# WITHDRAWAL SHEET

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| 1 | MEMO | ROBERTS TO WILLIAM GRESSMAN (PARTIAL) | 1 | 10/4/1985 | B6 | 784 |

THE WHITE HOUSE

WASHINGTON

October 1, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Succession at HHS

Reorganization Plan No. 1 of 1953, 42 U.S.C. § 3501 note, established the Department of Health, Education, and Welfare, and remains the enabling legislation for the Department of Health and Human Services. (Under Public Law 96-88, references to HEW are deemed to be references to HHS, except to the extent the reference is to a function transferred to the Department of Education.) Section 2 of the Reorganization Plan created the positions of Under Secretary and two Assistant Secretaries, all PAS. Section 2 further provided:

> The Under Secretary (or, during the absence or disability of the Under Secretary or in the event of a vacancy in the office of Under Secretary, an Assistant Secretary determined according to such order as the Secretary shall prescribe) shall act as Secretary during the absence or disability of the Secretary or in the event of a vacancy in the office of Secretary.

Thus, in the absence of an Under Secretary, the Assistant Secretaries should succeed to act as Secretary in the order prescribed by the Secretary.

A question has arisen whether the Assistant Secretary for Administration, a PA position, 42 U.S.C. § 3502, may succeed to act as Secretary. It is my view that he may not. The provision establishing succession, Section 2 of the Reorganization Plan, refers to Assistant Secretaries confirmed by the Senate. When 42 U.S.C. § 3502, creating the Assistant Secretary for Administration, was enacted in 1960, it contained no reference to any possible role for that Assistant Secretary in succession. By contrast, when three additional PAS Assistant Secretary slots were created by 42 U.S.C. § 3501a in 1965, the statute specifically referred back to the succession scheme of Section 2: "The provisions of section 2 of the Reorganization Plan Numbered 1 of 1953 shall be applicable to such additional Assistant Secretaries to the same extent as they are applicable to the Assistant

Secretaries authorized by that section." Thus, the statute adding PAS Assistant Secretaries explicitly includes them in the succession scheme; the statute adding the PA Assistant Secretary does not.

The Secretary may, under Section 6 of the Reorganization Plan, authorize any other officer or employee of the Department to perform any of the functions of the Secretary. Given a specific succession plan in Section 2, however, I do not think the Secretary could use Section 6 to authorize someone to perform all the functions of the Secretary in her absence. Nor could the Secretary use Section 6 to fill the Under Secretary slot, and then have that person succeed when the Secretary position became vacant. This is because Section 6 does not permit the Secretary to fill vacancies, only to assign the functions of the Secretary, and one of the functions of the Secretary is not to become Secretary when that post is vacant. That leaves only the possibility of using Section 6 to assign all the functions of the Secretary to someone and, as noted, I do not think that can be done given the specific succession rules of Section 2.

If the President disagrees with the succession order drawn up by the Secretary, he can use the Vacancy Act, 5 U.S.C. § 3347, to fill the Secretary slot after her departure. The appointment would be valid only for 30 days, 5 U.S.C. § 3348, but during those 30 days the Acting Secretary could issue a new order rearranging the succession order as desired.

THE WHITE HOUSE

WASHINGTON

October 1, 1985

MEMORANDUM FOR THE FILE

FROM: JOHN G. ROBERTS

SUBJECT: The Walter Kaitz Foundation

I advised Presidential Messages that I had no legal objection to sending the above-referenced message, provided the recipients were cautioned that it could not be used in fundraising. I also noted that I was not familiar with the Foundation, and that Messages should check with Mel Bradley to determine if a message was desirable on policy grounds. I did check and determine that the Foundation has 501(c)(3) status.

