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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 1, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Protection of Williamsburg Summit Logo

Michael McManus has asked for your thoughts regarding the possibility of copyrighting the logo of the Williamsburg Summit, to prevent its commercialization. Copyright protection is not available for any work of the United States government, 17 U.S.C. § 105, nor would trademark protection appear available, since the logo is not to be used in commerce, see 15 U.S.C. § 1051.

If it is necessary to protect the logo, the best approach would seem to be to establish the logo as an official seal. The logo would then be protected by 18 U.S.C. § 506, which provides:

> Whoever falsely makes, forges, counterfeits, mutilates, or alters the seal of any department or agency of the United States; or
>
> Whoever knowingly uses, affixes, or impresses any such fraudulently made, forged, counterfeited, mutilated, or altered seal to or upon any certificate, instrument, commission, document, or paper, of any description; or
>
> Whoever, with fraudulent intent, possesses any such seal, knowing the same to have been so falsely made, forged, counterfeited, mutilated, or altered --
>
> Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

The term "agency" as used in 18 U.S.C. § 506 is defined broadly in 18 U.S.C. § 6 to include "any department, independent establishment, commission, administration, authority, board or bureau of the United States," which would seem to embrace the Economic Summit office.

The logo could be established as a seal by executive order. Seals have been so established, to cite a few examples, for the Office of Administration of the Executive Office of the

President, E.O. 12112; OMB, E.O. 11600; and NASA, E.O. 10849.

Those agencies, and most agencies with a seal, are "permanent" entities, unlike the ephemeral Economic Summit, which will be of only historic interest after Memorial Day. I can, however, think of no way to protect the logo other than establishing it as a seal. As an initial matter, I would question whether such protection is really necessary. It is hard for me to imagine commercialization of the logo. The Summit is not a tourist event, and I think any concern about Economic Summit T-shirts, pennants, and caps is probably exaggerated.

I have prepared a memorandum to McManus advising him that no copyright protection is available. The draft memorandum notes the possibility of establishing the logo as a protected seal, but questions the need to do so.

Attachment

THE WHITE HOUSE

WASHINGTON

April 1, 1983

MEMORANDUM FOR MICHAEL A. McMANUS
DEPUTY ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Protection of Williamsburg Summit Logo

You have asked for our thoughts on the possibility of copyrighting the 1983 Summit of Industrialized Nations logo in order to prevent its commercialization. Under 17 U.S.C. § 105, "[c]opyright protection . . . is not available for any work of the United States Government . . . ." This precludes copyrighting the Summit logo.

If it is really necessary to protect the Summit logo, it may be possible to establish the logo as the official seal of the Economic Summit office. As a seal the logo would be protected by 18 U.S.C. § 506. This provision imposes criminal penalties on anyone who falsely makes, forges, or counterfeits an agency seal, or uses or possesses such a falsely made seal.

Designating the logo as an official seal would, however, require a formal executive order, and it would be highly unusual for a temporary, ad hoc office such as the Summit office to have an official seal. In light of these facts you should consider how serious the threat of commercialization of the logo actually is.

FFF:JGR:aw 4/1/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

April 1, 1983

APPOINTMENT PROCESS PERSONAL INTERVIEW RECORD

DATE OF INTERVIEW: March 31, 1983 (by telephone)
CANDIDATE: Richard L. Armitage
POSITION: Assistant Secretary of Defense (International Security Affairs)
INTERVIEWER: John G. Roberts

Comments

Richard L. Armitage, currently Deputy Assistant Secretary of Defense for East Asia and Pacific Affairs, is to be nominated for the post of Assistant Secretary of Defense for International Security Affairs, pursuant to 10 U.S.C. § 136(a). Mr. Armitage's financial status is straightforward. [redacted] b6

Mr. Armitage states that he knew of nothing in his background that could be a source of embarrassment to the President, and that he had no reason to suppose that his senators would react adversely to his nomination.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 4, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Draft Proclamation Designating May 13, 1983, as American Indian Day

Dodie Livingston has requested comments by close of business April 5 on the above-referenced draft proclamation. The proclamation, authorized and requested by Public Law 97-445, was prepared by the Department of Interior and has been approved by OMB. The proclamation is somewhat unusual in that it goes beyond the typical glorification of the commemorated group and promotes the Administration's policy initiative in dealing with tribes on a government-to-government basis. I do not, however, have any legal objections the draft proclamation.

