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THE WHITE HOUSE

WASHINGTON

December 18, 1985

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS 22
SUBJECT: Use of Presidential Letter
in Fundraising Appeal

Ralph Showers runs Rainbow Acres Ranch in Arizona, a facility for mentally retarded adults. In 1982 he sent the President a letter describing his ranch, and received a laudatory reply from the President dated May 24, 1982. That reply, complete with signature, was featured in a recent brochure soliciting contributions for the ranch. The contributions sought were in the form of annuities, with the income to the donor until paid off, and the remainder to Rainbow Acres.

A letter to Showers is attached for your signature. The letter insists that he cease immediately any use of the President's letter in his fundraising solicitation.

Attachment

THE WHITE HOUSE

WASHINGTON

December 18, 1985

Dear Mr. Showers:

Your brochure soliciting participation in the Rainbow Acres Partnership Trust has been brought to our attention. That brochure features a reproduction of a letter from the President to you, dated May 24, 1982, complete with a facsimile of the President's signature.

White House policy generally prohibits such use of letters from the President in private charitable fundraising appeals, and strictly prohibits any use of such letters in solicitations for funds with investment characteristics. Your use of the President's letter creates the false impression that the President has endorsed your fundraising appeal or the investment vehicle you offer in the brochure.

This misuse of the President's letter must cease immediately. In particular, your brochure containing the President's letter may not be further distributed. Please advise this office as soon as possible of the steps you have taken to comply with this letter.

Sincerely,

Richard A. Hauser
Deputy Counsel to the President

Mr. Ralph K. Showers
President
Rainbow Acres Ranch
Post Office Box 1326
Camp Verde, Arizona 86322

RAH:JGR:aea 12/18/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

December 20, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Peace Institute

On December 18 the Senate confirmed, and on December 19 the President appointed, our nine nominees to the Peace Institute. We have no names as yet from Presidential Personnel for the two remaining nomination vacancies, but the Board has a quorum to begin work.

In addition to the eleven nominated members, there are four designated ex officio members. Three were announced on August 1. The fourth ex officio slot is for the President of the National Defense University (N.D.U.) or, if he so designates, the Vice President of N.D.U. We did not announce who would fill the N.D.U. slot when we announced the others because both the President and Vice President are active duty career military officers who declined to disclose their party affiliation. You will recall that the Peace Institute statute is unusual in requiring that the ex officio members be included in satisfying the bipartisanship requirement. We have delayed announcing the N.D.U. representative in the hope that we would have the full slate to see if the affiliation of the N.D.U. member was significant.

Despite the fact that we do not have a full slate, it is my view that we should delay no longer, in order that the N.D.U. representative may participate in the first board meeting. Regardless of the N.D.U. representative's political affiliation, we will not presently be in violation of the bipartisanship requirement. The statute specifies that no more than eight of the fifteen members may be of the same party. Of the nine confirmed members, five are Republicans and four are Democrats. Of the three known ex officio members, all are Democrats. Thus, whether the N.D.U. representative is a Democrat or Republican, there will not be more than eight of the same party on the board.

Not knowing the party affiliation of the N.D.U. representative may limit our flexibility in filling the remaining two nominated slots. If both are Republicans, there would be no problem, since there would thus be seven known Republicans, seven known Democrats, and the N.D.U. representative -- still no more than eight from the same party. If Personnel wants to select a Democrat for one of the slots, however,

there could be a problem, since there would then be eight known Democrats, plus the N.D.U. representative. We could argue persuasively that we need only satisfy the "no more than eight from one party" requirement with respect to members of whom we can reasonably inquire about party affiliation, and I do not think Congress will insist we obtain the information from active duty career military officers. We are also helped as a practical matter by the fact that the only possible objection is that there are too many Democrats on the board. In any event, I think it more important to comply with the statutory requirement that an N.D.U. representative serve on the board, than keep him off for fear of future problems with the bipartisanship requirement.

The attached memorandum for Tuttle recommends announcing the N.D.U. representative immediately, without party affiliation.

Attachment

THE WHITE HOUSE

WASHINGTON

December 20, 1985

MEMORANDUM FOR ROBERT H. TUTTLE
DEPUTY ASSISTANT TO THE PRESIDENT
DIRECTOR, PRESIDENTIAL PERSONNEL

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Peace Institute

As you know, our nine nominees for the Peace Institute Board of Directors were recently confirmed and appointed. In addition to those nine, we announced three of the four ex officio members on August 1. We have delayed announcing the ex officio member from the National Defense University, because the President of the University, an active duty career military officer, has declined to disclose his party affiliation. The Peace Institute statute requires that the affiliation of the ex officio members be included in satisfying the bipartisanship requirement.