THE WHITE HOUSE

WASHINGTON

October 2, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Use of Presidential Seal by the Ronald Reagan Presidential Foundation

Attached is a letter for your signature to Gary Jones, Executive Director of the Ronald Reagan Presidential Foundation, advising that the Foundation may not use the attached Seal. The Seal is the Presidential Seal, with "Ronald Reagan Presidential Foundation" substituted for "Seal of the President of the United States." (The Foundation's Seal also has a single star dividing the words, as opposed to the two dashes on the Presidential Seal. This may offend the Supreme Court, which uses the single star in the same location on its seal, to recall the Constitution's establishment of "one supreme court.")

Use of the Seal by the Foundation is prohibited by 18 U.S.C. § 713, since it is not permitted by Executive Order 11649. That Executive Order does permit use of the Seal "as an architectural embellishment in libraries, museums, or archives established to house the papers or effects of former Presidents," but this cannot be extended to include use by a foundation established to raise funds for such a library.

Attachment

THE WHITE HOUSE

WASHINGTON

October 2, 1985

Dear Gary:

I have reviewed your proposed seal for the Ronald Reagan Presidential Foundation. That Seal consists of the Seal of the President, with the words "Ronald Reagan Presidential Foundation" substituted for "Seal of the President of the United States." I must advise you not to proceed with plans to use this seal, or any other seal featuring the Seal of the President.

The permitted uses of the Seal of the President are limited by law. Pursuant to 18 U.S.C. § 713(b), it is a criminal offense to use the Seal except as authorized in regulations promulgated by the President. Those regulations are embodied in Executive Order 11649, as amended. A copy of the pertinent statute and regulations is enclosed for your information.

Your contemplated use of the Seal is not among the permitted uses detailed in the Executive Order. The Executive Order does permit the Seal to be used "as an architectural embellishment in libraries, museums, or archives established to house the papers or effects of former Presidents," but this category of permitted uses cannot be extended to include use by a foundation established to raise funds for such a library.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Gary L. Jones
Executive Director
Ronald Reagan Presidential
Foundation
905 16th Street, N.W.
Washington, D.C. 20006

FFF:JGR:aea 10/2/85

bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

October 3, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Fair Trade Practices

Jerry Pearlman, Chairman and President of Zenith, has written the Chief of Staff to object to the Administration's position as amicus curiae in Matsushita v. Zenith, a pending Supreme Court case set for oral argument on November 12. The case concerns a claim by Zenith that various Japanese television manufacturers conspired to drive American manufacturers out of business, in violation of the antitrust laws. It has been pending for 14 years. The district court granted summary judgment for the Japanese, ruling that much of the evidence Zenith proposed to rely upon was inadmissible and that without that evidence a conspiracy could not be proven. The district court avoided ruling on whether the conduct of the Japanese manufacturers was compelled by the Japanese Government and therefore could not form the basis for a private antitrust suit.

The court of appeals reversed the district court on the evidentiary rulings, and was therefore compelled to reach the sovereign compulsion issue. The court ruled that the defendants were not entitled to summary judgment on this issue, despite the fact that the Japanese Ministry of International Trade and Industry (MITI) filed a brief stating that it had in fact compelled the challenged conduct.

The brief filed by the Solicitor General contends that the grant of summary judgment by the district court in favor of the Japanese manufacturers was appropriate, and should not have been overturned by the court of appeals. In addition, the Solicitor General also argues that the court of appeals erred in not recognizing the sovereign compulsion defense, a defense that is available in private antitrust actions but not in suits brought by the U.S. Government.

Pearlman contends that the brief is inconsistent with the President's recent call for "fair trade." The question of what position to take in this case was addressed at a Domestic Policy Council meeting. I do not think we want to get into the merits with Pearlman, and should simply note that the Administration's arguments are in the brief.

THE WHITE HOUSE

WASHINGTON

October 3, 1985

Dear Mr. Pearlman:

Thank you for your letter of September 25 to White House Chief of Staff Don Regan. In that letter you objected to the amicus curiae brief filed by the Department of Justice in Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corporation, currently pending before the Supreme Court of the United States.

