1985	B6	1270
3	MEMO	ROBERTS TO RICHARD HAUSER RE PROSPECTIVE APPOINTMENT	1	5/28/1985	B6	1271

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]
B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
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.

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name

Withdrawer
CAS 8/30/2005

File Folder CHRON FILE (5/15/85-5/31/85)

FOIA
F05-139/01
COOK
33CAS

Box Number 65

DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	ROBERTS TO FRED FIELDING RE PROSPECTIVE APPOINTMENT	2	5/22/1985	B6	1268
2	MEMO	ROBERTS TO FIELDING RE POTENTIAL PROBLEM APPOINTEES (PARTIAL)	1	5/28/1985	B6	1270
3	MEMO	ROBERTS TO RICHARD HAUSER RE PROSPECTIVE APPOINTMENT (PARTIAL)	1	5/28/1985	B6	1271

THE WHITE HOUSE

WASHINGTON

May 15, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: BMW Inquiry from GAO

In response to your questions on my May 10 memorandum on the above subject:

1. The State press guidance is attached at Tab A. The pertinent guidance is that "under State Department regulations, the only inhibition on our employees receiving financial benefits from private sources is that the source not be regulated by or have business with the State Department." I think we should retain the language in my draft reply to the effect that State regulations do not prohibit [as opposed to permit] the acceptance of discounts.

2. The official OGE position, relayed to me at 4:20 p.m. this afternoon, is that such discounts are generally not gifts, although they could be gifts if they "do not reflect commercial reality." This makes sense. A 90 percent discount could well be a gift; the discounts at issue here were not.

I have now received the NHTSA draft reply, attached at Tab B. The draft appropriately concludes that it would be illegal for a NHTSA employee to accept a discount from a car manufacturer, in light of the regulatory responsibilities of that agency. The last sentence on the first page, however, states that discounts are governed by Departmental regulation relating to the acceptance of gifts, contrary to our and OGE's view.

If you agree, I will suggest that the NHTSA reply drop that sentence. I will also ask State to beef up its reply, in part by answering the gift question (you will note the State press guidance concludes discounts are not gifts).

Attachments

THE WHITE HOUSE

WASHINGTON

May 16, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Gift Horse

Betty Weldon, a personal friend of the President, gave him a horse, "Nancy D," in 1981. The President found the horse unsuitable for the ranch, and returned it. It was never reported on the gift forms. Although the horse was returned to Weldon, the ownership papers were never changed and the President still appears as the owner of record.

Weldon has now asked if the President would consider donating Nancy D to the United Professional Horsemen's Association to be auctioned off to benefit the National Cerebral Palsy Foundation. As Weldon put it, "Just think what a mare owned by the President, with his signature on the papers and Nancy D for a name, might bring!"

Kathy Osborne has asked for guidance as soon as possible, noting that the President is awaiting our reply.

Since the President did not report the horse on his gift forms, because he returned it, we cannot now treat it as his property simply because his name is on the ownership papers. The reply to Weldon should state that Nancy D is Weldon's to do with as she pleases. The ownership forms should be updated to reflect the fact that the horse is Weldon's. I have not seen the forms, but, if possible, they should be revised to reflect the facts: i.e., that the horse was returned to Weldon shortly after it was given to the President. Perhaps the transfer could be made nunc pro tunc.

We should also advise Weldon not to attempt to garner more for the horse, if she decides to auction it for charity, by noting that the President owned it. Our policy precludes approving the auctioning of Presidential memorabilia for charity, and even though this is not now the President's horse the main reason for the policy -- avoiding Presidential endorsement of particular fundraising efforts -- seems to apply.

In answer to Osborne's specific question, the President should certainly not write any donation of the horse off his taxes. Doing so would be inconsistent with failing to report receipt of the gift, and would highlight the whole episode.

Attachment

THE WHITE HOUSE

WASHINGTON

May 16, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Videotape Message Regarding ABA and Bicentennial of the U.S. Constitution

The attached approves a Presidential introduction to the KQED/ABA series on the Constitution, as discussed at this morning's staff meeting.