I recommend that we now announce the representative from the University (either the President or, if he so designates, the Vice President) who will serve on the Board, even though we will not know his party affiliation. There is no danger of violating the bipartisanship requirement now, since we have five confirmed Republicans, four confirmed Democrats, and three ex officio Democrats. Regardless of the affiliation of the N.D.U. representative, we will comply with the statutory requirement that no more than eight members be of the same political party.

Problems may arise in filling the remaining two vacant nomination slots. If you choose Republicans for both slots, there will be no problem. You may not select two Democrats in any event. If you choose one Democrat and one Republican, that would result in eight known Democrats, six known Republicans, and the N.D.U. representative -- a potential violation, since the N.D.U. representative could be a Democrat. We could perhaps argue that the "no more than eight" requirement only applies to members of whom we can reasonably ask about party affiliation, and (despite the statute) I would be surprised if Congress insisted that we violate tradition and policy and demand to know the party affiliation of an active duty career military officer. In any event, I think it more important to comply with the statutory requirement that an N.D.U. representative serve on

the Board, than to avoid appointing such a representative for fear of potential bipartisanship problems. The N.D.U. representative should be announced promptly, in order that he can participate in the first Board meeting. Please let me know as soon as possible of your selections for the remaining two nomination vacancies.

FFF:JGR:aea 12/20/85

cc: FFFielding

JGRoberts

Subj

Chron

THE WHITE HOUSE

WASHINGTON

December 24, 1985

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS 

SUBJECT: Request for Permission to Use
Presidential Seal on Cover of
National Energy Policy Plan

Ted Garrish has asked for permission to use the Seal of the President on the next report to Congress on the National Energy Policy Plan. The Department of Energy Organization Act of 1977 requires the President to submit such a report to Congress biennially. This will be the fifth such report; previous reports have borne the Department of Energy seal. Garrish also asks permission to include a transmittal letter from the President.

Since the report is from the President, the Seal may, as a legal matter, be used. Granting Garrish's request, however, could create a precedent that would lead other Departments to seek the Seal for their reports to Congress, most of which, like this one, are nominally required of the President. I see no reason to depart from the prior practice of using the departmental seal. In fact, since the President will have no personal knowledge of the issues discussed in the report, an argument can be made that he should be distanced from it. Using the Seal would more closely identify the President with the report.

I have, however, no objection to a transmittal letter from the President, assuming the text is staffed for White House review. Unlike the Seal, such letters are commonly used with such statutory reports.

Attachment

THE WHITE HOUSE

WASHINGTON

December 24, 1985

MEMORANDUM FOR THEODORE C. GARRISE
ASSISTANT SECRETARY, CONGRESSIONAL,
INTERGOVERNMENTAL AND PUBLIC AFFAIRS
U.S. DEPARTMENT OF ENERGY

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Request for Permission to Use
Presidential Seal on Cover of
National Energy Policy Plan

You have asked for our approval to use the Seal of the President on the fifth report on the National Energy Policy Plan, required by law to be submitted to Congress by the President. You have also requested approval to include a transmittal letter from the President with the report.

We have no objection to an appropriately worded transmittal letter from the President, assuming of course that the letter is reviewed at the White House before transmittal. We would not, however, approve use of the Seal on the report. As I am certain you are aware, there are countless reports to Congress required by law, many, like the National Energy Policy Plan, nominally required to be submitted by the President. It would be inconsistent with our policy of restricting use of the Seal of the President to those items with which the President is directly involved or closely identified to permit the Seal to be used on these various reports. On balance, we see no need to depart from the past practice of using the departmental seal on the National Energy Policy Plan.

RAH:JGR:aea 12/24/85

cc: FFFielding
RAHauser
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

December 27, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Peace Institute

On December 18 the Senate confirmed, and on December 19 the President appointed, our nine nominees to the Peace Institute. There are two remaining slots for nominated members. In addition to the eleven nominated members, there are four designated ex officio members. Three were announced on August 1. The fourth ex officio slot is for the President of the National Defense University (N.D.U.) or, if he so designates, the Vice President of N.D.U. We did not announce who would fill the N.D.U. slot when we announced the others because both the President and Vice President are active duty career military officers who declined to disclose their party affiliation. You will recall that the Peace Institute statute is unusual in requiring that the ex officio members be included in satisfying the bipartisanship requirement.