Attachment

THE WHITE HOUSE

WASHINGTON

April 4, 1983

MEMORANDUM FOR DODIE LIVINGSTON

FROM: FRED F. FIELDING

SUBJECT: Draft Proclamation Designating May 13, 1983, as American Indian Day

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

FFF:JGR:aw 4/4/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 4, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Draft Letter to Senator Hawkins Re: National Foundation on Youth and Drugs

Richard Darman has requested comments by close of business April 5 on a draft Presidential letter to Senator Hawkins, congratulating her on the establishment of the National Foundation on Youth and Drugs. You will recall that an earlier draft of this letter was submitted for our comments, and you noted no legal objections in a memorandum to Darman dated February 23. I have attached a copy of my previous memorandum on the proposed letter, in case you had not committed it to memory. The new draft makes only stylistic changes, and I have accordingly prepared another "no legal objection" memorandum for your signature.

Attachment

THE WHITE HOUSE

WASHINGTON

April 4, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Letter to Senator Hawkins Re:
National Foundation on Youth and Drugs

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

FFF:JGR:aw 4/4/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 4, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Proposed Testimony of DEA Assistant Administrator Monastero Before the House Committee on Foreign Affairs

DEA Assistant Administrator Frank Monastero has submitted testimony he proposes to deliver April 6 before the House Committee on Foreign Affairs, concerning DEA's international efforts. The testimony reviews DEA's efforts to promote crop eradication and substitution in heroin, cocaine, and marihuana source countries. With respect to heroin, it discusses initiatives in Pakistan, the only "Golden Crescent" country with which the United States has normal relations, and support of Royal Thai Government actions against the drug warlords who control opium cultivation, processing, and traffic in the "Golden Triangle." Turning to cocaine, the testimony reviews eradication efforts in South America and recent improvements in DEA liaison programs in that area. The testimony also discusses marihuana eradication in Central and South America, noting that the success of paraquat programs abroad depends in large measure on our own willingness to use paraquat in the United States.

I see no legal objections to the proposed testimony.

THE WHITE HOUSE

WASHINGTON

April 4, 1983

APPOINTMENT PROCESS PERSONAL INTERVIEW RECORD

DATE OF INTERVIEW: April 4, 1983 (by telephone)
CANDIDATE: Lois H. Herrington
POSITION: Assistant Attorney General, Office of Justice Assistance, Research, and Statistics
INTERVIEWER: John G. Roberts JGR

Comments

Lois H. Herrington is to be nominated for the position of Assistant Attorney General, with responsibility for the Office of Justice Assistance, Research, and Statistics (OJARS). No such post is specifically established by statute. On the contrary, under 42 U.S.C. § 3781(a) "[t]he chief officer of the Office of Justice Assistance, Research, and Statistics shall be a Director appointed by the President by and with the advice and consent of the Senate."

The Office of Legal Counsel, however, has determined that there is an available Assistant Attorney Generalship to which an individual may be nominated, and that the individual may be given responsibility for OJARS. The Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, amended 28 U.S.C. § 506 to provide a tenth Assistant Attorney General. That post has never been filled. The Office of Legal Counsel has opined that the slot is available for use by the Attorney General in his discretion, even though the legislative history of Pub. L. No. 95-598 indicates that the new Assistant Attorney General was to supervise the United States Trustee program. A copy of that opinion is attached.

Mrs. Herrington recently served as chairman of the President's Task Force on Victims of Crime. Her associations and financial interests do not appear to raise any conflicts problems. She is associated with Queen's Bench, a legal sorority, and the Diablo Scholarship Foundation, a non-profit charitable endeavor. Her financial interests and those of her spouse are primarily in real estate. Mrs. Herrington reported that no controversies had arisen during her service at the Department of Justice, and that she was not personally known to her senators.

THE WHITE HOUSE

WASHINGTON

April 4, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: H.R. 1314 -- Reorganization Act Amendments of 1982

James C. Murr of OMB has asked for our views on the above-referenced bill, which is expected to be the subject of hearings this month before the House Committee on Government Operations. The bill, which is the result of long negotiations between OMB and Chairman Brooks, essentially repeals the legislative veto mechanism for approval of reorganization plans. Reorganization plans currently become effective if not "vetoed" by either House within sixty days, 5 U.S.C. § 906. The bill would require a joint resolution approving the reorganization, signed by the President.

The bill represents the Administration's legislative veto position coming home to roost, since its effect in this case will be to make it much more difficult for a President to achieve a reorganization. I discussed the question with Ted Olson, who believes that the bill is not only constitutionally permissible but constitutionally required. He noted that the Carter Administration had taken the position that legislative veto provisions with respect to reorganization plans were somehow "different" and less objectionable than run-of-the-mill legislative vetoes. This position, however, was rejected by this Administration during arguments in the Chada case.