Attachment

THE WHITE HOUSE

WASHINGTON

May 16, 1985

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Videotape Message Regarding ABA and Bicentennial of the U.S. Constitution

You have asked for my views on whether the President should tape an introduction to the planned comprehensive media project "We the People," jointly sponsored by public television station KQED, Inc., and the American Bar Association. "We the People," centering on eight 60-minute television programs, will explore the major themes of the Constitution in commemoration of the bicentennial of its drafting.

I have no legal objection to the President taping an introduction to the series, and recommend that he do so. It is my view that the President should be as closely identified as possible with the celebration of the bicentennial of the Constitution. Such identification is not only entirely appropriate as a general matter, but also provides an opportunity for the President to articulate his views on the Constitution and the system of government it established. The celebration of the bicentennial is likely to occasion spirited and broad discussion about the nature of our government, and the President should participate actively in that discussion.

The text of the President's introduction should focus on the Constitution itself and the bicentennial rather than the television programs. This office would be happy to participate in preparing the President's remarks.

FFF:JGR:aea 5/16/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

May 20, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: United States v. City of Chicago

The following is for your information only. The Department of Justice will file a brief today in the Chicago police and firefighter discrimination cases, United States v. City of Chicago. Chicago has been hiring police and firefighters from a list based on a 1981 test and a one-for-one minority hiring quota, required by a previous consent decree. The quota system has "used up" the minorities and women available from the 1981 test, and the City now wants to discontinue using that list and conduct a new test. The new test would result in more minority members and women with passing scores, and the City could return to hiring on a one-for-one quota basis, giving preference to minorities and women with lower scores than white males.

The white males remaining on the 1981 list have filed a motion to prevent the City from discontinuing hiring from that list. The Department's brief contains good news and bad news for the City. The good news is that brief will support the right of the City to discontinue hiring from the 1981 list. In fact, the Department will argue that the 1981 list is discriminatory and cannot be used. The bad news, from the City's perspective, is that the brief will go on to seek to overturn the previous consent decree requiring the one-for-one hiring quota. As an alternative remedy, the Department will urge the court to require the City to increase its efforts to attract qualified minorities and women to take the new test.

This position is consistent with that taken by the Department in post-Stotts cases. Since the United States is a party, and has been directed by the court to file a responsive pleading, the Administration cannot be accused in this case of gratuitously intervening to undo prior consent decrees. Nonetheless, in view of Brad Reynolds's pending confirmation hearings, and the interest on the part of one of the judges in attracting attention to the case, the filing is likely to generate considerable publicity.

Attachment

Department of Justice

FOR IMMEDIATE RELEASE
MONDAY, MAY 20, 1985

CR
202-633-2019

In separate police and fire department employment cases currently pending in the U.S. District Court in Chicago, the Department of Justice, responding to court inquiries and motions by other parties to the litigation, filed papers today supporting the City of Chicago's stated intention to cease using discriminatory hiring and promotion lists for the police and fire departments.

In its memoranda to the courts, the Department argued that the 1981 examinations on which the lists are based have never been shown to be job-related and cannot in such circumstances continue to be used in light of the serious adverse impact the tests had on blacks, Hispanics and women.

The cases involve three lawsuits filed by the Justice Department: one in 1973 charging discrimination against blacks and Hispanics in fire department hiring; another in 1973 charging discrimination against blacks, Hispanics, and women in police department hiring and promotions; and the third in 1980 charging discrimination against blacks and Hispanics in fire department promotions.

The suits resulted in court decrees and orders requiring the police and fire departments to use race and gender quotas in their hiring and promotion decisions: to hire one black or

(MORE)

Hispanic firefighter for every white firefighter hired; to promote one black or Hispanic firefighter for every four white firefighter promoted; to hire police officers at the rates (for each entering class) of 35 percent white male, 34 percent minority male, and 31 percent female; and the police department to promote police officers at the rates of 70 percent white male, 25 percent minority male, and 5 percent female.