The board, with the nine confirmed and three announced ex officio members, has a comfortable quorum, and will soon begin work. The N.D.U. President is anxious to participate in the board's work from the outset, and under the terms of the statute he is a member whether or not the White House announces him as such. Regardless of the N.D.U. representative's political affiliation, we will not presently be in violation of the bipartisanship requirement. The statute specifies that no more than eight of the fifteen members may be of the same party. Of the nine confirmed members, five are Republicans and four are Democrats. Of the three known ex officio members, two are Democrats and one is a Republican. Thus, whether the N.D.U. representative is a Democrat or Republican, there will not be more than eight of the same party on the board.

The two remaining nomination slots are to be filled by Morris Liebman, a Democrat, and Wendy Borchardt, a Republican. That would result in seven Democrats, seven Republicans, and the unknown N.D.U. representative -- still no possible violation of the "no more than eight" requirement. While problems may arise in the future, I think we should announce the N.D.U. representative without further efforts to ascertain his party affiliation. I sympathize with his position on

- 2 -

declining to reveal his party affiliation, and suspect many in Congress (despite the statutory language) would do so as well. A memorandum for Tuttle is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

December 27, 1985

MEMORANDUM FOR ROBERT E. TUTTLE
DEPUTY ASSISTANT TO THE PRESIDENT
DIRECTOR, PRESIDENTIAL PERSONNEL

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Peace Institute

As you know, our nine nominees for the Peace Institute Board of Directors were recently confirmed and appointed. In addition to those nine, we announced three of the four ex officio members on August 1. We have delayed announcing the ex officio member from the National Defense University, because the President of the University, an active duty career military officer, has declined to disclose his party affiliation. The Peace Institute statute requires that the affiliation of the ex officio members be included in satisfying the bipartisanship requirement.

I recommend that we now announce the representative from the University (either the President or, if he so designates, the Vice President) who will serve on the Board, even though we will not know his party affiliation. There is no danger of violating the bipartisanship requirement now, since we have five confirmed Republicans, four confirmed Democrats, two ex officio Democrats, and one ex officio Republican. Regardless of the affiliation of the N.D.U. representative, we will comply with the statutory requirement that no more than eight members be of the same political party.

Current plans call for filling the two remaining nomination vacancies with one Republican and one Democrat. If that comes to pass, we will still comply with the bipartisanship requirement regardless of the party affiliation of the N.D.U. representative. Problems may arise in the future, but I think it more important to comply with the statutory requirement that an N.D.U. representative serve on the Board, than to avoid appointing such a representative for fear of potential bipartisanship problems. The N.D.U. representative is entitled to serve on the Board in any event, whether or not the White House announces him. In addition, I sympathize with his position, and suspect many in Congress (despite the statutory language) will do so as well. The N.D.U. representative should be announced promptly, in order that he can participate in the first Board meeting.

FFF:JGR:aea 12/27/85

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 30, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Japan/U.S. Trade

Senator Bradley has written Mr. Regan to complain about the Justice Department filings as amicus curiae in Matsushita v. Zenith, which was argued before the Supreme Court on November 12. You may recall that the Chairman of Zenith wrote Mr. Regan with the same complaint in October. A copy of the memorandum I wrote for you at that time, summarizing the case and the position of the Solicitor General, is attached for your information.

I see no reason to debate Justice's position with Bradley; I would leave that to Justice, if anyone. A standard "pending litigation" response is attached for your signature, as is a brief memorandum for Regan, explaining the proposed response.

Attachment

THE WHITE HOUSE

WASHINGTON

December 30, 1985

MEMORANDUM FOR DONALD T. REGAN
CHIEF OF STAFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Japan/U.S. Trade

You have asked for my views on a response to the attached letter from Senator Bradley to you, complaining about the position taken by the Solicitor General as amicus curiae in Matsushita v. Zenith. In that case, the Solicitor General argued that certain Japanese television manufacturers should not have been subject to a private antitrust suit, because the challenged conduct was compelled by the Japanese government. This "sovereign compulsion defense" is available in private antitrust suits, but not in suits brought by the United States.