It is the general policy of the White House not to discuss the merits of litigation pending before the Supreme Court involving the United States. The views of the Administration in such cases are presented by the Department of Justice, in the briefs filed by that Department in the course of the litigation.

I hope you will recognize the reasons we must adhere to this policy. Thank you for the benefit of your views.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Jerry K. Pearlman
Chairman and President
Zenith Electronics Corporation
1000 Milwaukee Avenue
Glenview, IL 60025-2493

FFF:JGR:aea 10/3/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 4, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: California Pro Life Medical Association Event, October 6

Charles Donovan, for Anne Higgins, has asked for our review of a proposed Presidential telegram to be sent to a memorial service to be held in Los Angeles on October 6 for the 16,500 aborted fetuses discovered at a medical laboratory in 1982. You will recall that local government officials originally planned to turn the fetuses over to a private group for a religious burial, but the plan was blocked by the ACLU and the Feminist Women's Health Center. The state courts directed the officials to dispose of the remains by cremation or burial, without arranging or participating in religious ceremonies. The officials now plan a non-religious burial, and the California Pro Life Medical Association (CPLMA) is planning a separate memorial service. CPLMA has been actively involved in the issue since the beginning.

Donovan notes that sending a message would be an appropriate follow-up to the President's May 5, 1982, letter to Dr. Phillip Dreisbach, Secretary for CPLMA (Tab A). That letter, prepared and sent by Higgins without our knowledge (according to Peter Rusthoven's files), praised CPLMA's decision to hold a memorial service for the fetuses. Dr. Dreisbach later sent a photo exhibit to the President, featuring the May 5 letter surrounded by pictures of aborted fetuses. Mr. Hauser sent a letter to Dr. Dreisbach, protesting the planned use of the President's letter (Tab B).

I have only one small objection to the text of the proposed telegram. In the third paragraph, the text states that the Roe and Doe decisions "made void all our laws protecting the lives of infants developing in their mothers' wombs." This is legally inaccurate, since Roe v. Wade permitted some regulation of abortion -- and even a ban on abortion -- depending on the stage of the pregnancy. I would change "all our laws" to "many of our laws." With this change, I have no objection to the text. It criticizes the Roe and Doe decisions, to be sure, and states that they cannot long endure, but the President has said as much often in the past.

Nor do I have any objection to the President sending a message to the memorial service. The President's position is that the fetuses were human beings, or at least cannot be proven not to have been, and accordingly a memorial service would seem an entirely appropriate means of calling attention to the abortion tragedy.

My concern is sending another message to Dreisbach, who was prepared to misuse the previous Presidential message on a gruesome anti-abortion display. I recommend approving the telegram (with the one change), but making certain the recipients understand that it may not be reprinted or used in any future materials. A memorandum for Donovan is attached.

Attachments

THE WHITE HOUSE

WASHINGTON

October 4, 1985

MEMORANDUM FOR CHARLES A. DONOVAN
OFFICE OF WHITE HOUSE CORRESPONDENCE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: California Pro Life Medical Association Event, October 6

You have asked for this office's views on a proposed telegram from the President to a memorial service to be held October 6, for the 16,500 fetuses discovered in Los Angeles in 1982. The telegram is to be sent to Dr. Phillip Dreisbach, Secretary of the California Pro Life Medical Association.

On May 5, 1982, your office prepared and sent a letter from the President to Dr. Dreisbach, stating that a decision to hold a memorial service was "most fitting and proper." (The message was neither submitted to nor approved by this office.) Dr. Dreisbach subsequently misused the May 5 letter by reprinting it on a photo display featuring pictures of aborted fetuses. This office was compelled to write Dr. Dreisbach on January 28, 1985, protesting his misuse of the President's message.

While I have no legal objection to sending a message to the memorial service, I am quite concerned about another possible incident of misuse by Dr. Dreisbach. Accordingly, in sending the message, you should warn Dr. Dreisbach that while it may be read at the memorial service it may not be reprinted or otherwise used by him in any future materials. If Dr. Dreisbach is not fully agreeable to these conditions, no message should be sent.