In announcing the filing, Assistant Attorney General William Bradford Reynolds, head of the Department's Civil Rights Division, said:

"We are opposed to the use of these hiring lists because the tests on which they were based unlawfully discriminate against minorities and women who took the tests. Once job-related tests are established, minorities and women will compete on an equal footing."

The Justice Department filings also said the police and fire departments should discontinue hiring and promoting from eligibility lists based on prior examinations because these examinations discriminated against minorities and were otherwise tainted. In addition, the motions said, the fire department list was further compromised by proven bribery of city officials to favor white candidates.

In a related filing, the Department also asked the two district courts to modify the outstanding court decrees pertaining to the police and fire departments -- entered originally in

(MORE)

1976 and amended on several occasions thereafter -- to remove hiring and promotion quota provisions and substitute affirmative recruitment and outreach requirements aimed at increasing the number of qualified minority and female applicants considered for hire and promotion.

With respect to this filing, Reynolds said:

"To insure an end to unlawful discrimination in the hiring and promotion decisions of the Chicago police and fire departments, we have also asked that the quota provisions be removed from the existing court decrees and that they be brought in line with the Supreme Court's decision in the Memphis Fire-fighters case. That decision makes clear that Congress granted full remedial authority to courts in Title VII cases to enjoin the discriminatory employment conduct and provide make whole relief for all identifiable victims of the employer's unlawful practices. But the Supreme Court held as well in the Memphis Firefighters case that Title VII does not empower the courts to use discrimination to fight discrimination. Therefore quotas, goals, or other remedial preferences tied to race or sex cannot lawfully be a part of court-ordered relief under Title VII.

"As a substitute for the quota provisions, we have urged the courts to direct the City of Chicago to develop and use neutral nondiscriminatory selection procedures, coupled with an

(MORE)

active and aggressive recruitment effort to attract qualified minorities and women to apply for police and fire positions. Valid and job-related selection criteria that accord no individual a preference or a disadvantage because of gender or skin color will enable increased numbers of minorities and women to become police officers and firefighters in Chicago -- and to rise through the ranks on the basis of their abilities."

The Department's papers indicated that the city is prepared to administer new examinations for police officers and firefighters that will not discriminate against minorities.

As a substitute for the hiring and promotion goals, the motions asked the court to amend the decrees to enjoin the city from engaging in any discriminatory employment practice, to require enhanced recruitment by the police department and training for fire department promotions, and to submit periodic reports on minority employment and promotions.

# # # #

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name
Roberts, John

Withdrawer
CAS 8/12/2005

File Folder
CHRON FILE (5/15/85-5/31/85)

FOIA
F05-139/01
COOK

Box Number
65

33CAS

DOC NO	Document Type / Document Description	No of pages	Doc Date	Restrictions	
1	MEMO ROBERTS TO FRED FIELDING RE PROSPECTIVE APPOINTMENT	2	5/22/1985	B6	1268

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]
B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
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

May 22, 1985

MEMORANDUM FOR LINAS KOJELIS
ASSOCIATE DIRECTOR
OFFICE OF PUBLIC LIAISON

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Draft Letter

You have asked for our views on a draft letter responding to a telegram on the Demjanjuk case. I have no objection to the first paragraph. As you state, the White House must avoid comment on pending Department of Justice prosecutions.

With the first sentence of the second paragraph, however, you are buying a pig in a poke. The East European ethnic community has expressed a broad range of concerns about the Office of Special Investigations, and Mr. Buchanan should not state that he shares them all. A minor point: "alleged" is misused in this context. We do not seek to uncover and prosecute "alleged" war criminals; we seek to uncover and prosecute war criminals. The individuals targeted become alleged war criminals.

The second sentence of the second paragraph strikes me as committing to too specific a course of action and perhaps raising false hopes of change in OSI on the part of the East European ethnic community. Your correspondent will soon want to know what recommendations were made and whether they will be followed. If the Administration cannot support any such recommendations, you will be in the position of revealing internal disagreement.