It is our usual policy to avoid discussing the merits of particular cases involving the United States that are pending before the Supreme Court. The positions of the Government in such cases are formulated by the Department of Justice, and the arguments are articulated in the briefs. Our policy of avoiding discussion of particular pending cases helps preserve public confidence in the impartial administration of the laws, provides some distance when, for legal reasons, Justice must take politically unpalatable positions, and avoids jeopardizing the normal litigation process. A copy of a proposed reply to Senator Bradley, for my signature, is attached.

Attachment

FFF:JGR:aea 12/30/85

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

December 30, 1985

MEMORANDUM FOR D. LOWELL JENSEN
DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Japan/U.S. Trade

The attached correspondence from Senator Bradley, objecting to the Department's filing as amicus curiae in Matsushita v. Zenith, is forwarded for whatever consideration and response you deem appropriate. I have also attached a copy of my reply to Bradley.

Many thanks.

Attachments

FFF:JGR:aea 12/30/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

December 30, 1985

Dear Senator Bradley:

Thank you for your recent letter 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. That case was recently argued before the Supreme Court of the United States, and is currently awaiting decision.

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 formulated and presented by the Department of Justice, in the briefs filed by that Department in the course of the litigation.

I have, however, taken the liberty of referring your correspondence to the Department of Justice, so that the Department will have the benefit of your views.

Sincerely,

Fred F. Fielding
Counsel to the President

The Honorable Bill Bradley
United States Senate
Washington, D.C. 20510

FFF:JGR:aea 12/30/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

December 30, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Use of Presidential Seal on Stamps

Next year the U.S. Postal Service will issue a series of stamps honoring each of the 35 deceased Presidents. The Postal Service will sell a collector's set of the stamps in a book with the stamps, background material, and photographs, as it usually does for major stamp series. "The Presidential Mint Set" book will contain facts and anecdotes on each of the Presidents, along with the President's stamp. The Postal Service would like permission to reproduce the Seal of the President on the book cover.

The Postal Service is "an independent establishment of the executive branch of the Government of the United States," 39 U.S.C. § 201. Even apart from the Service's governmental status, this contemplated use of the Seal would seem to be permitted by Subsection 1(b) of Executive Order 11649, which authorizes use of the Seal in books or pamphlets "incident to a description or history of...the Presidency." I have no difficulty viewing a booklet featuring stamps of the Presidents, with background information on each President, as a "history of...the Presidency," particularly since it will be issued by a governmental entity.

Attachment

THE WHITE HOUSE

WASHINGTON

December 30, 1985

Dear Mr. McCaffrey:

Thank you for your letter of December 13. In that letter you described the plans of the U.S. Postal Service to issue a set of stamps honoring the first 35 Presidents, and to issue a book for collectors containing the stamps and additional background information on the Presidents. You requested approval to reproduce the Seal of the President on the cover of the book.

The permitted uses of the Seal are limited by law. Section 713 of Title 18 of the United States Code makes it a criminal offense to use the Seal, except in accord with regulations issued by the President. Those regulations are embodied in Executive Order 11649. Copies of the pertinent statute and Executive Order are enclosed for your information.

You will notice that the Executive Order permits use of the Seal in books or pamphlets incident to a description or history of the Presidency. In view of this provision, and recognizing the unique status of the U.S. Postal Service, I have no objection to your contemplated use of the Seal. Although the Seal may be used on the book cover, as described in your letter, it should not otherwise be used in promotional materials without the prior approval of this office.

I have enclosed a black and white and a color photograph of the Seal, as you requested. Thank you for your inquiry.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Terrence W. McCaffrey
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-3100

FFF:JGR:aea 12/30/85
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 31, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Letters of Commendation

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

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1 / 1Name of Correspondent: Donna Chew☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Presidential Letters of Commendation

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Date YY/MM/DD	Type of Response	Completion Date YY/MM/DD
<u>CUHOLL</u>	ORIGINATOR		
	Referral Note:		
<u>cuat 18</u>			
	Referral Note:		
	Referral Note:		
	Referral Note:		
	Referral Note:		

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

I - Info Copy Only No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:

A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response - Initials of Signer
Code - "A"
Completion Date - Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.

Send all routing updates to Central Reference (Room 75, DEGB).

Always return completed correspondence record to Central Files.

Refer questions about the correspondence tracking system to Central Reference, ext. 2590.