I am advised by James Murr that OMB and Brooks have reached an informal agreement in support of the bill. OMB would now like to send a formal letter indicating Administration support. The letter would object to two aspects of the bill other than the repeal of the legislative veto. Section 4 of the bill requires submission of drafts of any executive order, directive, or administrative action likely to accompany a reorganization. OMB plans to object to such a formal requirement. Section 5 of the bill adds two items to the list of restrictions on the possible contents of reorganization plans in 5 U.S.C. § 905. Section 5 would preclude renaming executive departments and creating new agencies

through reorganization plans. OMB plans to object to the provision barring creation of new agencies by reorganization plan. The issue is really not significant, since H.R. 1314 would make a reorganization plan essentially like any other bill. Providing that some proposals must be submitted as a regular bill rather than a reorganization plan thus does not alter the President's powers -- the alteration is accomplished by repeal of the legislative veto. Nonetheless, there are advantages in terms of legislative scheduling and priorities accompanying reorganization plan treatment, and there is no harm in the contemplated OMB objection.

Attachment

THE WHITE HOUSE

WASHINGTON

April 4, 1983

MEMORANDUM FOR JAMES C. MURR
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: H.R. 1314 -- Reorganization Act Amendments of 1982

Counsel's Office has no objection to a letter in support of the above-referenced bill. It is our understanding that the contemplated letter will object to sections 4 and 5 of the bill.

FFF:JGR:aw 4/4/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 5, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Retirement of James Coyne Campaign Debt

I submitted a memorandum giving James Coyne guidance on retiring his campaign committee debts for your approval, indicating that once approved I would review the memorandum with the Office of Government Ethics. You concurred, and OGE agreed with the guidance in the memorandum. Subsequently, I became concerned about possible Hatch Act difficulties, because of Coyne's status as an SES employee of the Commerce Department. The General Counsel of the Office of Personnel Management, Joseph Morris, has advised, however, that there would be no Hatch Act problems if Coyne left active fundraising to the James Coyne for Congress Committee -- which owes Coyne the debt in question -- as I understand he intends to do. Morris advises that Coyne could appear and speak at the fundraiser without encountering Hatch Act problems. I have added a paragraph to the Coyne memorandum noting that the fundraising activities of Coyne and his Committee should be strictly limited to retiring pre-existing debts from the past campaign, and that Coyne himself should not actively engage in soliciting contributions or organizing fundraising functions, although he may attend and speak at a function organized by the Committee. The memorandum is now ready to be sent to Coyne.

Alternatively, any Hatch Act problems could be avoided by transferring Coyne to the White House payroll. John Rogers has stated that he is unwilling to do this in the absence of a directive from Mr. Deaver.

Attachment

THE WHITE HOUSE

WASHINGTON

April 5, 1983

MEMORANDUM FOR THE HONORABLE JAMES COYNE
SPECIAL ASSISTANT TO THE PRESIDENT
PRIVATE SECTOR INITIATIVES

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Retirement of the Debts of the
James Coyne for Congress Committee

As a Special Assistant to the President for Private Sector Initiatives, you are in a unique position with regard to your efforts to retire the campaign debts of your 1982 Congressional Campaign Committee (the "Committee"). As a Special Assistant to the President, and an SES employee of the Department of Commerce detailed to the White House, you are subject to the Standards of Ethical Conduct for Government Officers and Employees as set forth in Executive Order No. 11222, and, as a matter of policy, the Standards of Conduct for White House Employees, 3 C.F.R. § 100.735. Further, several provisions of the Federal Criminal Code, 18 U.S.C. §§ 201, 203, 209, 210, 211, 602, 603 and 607 are applicable to you as a Federal employee and should be reviewed carefully in the course of retiring the Committee's debts. Since the Committee owes a substantial debt to you as an individual, contributions to the Committee must be considered indirect payments to you.

Outlined below is our analysis of the restrictions of each of the statutory provisions */ and the Executive Order noted above which are or should be considered applicable to your activities in connection with any efforts to retire the debts of the Committee. Additionally, we have attached a summary of the general guidelines which you and your campaign committee should follow in planning the Committee's fundraising activities to retire the Committee's debts.

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*/ All references to statutory requirements contained herein, unless otherwise specifically noted, are paraphrases of the referenced statutes. Accordingly, when in doubt as to the applicability of these statutory provisions to specific facts or circumstances, reference should be made directly to the statute in question.