The following substitute second paragraph avoids these problems:

> With respect to the more general issues surrounding the U.S. Government effort to uncover and prosecute war criminals, Mr. Buchanan has asked me and other members of his staff to review the complaints and comments we have received from ethnic and civic groups. You may be assured that we will give every appropriate consideration to your views as we conduct this review.

THE WHITE HOUSE

WASHINGTON

May 23, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: "The Zorba Presidential Collection"

As we discussed this morning. I have simply left the Quinns out of all this; I assume the advertisement was masterminded by the gallery. Clem Conger tries to keep up with these problems, since he receives many complaints about such abuses, so I have blind copied him on the drafts.

Attachments

THE WHITE HOUSE

WASHINGTON

May 23, 1985

Dear Mr. Zachary:

An advertisement appearing in your June issue, placed by Center Art Galleries-Hawaii, has been called to our attention. That advertisement, for the "Zorba Presidential Collection," features a photograph of the President with Mr. and Mrs. Anthony Quinn and Mr. William D. Mett, the President of Center Art Galleries-Hawaii.

The White House adheres to a policy of declining to approve any use of the name, signature, photograph, likeness, or title of the President or First Lady in any manner that suggests or could be construed as endorsement of a commercial product or enterprise. Similarly, the White House may not be used in advertising, as noted in the "Do's and Don'ts in Advertising Copy," published by the Council of Better Business Bureaus, Inc. (A copy of the pertinent provision is enclosed for your information.)

The advertisement contravenes these restrictions by suggesting that the President is associated with or has endorsed the marketing of the sculptures. This office has contacted Mr. Mett, and advised him to cease misusing the photograph of the President and the misleading description "Presidential Collection."

My purpose in writing you is to alert you to the foregoing restrictions on use of the White House and the name, signature, photograph, likeness, or title of the President or First Lady in advertising copy. In order to avoid the unintentional publication of misleading advertisements in the future, you should feel free to contact this office concerning any advertising copy that appears to violate these restrictions.

Thank you for your cooperation.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Frank Zachary
Editor-in-Chief
Town & Country Magazine
1700 Broadway
New York, NY 10019

bcc: Clement Conger

FFF:JGR:aea 5/23/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

May 23, 1985

Dear Mr. Mett:

Your advertisement in the June issue of Town & Country has been called to our attention. That advertisement, for the "Zorba Presidential Collection," features a photograph of you with Mr. and Mrs. Anthony Quinn and the President.

Established White House policy prohibits any use of the name, likeness, photograph, signature, or title of the President in any manner that suggests or could be construed as endorsement of a commercial product or enterprise. Similarly, the White House may not be used in advertising, as noted in the "Do's and Don'ts in Advertising Copy," published by the Council of Better Business Bureaus, Inc. (A copy of the pertinent provision is enclosed for your information.)

Your use of the photograph of the President, the text of the sixth paragraph of your advertisement, and the use of the description "Presidential Collection" all contravene these established policies. Your advertisement conveys the false impression that the President is associated with or has endorsed the marketing of the sculptures.

I must advise you to cease immediately any use of the photograph of the President for promotional purposes. You should also cease describing the collection as the "Presidential Collection." Please advise me of the steps you have taken to comply with this letter.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. William D. Mett
President, Center Art
Galleries-Hawaii, Inc.
2301 Kalahaua, Bldg. C108
Honolulu, HI 96815-2984

FFF:JGR:aea 5/23/85
bcc: FFFielding
JGRoberts
Subj
Chron

bcc: Clement Conger

THE WHITE HOUSE

WASHINGTON

May 24, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Invitation to David Chew to Participate in Anglo-American Successor Generation Program

David Chew has been nominated as a potential participant in the Anglo-American Successor Generation program. The program, sponsored by the Royal Institute of International Affairs and Johns Hopkins University, and funded by the J. Howard Pew Freedom Trust, is designed to promote dialogue between the next generation of British and American leaders. Chew is one of 100 nominees; 24 nominees will be selected to go to England October 23-27, 1985, for the program.