With respect to the proposed text, "all" in line 12 should be changed to "many of." Roe and Doe did not void all laws regulating abortion, and in fact recognized the validity of certain regulations and even prohibitions, depending on the stage of the pregnancy.

FFF:JGR:aea 10/4/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 4, 1985

MEMORANDUM FOR BARRY FERNALD
WHITE HOUSE PHOTO OFFICE

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Photo Policy

You have asked for a statement of our policy with respect to providing White House photographs for use in advertisements. The main purpose of the White House Photo Office is, of course, to create and preserve a photographic record of the Presidency. As a courtesy, the office makes available limited numbers of White House photographs that have been released into the public domain to those requesting them.

The White House has long adhered to a general policy of not approving any use of the President's name, likeness, photograph, or signature in advertising copy. The purpose of this policy is to avoid creating the false impression that the President is affiliated with or has endorsed a particular commercial product or enterprise, or a particular fundraising or promotional campaign in the case of advertisements placed by non-profit organizations. Since we generally do not approve the use of the President's photograph in advertising copy, we do not provide photographs to those that request them for that purpose.

You should feel free to advise requesters of this policy, but if any insist on a written statement they should be referred to this office for handling.

784



THE WHITE HOUSE

WASHINGTON

October 4, 1985

MEMORANDUM FOR WILLIAM GRESSMAN
OFFICE OF THE LEGAL ADVISER
U.S. DEPARTMENT OF STATE

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Rockwell Schnabel

I met with Mr. Schnabel on October 2. At that meeting he indicated that he intended to go forward with his plans to take a leave of absence from his firm during his period of Government service. As we discussed, those plans, detailed in attachments to his SF-278, have been approved by the Department of State.

[redacted]

b6

A copy of the plan sent to me by Mr. Schnabel is attached. I am forwarding it to you for inclusion with Mr. Schnabel's papers, and for a determination on how the plan should be continued during Mr. Schnabel's Government service. You should contact Mr. Schnabel directly with your advice on the plan.

Many thanks.

THE WHITE HOUSE

WASHINGTON

October 4, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Canadian Request for U.S. Import Restrictions Under the Convention on Cultural Property

The United States, Canada, and many other countries are signatories to the Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property. The Convention is designed to protect each country's interest in its own archaeological artifacts and other national art treasures that may be considered to comprise the country's cultural patrimony. In 1983 Congress passed the Convention on Cultural Property Implementation Act, 19 U.S.C. §§ 2601-2612. That act authorizes the President to enter into bilateral agreements with Convention signatories to restrict the import of cultural property of the other country into the United States. The act set out a procedure whereby requests from other countries for such action are referred to a Cultural Property Advisory Committee for review and recommendation.

Ever since the act was passed State and U.S.I.A. have been feuding over which agency should be delegated authority to perform the various tasks the act assigned to the President. State contends it should receive the delegations because the process involves negotiating an agreement with other countries; U.S.I.A. bases its case largely on the fact that the Cultural Property Advisory Committee is, by statute, based at U.S.I.A.

This dispute is still unresolved, and now the act has been triggered by receipt on October 2 of the first request from another country -- Canada -- for import restrictions. U.S.I.A. Director Wick has written you to request that the President publish notification of the request in the Federal Register, as required by 19 U.S.C. § 2602(f)(1), and send a letter to Wick, authorizing him to release information in the request to the Advisory Committee, so that it might begin its statutory review. The letter Wick would have the President send him also has the President saying he looks forward to Wick taking the lead in response to the Canadian request. In his cover memorandum Wick states that State and U.S.I.A. will submit a request for resolution of their dispute "within the next few weeks."