I see no reason to object to Chew's potential participation in this program. A strong case could be made that he has been invited in his private rather than official capacity, since the selection committee looks to overall accomplishments of the individual rather than specific government positions. In any event, the J. Howard Pew Freedom Trust, which funds the program, is a 501(c)(3) organization. Accordingly, even if Chew were considered to be participating in his official capacity, he could accept reimbursement for expenses.

Attachment

THE WHITE HOUSE

WASHINGTON

May 24, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Invitation to Participate in Anglo-American Successor Generation Program

You have asked for my views on your potential participation in the Anglo-American Successor Generation program, sponsored by the Royal Institute of International Affairs and Johns Hopkins University, and funded by the J. Howard Pew Freedom Trust. I have no objection to your pursuing this opportunity.

Should you be selected to participate in the program, you could accept reimbursement of your travel, lodging, and related expenses from the J. Howard Pew Freedom Trust. A strong case could be made that your participation in the program would be in your private rather than official capacity, in which case reimbursement would be permissible so long as the usual conflicts standards were not violated. In any event, the J. Howard Pew Freedom Trust is a 501(c)(3) organization, so it may reimburse you for travel, lodging, and related expenses even if you were considered to be participating in your official capacity.

Good luck!

FFF:JGR:aea 5/24/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

May 28, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Potential Problem Appointees

The following is in response to your request at this morning's staff meeting for a list of potential problem appointees currently in clearance:

1. [redacted] B6

2. Carolyn J. Deaver, Member of Commission of Fine Arts (PA). I have not yet received her PDS, and only include her name because is is likely to attract some attention.

3. We have informally discussed that some of the prospective appointees (PA) to the Commission on the Bicentennial of the U.S. Constitution [redacted] may generate some adverse comment, as may the [redacted] as a whole. I have signed off on them all from a technical legal standpoint. B6

4. Appointees to the U.S. Institute of Peace (PAS) may excite some interest, if only because they were to be appointed by April 20, 1985, 22 U.S.C. § 4605, and are only now submitting Personal Data Statements. Some of the individuals, such as Evron Kirkpatrick, may also be controversial.

THE WHITE HOUSE

WASHINGTON

May 28, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Potential Problem Appointees

The following is in response to your request at this morning's staff meeting for a list of potential problem appointees currently in clearance:

[redacted]

b6

THE WHITE HOUSE

WASHINGTON

May 28, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Draft Report of Commission on Executive, Legislative, and Judicial Salaries

We have now received a draft report from the Commission on Executive, Legislative, and Judicial Salaries, along the lines discussed in my previous memorandum. I have no legal objection to the report, but those reviewing it should recognize that approval would, in effect, commit the President to proposing significant salary increases for covered officials in January 1987. My draft memorandum for Chew also contains some substantive corrections and several more picayune points.

Attachment

THE WHITE HOUSE

WASHINGTON

May 28, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Report of Commission on Executive, Legislative, and Judicial Salaries

I have reviewed the draft report of the Commission on Executive, Legislative, and Judicial Salaries. As I have noted previously, I have no objection to the substance of the Commission's recommendations. You should be aware, however, that approval of the Commission's report by the President would, in effect, commit the President to proposing significant salary increases for Federal judges, Congressmen, and high-level executive branch officials in January of 1987. Under the Commission's plan the President would be most directly responsible and accountable for salary levels, and the Commission's report makes it clear that its members think the salaries should be raised.

Minor comments follow:

Page 2, lines 1-2: "Commission on Executive, Legislative and Judicial Salaries" should be changed to "Commission on Executive, Legislative, and Judicial Salaries." See 2 U.S.C. § 351. (This mistake also appears on the Commission stationery.)

Page 2, lines 1-2: The first Commission was not appointed in 1967. The statute establishing the Commission was enacted on December 16, 1967, but the first members were not appointed until 1968.

Page 4, line 15: I would add "in effect" after "reduced," to avoid appearing to give credence to the claim that failure to grant raises to Federal judges in the face of inflation can constitute a violation of the Compensation Clause. That claim has been made and rejected. See Atkins v. United States, 556 F.2d 1028 (Ct. Cl. 1977), cert. denied, 434 U.S. 1009.

Page 6, line 13: It is inaccurate to state that the Supreme Court in United States v. Will, 449 U.S. 200 (1980), affirmed the rulings of the lower courts. In fact, the lower

court decisions were affirmed in part and reversed in part. See id., at 230-231.

Page 7, line 7: "signature or veto" should, in the interests of technical accuracy, be changed to "approval or disapproval." A law can become effective without the President's signature, and can be disapproved without an affirmative veto.

Page 12, line 8: Again, "signed or vetoed" should more properly read "approved or disapproved."

Page 12, line 22: Same comment.

Page 14: There is no discussion of how such a Commission should be established or who should appoint the membership.

FFF:JGR:aea 5/28/85

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

May 28, 1985

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: Prospective Appointment of Jack Edwards to the Permanent Joint Board on Defense, United States and Canada

Kathleen Buck advises that the Joint Board will make decisions on specific defense procurement matters, particularly in the missile, radar, and aircraft areas. It will not be merely advisory, nor will it deal with solely broad policy matters. 66

[redacted] Since the position is not as a member of a collegial body, [redacted] could not avoid conflicts problems by selective recusal. Accordingly, this appointment may not go forward.

I have attached for reference the rather obscure enabling documents for the Joint Board.

Attachment

PERMANENT JOINT BOARD ON DEFENSE, UNITED STATES AND CANADA

Department of State

AUTHORITY: Board was established by the United States and Canada in pursuance of an announcement by the President and the Prime Minister of Canada, August 17, 1940
Letter dated February 26, 1954, from the President to the Secretary of State and the Secretary of Defense

METHOD: Appointed by the President

MEMBERS: The Chairman only is appointed by the President. The representative of the Department of State and the representatives of the military departments of the Department of Defense are appointed by the Secretary of State and Secretary of Defense, respectively.

CHAIRMAN: Appointed by the President

TERM: Pleasure of the President

SALARY: Without compensation

80 (White House Statement on Establishment of Joint Board on Defense of Canada and the United States. August 18, 1940

THE Prime Minister of Canada and the President have discussed the mutual problems of defense in relation to the safety of Canada and the United States.

It has been agreed that a Permanent Joint Board on Defense shall be set up at once by the two countries.

This Permanent Joint Board on Defense shall commence immediate studies relating to sea, land and air problems including personnel and matériel.

It will consider in the broad sense the defense of the north half of the Western Hemisphere.

The Permanent Joint Board on Defense will consist of four or five members from each country, most of them from the services. It will meet shortly.

NOTE: The foregoing statement was issued after a conference between the Canadian Prime Minister, the Right Honorable W. L. Mackenzie King, and myself in August, 1940. I had invited him, while I was on an inspection tour of some defense establishments near the Canadian border, to meet with me and discuss problems of defense common to Canada and the United States.

A few days later, the members of the Permanent Joint Board on Defense—United States and Canada, were appointed. They held their first meeting on August 26, 1940, in Ottawa; and thereafter held meetings in Washington, Boston, Halifax, San Francisco, Victoria, B. C., and Vancouver, B. C., New York, Montreal, and Buffalo.

Various recommendations and reports relating to defense plans have been submitted to the United States and Canada by this board. Obviously, these cannot be made public because of existing military considerations.

The adoption of these joint defense efforts is another proof of the solidarity existing among the American Republics, which has been even more closely cemented by the danger and threat which loom up from the swift movement of events in Europe and in the Far East.

(ATTACHMENTS)

COPY

February 26, 1954

My dear Mr. Secretary:

The Secretary of State is authorized to make necessary changes hereafter to the United States State Department Membership on the Permanent Joint Board on Defense, Canada-United States.

By separate correspondence the Secretary of Defense has been authorized to make necessary changes to that Department's membership.

This change in procedure will not affect the appointment by the President of the Chairman of the U. S. Section.