I think receipt of the Canadian request is an excellent opportunity to force an immediate resolution of the State/U.S.I.A. dispute. I do not think the White House should begin managing the procedures of the act directly, but rather should insist on a prompt delegation to either State or U.S.I.A., or perhaps a delegation of some authorities to one and others to the other. There is no reason the process should take a "few weeks;" according to OMB's John Cooney, the pertinent drafts were ready years ago, with blanks for either "State" or "U.S.I.A." to be inserted. Nor is there any need for immediate action by the President. The statute simply provides that if a request is received the President shall publish notification in the Federal Register and provide information to the Advisory Committee; there is no suggestion that this must happen immediately. I see no reason that an Executive Order delegating the authorities cannot be signed next week, and think the steps required by the statute could then still be taken in a timely manner. (The statute gives the Advisory Committee 150 days to prepare its report, so an extra week delay at the outset cannot be considered significant.)

A memorandum to Wick and Michael Armacost (the State player in the long-running feud) is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

October 4, 1985

MEMORANDUM FOR CHARLES Z. WICK
DIRECTOR, UNITED STATES
INFORMATION AGENCY

MICHAEL H. ARMACOST
UNDER SECRETARY FOR POLITICAL AFFAIRS
U.S. DEPARTMENT OF STATE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Convention on Cultural Property

Director Wick has advised me of the receipt of a request from Canada under the Convention on Cultural Property Implementation Act, and requested that the President publish notice of the request in the Federal Register (as required by 19 U.S.C. § 2602(f)(1)) and sign a letter authorizing the release of pertinent information to the Cultural Property Advisory Committee. I understand that State and USIA have discussed the delegation of the President's authorities under the Act, and have been unable to resolve the matter. Rather than proceeding to involve the White House directly in the administration of this Act, I think it preferable promptly to resolve the delegation dispute, and have the President sign an Executive Order accomplishing the delegations. The Canadian request would then be handled pursuant to the delegation of authorities.

Since this matter has been the subject of discussion between your two agencies for some time, I do not foresee any reason either a resolution or decision memorandum cannot be submitted to OMB in the next few days. If this is done, there is no need for the President to take any direct action. There is no suggestion that the Federal Register notice need be filed immediately, and the fact that the Advisory Committee is given 150 days to submit its report suggests a delay of about one week should not be significant.

Please advise if you have any objection to this proposed course of action.

FFF:JGR:aea 10/4/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 7, 1985

MEMORANDUM FOR CLAUDIA KORTE
PRESIDENTIAL MESSAGES

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: KPRC-TV/Houston Job Fair

We have reviewed the question of Presidential messages for media organizations and have decided that, as a general matter, such messages may be sent, consistent with the usual guidelines and policies with respect to Presidential messages. To avoid some of the potential problems we discussed, the messages should be carefully drafted to focus on the particular private sector initiative in question, rather than the station's general record of public service.

If you have any questions on particular messages, please do not hesitate to run them by us. Thank you for raising this question with this office.

THE WHITE HOUSE

WASHINGTON

October 8, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Message for Aborted Fetuses

On October 3, 1985, Charles Donovan, for Anne Higgins, provided my office with a copy of a proposed Presidential message to be sent to the October 6 memorial service for the aborted fetuses discovered in Los Angeles in 1982, for our review. On October 4, my office telephoned Donovan and advised him that the message should not be sent. This decision was based upon my review of the legal dispute surrounding the burial, and the egregious misuse of a previous Presidential message by the same individual requesting this one.

According to this morning's edition of the New York Times, however, the very message I had explicitly disapproved was in fact sent. I would like an explanation of why the system of review we have in place failed to function in this instance.

cc: Anne Higgins
Charles A. Donovan

FFF:JGR:aea
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 8, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Portal-to-Portal Update

Mike Horowitz has written you and Joe Wright to report on the progress of the portal-to-portal bill. Horowitz's memorandum is a bit vague on precisely what is being proposed, but he indicates that the subcommittee proposal will include a spousal provision (ours did not), will limit regular portal-to-portal to Cabinet Secretaries and 6-10 Level II's, will delete the Hill and the Judiciary, and will permit additional portal-to-portal if the President designates others to receive it. Horowitz has asked for guidance on a negotiation position.