Sincerely,

DWIGHT D. EISENHOWER

The Honorable John Foster Dulles
The Secretary of State
Washington, D. C.

cc: Commander Peach

THE WHITE HOUSE

WASHINGTON

May 29, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Grace Commission

For the past several weeks Mike Horowitz has been explaining to Al Kingon why it would be inadvisable to issue an Executive Order establishing a formal advisory committee to implement the recommendations of the Grace Commission. Kingon has apparently had preliminary discussions with Grace's people looking to the creation of such an entity. Now Kingon has asked for your views on Horowitz's memoranda.

I quite agree with Horowitz that it would be a disaster to establish an "advisory" committee of the private sector executives to implement the Grace Commission recommendations. As you well know, the Grace Commission itself presented an unending parade of legal problems. A successor commission to implement the advice of the first Grace Commission would present all those problems, and more. Horowitz has detailed the most serious in his memoranda:

1. Under the Federal Advisory Committee Act, advisory committees may be utilized solely for advisory functions, "unless otherwise specifically provided by statute or Presidential directive." 5 U.S.C. App. II § 9(b). Thus, an Executive Order of the sort contemplated would have to specifically provide operational authority for this second Grace Commission, which would create an uproar in view of the controversial nature of the original Commission's recommendations. Further, the new commission could not operate for more than one year without congressional authorization, in view of the requirements of 31 U.S.C. § 1347.

2. Grace wants the new commission to work closely with high-level executive branch officials. Creation of a formal advisory committee would hinder this objective, since such meetings would arguably become meetings of the advisory committee, subject to notice, FOIA, etc.

3. Under the Federal Advisory Committee Act, the new commission would (arguably) have to be "balanced," 5 U.S.C. App. II § 5, and no commission of the sort envisioned by Grace would satisfy this requirement. You will recall that

Judge Gesell ruled in National Anti-Hunger Coalition v. Executive Committee of the PPSSCC that the original Grace Commission was balanced in view of its "limited function" of providing cost-control advice; a different ruling could attend a commission with broader operational responsibilities.

4. Serious conflict of interest problems arose from having corporate CEOs scrutinizing the internal workings of agencies charged with regulating their businesses. The problems would be magnified if the members of the new commission were to be charged with implementing the Grace recommendations with respect to those same agencies.

The attached draft memorandum for Kingon notes your agreement with Horowitz that the legal problems are well-nigh insurmountable.

Attachment

THE WHITE HOUSE

WASHINGTON

May 29, 1985

MEMORANDUM FOR ALFRED H. KINGON
CABINET SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Successor to the Grace Commission

I have reviewed the various memoranda prepared by Mike Horowitz on a possible Executive Order to establish a new federal advisory committee to implement the recommendations of the first Grace Commission, and I find it impossible to disagree that the legal problems associated with such an effort would be practically insurmountable. The original Grace Commission itself presented myriad legal problems, culminating in litigation, and a reprise focused on implementation would present even more serious difficulties.

As a Federal advisory committee, the new commission would be subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. II. Meetings would generally have to be publicly noticed and open to the public, and committee documents would be subject to the Freedom of Information Act. Meetings of the committee or members of the committee with Government officials could be considered committee meetings covered by FACA, compromising the confidentiality of executive branch deliberations. If Grace's goal is access to Government officials, this would be hindered rather than helped by formation of an advisory committee.

Under FACA, a special Presidential directive is necessary before an advisory committee can go beyond solely advisory functions. 5 U.S.C. App. II § 9(b). Such a grant of authority to a committee of private citizens would be very controversial, and could be seen as an abdication by the President of his own responsibilities. If no such grant of authority were given, the new committee would be constantly subject to challenge as its "advice" became more focused on implementing the earlier commission's recommendations. Even if the new committee were granted operational authority by the President, such authority could not last beyond one year without congressional authorization. 31 U.S.C. § 1347.

Under FACA, an advisory committee must be "balanced." Judge Gesell ruled that the original Grace Commission Executive Committee did not violate this requirement in view of its

"limited function." A new committee with a focus on implementation, rather than simply providing cost-cutting advice, would be subject to a new challenge.