Obviously we are too removed from the discussions to offer much guidance on negotiation. I think selecting out 6-10 Level II's and leaving other portal-to-portal designations up to the President will cause the excluded Level II's to exert enormous pressure on the President to recover their privileged status. Once the President grants some exceptions he will be hard-pressed to deny the same to others of equal rank. On the other hand, anything would be better than the current confused state of the law.

We should discuss.

THE WHITE HOUSE

WASHINGTON

October 10, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Letters to Mrs. Barbara Newington and Mr. Carl Channell

I have discussed these proposed messages with Ollie North. Mr. Channell and the American Conservative Trust produced the television advertisements supporting the President's policies in Central America. Mrs. Newington paid for them. According to North, neither Newington nor Channell is in any way involved in the dispute over providing private funds to the Contras. Both understand, according to North, that they may not use the letters in fundraising or any other promotional activity. Given the foregoing, I see no reason to object to the letters. North believes that this is a good time to send the letters, since the President may be asking Congress for more funds in the future and it may present more problems to delay the letters until then.

Attachment

THE WHITE HOUSE

WASHINGTON

October 10, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Letters to Mrs. Barbara Newington and Mr. Carl Channell

I have reviewed the above-referenced proposed Presidential letters. Oliver North has advised my office that the recipients are not involved in raising private funds for the Contras, and that the recipients understand they may not use the letters in fundraising or other promotional activity. Based on these representations, I have no objection to the letters.

FFF:JGR:aea 10/10/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 15, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Requests for Major Disaster Declarations for New Jersey and Rhode Island

Richard Davis of Cabinet Affairs has asked for our views as soon as possible on two requests for a major disaster declaration, from New Jersey and Rhode Island. Both requests arise from damage caused by Hurricane Gloria.

Both requests appear to comply with the provisions of the Disaster Relief Act of 1974, as amended, Public Law 93-288, principally codified at 42 U.S.C. §§ 5121-5189. Damage caused by hurricane, storm, or flood is specifically included as eligible for disaster assistance under 42 U.S.C. § 5122(2). The request letters are signed by the Governor, contain findings that the disaster is of such severity and magnitude that effective response is beyond the capabilities of state and local governments, indicate that state emergency plans have been implemented, provide information on the extent and nature of state resources used to alleviate the disaster, and contain certifications that state and local expenditures will constitute expenditure of a reasonable amount of state and local funds for alleviating the disaster damage. See 42 U.S.C. § 5141(b).

I have reviewed the request letters and the implementation materials prepared by FEMA, and have no objections.

Attachments

THE WHITE HOUSE

WASHINGTON

October 15, 1985

MEMORANDUM FOR RICHARD DAVIS
ASSOCIATE DIRECTOR
CABINET AFFAIRS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Disaster Declaration for New Jersey

Our office was asked to review a request from Governor Thomas H. Kean of New Jersey for Presidential declaration of a "major disaster," within the meaning of the Disaster Relief Act of 1974, Pub. L. 93-288.

Based on a review of the request and the related materials forwarded by the Federal Emergency Management Agency, the Governor's request appears to comply with the statutory requirements for a disaster declaration. We also have no legal objection to the implementation materials prepared by FEMA in connection with this request.

cc: David L. Chew

FFF:JGR:aea 10/15/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 15, 1985

MEMORANDUM FOR RICHARD DAVIS
ASSOCIATE DIRECTOR
CABINET AFFAIRS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Disaster Declaration for Rhode Island

Our office was asked to review a request from Governor Edward D. DiPrete of Rhode Island for Presidential declaration of a "major disaster," within the meaning of the Disaster Relief Act of 1974, Pub. L. 93-288.