Serious conflict of interest problems were presented by the original Grace Commission, as corporate executives on the Commission scrutinized the internal workings of agencies charged with regulating their businesses. Members of a new commission focused on implementation of the Grace Commission recommendations would raise even more serious conflicts questions. It may be necessary to ensure that the members are "conflict free," which would probably eliminate most of the individuals suggested by Grace from service on the new commission.

In sum, I cannot recommend creation of a Federal advisory committee successor to the Grace Commission. Such a committee is likely to be so hobbled by legal requirements and challenges that it would not be able to fulfill the role envisioned by Grace. Nor am I convinced that this is altogether bad. Implementation of the Grace Commission recommendations strikes me as within both the ability and responsibility of the normal organs of Government.

cc: Michael Horowitz
Counsel to the Director
Office of Management and Budget

FFF:JGR:aea 5/29/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

May 30, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Request for the President to Provide a 30-Second Introduction for Osmond Family 25th Anniversary Special

Senator Jake Garn has asked the President to do a thirty-second videotape spot to introduce a two-hour Osmond Family 25th anniversary television special. B. Oglesby channeled the request to Fred Ryan.

I recommend against the President providing a videotape or any other type of message for use in the television program. This is of course a for-profit, commercial activity, and the President should not participate in it. Exceptions to the general policy against such participation have been made (tossing the coin for the Super Bowl telecast, the "This is Your Life" participation discussed at this morning's staff meeting), but I see no reason for an exception in this case.

Attachment

THE WHITE HOUSE

WASHINGTON

May 30, 1985

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Request for the President to Provide a 30-Second Introduction for Osmond Family 25th Anniversary Special

Senator Jake Garn has requested that the President provide a thirty-second videotape spot to be used to introduce a two-hour Osmond Family 25th anniversary television special. The television special is of course a commercial, for-profit activity. Established White House policy generally precludes participation by the President in such activities, and I see no reason to depart from that policy in this instance. A Presidential message introducing the special would certainly be resented by the competing networks, and justifiably so.

cc: M.B. Oglesby

FFF:JGR:aea 5/30/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

May 31, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Department of Transportation 10-Day International Aviation Decision: Swiss Air Transport

David Chew's office asked for comments by close of business today on the above-referenced Department of Transportation international aviation decision, which was submitted for Presidential review as required by § 801(b) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 1461(b). Under this provision, any order of the Board pursuant to 49 U.S.C. § 1482(j), "suspending, rejecting or canceling a rate, fare, or charge for foreign air transportation, and any order rescinding the effectiveness of any such order," must be submitted to the President. The President may disapprove a submitted order, but only for foreign policy or national defense reasons. If the President wishes to disapprove an order, he must do so within ten days of submission of the order to him (in this case by June 3).

The order suspends higher fares proposed by Swiss Air for one year, pending an investigation by the Department. The Department concluded that Swiss Air has not justified the higher fares. In addition, the order is in response to a Swiss order denying lower fares requested by U.S. carriers. The Department believes the order will assist the U.S. position in pending U.S.-Swiss negotiations over renewal of a bilateral aviation agreement.

The order here has been reviewed by the appropriate departments and agencies. OMB recommends that the President allow the order to go into effect, and reports that the NSC and the Departments of State, Defense, and Justice have no objection to the order. In ten-day review cases, unlike sixty-day review cases under 49 U.S.C. § 1461(a), it is standard simply to take no action on orders not being disapproved, rather than sending a "no disapproval" letter to the Department. I see no reason for disagreeing with the recommendation that the President not disapprove this order.

Attachment

THE WHITE HOUSE

WASHINGTON

May 31, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Department of Transportation 10-Day International Aviation Decision: Swiss Air Transport

We have reviewed the above-referenced Department of Transportation international aviation decision, and have no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(b).

We also have no legal objection to OMB's recommendation that the President not disapprove this order.

FFF:JGR:aea 5/31/85
cc: FFFielding
JGRoberts
Subj
Chron