Based on a review of the request and the related materials forwarded by the Federal Emergency Management Agency, the Governor's request appears to comply with the statutory requirements for a disaster declaration. We also have no legal objection to the implementation materials prepared by FEMA in connection with this request.

cc: David L. Chew

FFF:JGR:aea 10/15/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 15, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Amendment to Request for a Major Disaster Declaration for Puerto Rico

Richard Davis of Cabinet Affairs has asked for our views as soon as possible on an amendment to the October 10, 1985, disaster declaration issued by the President for Puerto Rico. The original request letter from the Governor referred to damage "during the weekend of October 6." A subsequent, more complete letter indicated the storm hit "from October 4 through 7," but also noted implementation of the Commonwealth emergency plan on October 6. The memorandum for the President prepared by FEMA stated that the "storm occurred on October 6-7." The various implementation materials accordingly fixed the beginning of the disaster on October 6. Now FEMA would like to have the President amend the October 10 declaration to indicate that the disaster began October 4, not October 6.

I reviewed and cleared the request on October 10. It fully complied with the requirements of the Disaster Relief Act of 1974, Public Law 93-288: request signed by governor, storm and flood damage covered by the statute, requisite findings as to severity and magnitude, sufficient information on nature and extent of committed state resources, and implementation of state emergency plan. The FEMA material stated that the storm began on October 6, and the implementation materials accurately reflected this finding.

Our office cannot review FEMA's findings as to when a particular disaster commenced, particularly when, as here, there was no necessary inconsistency between the FEMA finding and the Governor's request letter. If FEMA now wants to amend the declaration to indicate the disaster began on October 4, not October 6 as FEMA originally stated, I have no objection.

Attachment

THE WHITE HOUSE

WASHINGTON

October 15, 1985

MEMORANDUM FOR RICHARD DAVIS
ASSOCIATE DIRECTOR
CABINET AFFAIRS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Amendment to Request for a Major Disaster Declaration for Puerto Rico

You have asked for my views on a proposed letter from the President to the Acting Director of FEMA, amending the major disaster declaration for Puerto Rico of October 10, to indicate that the disaster began on October 4, not October 6. The memorandum for the President from FEMA requesting the original disaster declaration stated that the storm occurred October 6-7. If FEMA is now of the view that the storm began on October 4, I have no objection to an amendment of the October 10 declaration.

cc: David L. Chew

FFF:JGR:aea 10/15/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 15, 1985

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: Applicability of the Federal Advisory Committee Act to the Commission on the Bicentennial of the U.S. Constitution

We have, as you know, been provided a copy of the Public Citizen complaint alleging that the Bicentennial Commission is subject to, and not complying with, the Federal Advisory Committee Act. A copy of my memorandum of August 16 on these questions is attached. As I noted in that memorandum, the questions are open to dispute, but I do not think it is a dispute we should enter. The Commission did not ask for our counsel before deciding to close its meetings, nor is it clear that it would consider itself bound by our -- or any Executive Branch -- legal advice. And, as I noted in my memorandum, we have a real conflict in defending the Commission, since the arguments we would make to defend the inapplicability of FACA would simply highlight the constitutional infirmities of the Commission itself.

THE WHITE HOUSE

WASHINGTON

October 16, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Mr. Wizard Endorsement Ad

Fred Ryan has asked whether a letter of commendation provided by the President to television stations airing the "Mr. Wizard" public service science news spots may be reproduced in a full-page advertisement to be placed by the National Association of Broadcasters, which has been involved in promoting the Mr. Wizard educational spots. The advertisement would also thank the National Science Foundation and General Motors for underwriting the project.

Our office approved the original letter of commendation, which simply applauded the individual stations for participating in this private sector initiative project. Reproducing the letter in an advertisement strikes me as raising entirely different issues. Corporations like General Motors often devote a significant portion of their advertising budget to convincing the public that they do good things, and I do not think the President should be enlisted in the effort. If we do permit letters such as this to be used in advertising, we will have to begin being far more restrictive in sending the letters of commendation out in the first place.

Attachment

THE WHITE HOUSE

WASHINGTON

October 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: Mr. Wizard Endorsement Ad

You have asked for my views on a proposed advertisement, featuring a reproduction of a letter from President Reagan commending the television stations that aired the "How About..." reports on scientific and technological advances. The letter was written, and approved, as a letter of commendation, and not with the intent that it would be used to promote either this particular private sector initiative or those sponsoring the initiative. When such letters are reproduced in advertisements there is the danger that the President will be perceived to be endorsing the various commercial entities involved. Approving this use of the letter would set a bad precedent, and would require us to be far more circumspect in sending letters of commendation in the first place. For these reasons, I recommend that the request for permission to use the letter be denied.

Thank you for raising this matter with this office.

FFF:JGR:aea 10/16/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 17, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Remarks: Dropby Briefing for U.S. Attorneys

I thought you might like to take a quick look at these remarks, particularly since they discuss judicial selection (pages 5-6). I have no objection to the discussion. The attached memorandum simply notes two minor changes in other parts of the remarks.

Attachment

THE WHITE HOUSE

WASHINGTON

October 17, 1985

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Remarks: Dropby Briefing for U.S. Attorneys

Counsel's Office has reviewed the above-referenced proposed remarks. On page 3, lines 23-24, "the Kennedy brothers" should be changed to "John and Robert Kennedy," lest the audience think the reference includes Ted Kennedy. On page 4, line 13, "when appropriate" should be inserted between "honor" and "to." A recommendation for the maximum sentence in all cases would soon become no recommendation at all.

cc: David L. Chew

FFF:JGR:aea 10/17/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 17, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Report from Treasury Regarding Violation of Antideficiency Act

You have asked if any action is required in response to a report from Secretary Baker of a violation of 31 U.S.C. § 1517. That provision prohibits any Federal employee from making or authorizing an expenditure exceeding an apportionment. Pursuant to 31 U.S.C. § 1512, certain appropriations must be apportioned over the period of the appropriation. The Presidential Election Campaign Fund was originally not apportioned, but a 1978 change in the law resulted in it being apportioned. The Financial Management Service overlooked this change and, as a result, authorized expenditures exceeding the apportionment in the first quarter of FY 1985. (The expenditures did not exceed the general appropriation, which was the only reference available to FMS.) This violated 31 U.S.C. § 1517(a) and, as required by 31 U.S.C. § 1517(b), Secretary Baker reported the violation to the President and Congress.

Pursuant to 31 U.S.C. § 1518, anyone who violates 31 U.S.C. § 1517(a) "shall be subject to appropriate administrative discipline," including suspension without pay or removal. Pursuant to 31 U.S.C. § 1519, a willful or knowing violation subjects the employee to a fine of up to $5,000 and/or a prison sentence of up to two years. Secretary Baker's letter stated that no disciplinary action had been taken because the circumstances of the violation mitigate the blame and there was no willful violation. In my view, "appropriate disciplinary action" can include no action, and if, in Secretary Baker's view, there was no willful violation, I see no reason for a referral to Justice.

THE WHITE HOUSE

WASHINGTON

October 17, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Certificates for Judicial and Legislative Branch Members of the Bicentennial Commission

Attached is a prototype of certificates we could issue to the members of the judiciary and Congress who have been appointed to the Bicentennial Commission. The certificates are similar to those issued to appointees to quasi-governmental corporations, such as the Corporation for Public Broadcasting, Synfuels, and the Legal Services Board. The explicit reference to the statute may be helpful in distinguishing both past and future cases, and also incorporates by reference the peculiar appointment procedures of the statute (appointees chosen from recommendations submitted by the Chief Justice and the congressional leadership). I think this approach is a good compromise between a commission and either a letter or nothing.

Incidentally, the Chief Justice will not receive one of these, because the President did not appoint him to the Commission. The Chief was designated a member of the Commission by the statute itself.

Should we process these?