As an initial matter, it should be noted that the Hatch Act, 5 U.S.C. § 7324, applies to you as an employee of the Department of Commerce. We have, however, been advised by the General Counsel of the Office of Personnel Management that the Hatch Act would not preclude efforts by the James Coyne for Congress Committee to retire pre-existing debts it owes you from past elections. You personally, however, should not engage in soliciting contributions or organizing fundraising events, although you may attend events organized by the Committee. Fundraising efforts by the Committee should be strictly limited to retiring debts from your past campaign.

18 U.S.C. § 201: provides in part that any public official may not solicit, accept, receive or agree to receive anything of value for himself or for any other person or entity, in return for being influenced in his performance of any official act; for being induced to do or omit any act in violation of his official duty; or being influenced in his testimony under oath in any proceeding before any court or Congressional hearing. Violations of this provision are punishable by fine, imprisonment or both, and possible disqualification from holding any office of honor or trust under the United States.

Additionally, 18 U.S.C. § 201 prohibits any public official from soliciting, accepting, receiving or agreeing to receive anything of value for himself or for another person or entity for or because of any official act, including testimony before any court or Congressional committee, to be performed by him. Violations of this provision are punishable by fine, imprisonment or both.

Under certain circumstances these restrictions may preclude you or the Committee from accepting any contributions from individuals or political committees, including political action committees (PAC's), whose specific purpose in making such contribution is to influence your official acts. To avoid any appearance of a violation of this provision, you and the Committee should not solicit or accept contributions from any individual, political committee or organization which has interests or represents individuals or organizations having interests that are now or will be affected by the actions or non-actions of the Office of Private Sector Initiatives.

18 U.S.C. § 203: prohibits Members of Congress, or officers or employees of the Federal government from receiving, soliciting, or seeking any compensation for services rendered by them or any other person on behalf of another person in relation to any proceeding, request for a ruling or other determination, controversy or particular matter in which the United States is a party or has a direct and substantial interest. Violation of this provision is punishable by fine, imprisonment or both. Accordingly, you and the Committee should not accept contributions from any

individual, political committee or organization if the acceptance of such contribution could reasonably be perceived as compensation for anticipated services to be rendered by you as a Federal employee on behalf of such individuals or groups represented by such political committees. Hence you and the Committee should not solicit or accept contributions from entities which have or will have interests pending before the Office of Private Sector Initiatives or before other Federal government agencies which could reasonably be construed to be subject to significant influence by you.

18 U.S.C. § 209: prohibits supplementation of the salary of a Federal official as compensation for his services as a Federal official. No payments to the Committee may be solicited or accepted as additional compensation for your services as a Special Assistant to the President. Contributions may only be solicited and accepted to retire the Committee's preexisting debt. As a general matter, you and the Committee should not accept any contributions which you have reason to believe would not have been made but for your current Federal employment.

18 U.S.C. § 210: prohibits the payment of money or anything of value to any person, firm or corporation in consideration of the use or promise to use any influence to procure any appointive office in the United States.

18 U.S.C. § 211: prohibits the solicitation or receipt, either as a political contribution or personal emolument, of any money or thing of value in consideration for the promise of support or use of influence in obtaining for any person any appointive office in the United States.

Out of an abundance of caution, these prohibitions should be viewed by you and the Committee as prohibiting the acceptance of any contributions from individuals whom you may wish to appoint to positions within your office, or who are seeking appointments to positions within your office or any other position within the Federal government.

18 U.S.C. § 602: prohibits any candidate for the Congress, any Senator or Congressman, or any officer or employee of the United States or any department or agency thereof, from knowingly soliciting political contributions from any other such officer or employee.

Thus, you and the Committee should take the steps necessary to ensure that no Senators or Congressmen, or officers or employees of the Federal government, are knowingly solicited for contributions to the Committee.

18 U.S.C. § 603: prohibits an officer or employee of the Federal government from making political contributions to their supervising officers in the Federal government. For purposes of this provision, a contribution to a political

committee authorized by an officer of the Federal government is considered a contribution to such officer.

The Committee, therefore, should not accept any contributions from individuals presently employed by your office.

18 U.S.C. § 607: prohibits the solicitation or acceptance of a political contribution in a Federal building. There is an exception to this prohibition for the receipt of contributions in Federal buildings by persons on the staff of a Senator or Congressman under specific circumstances, but such exception would no longer be applicable to you or the Committee.

This provision would preclude all solicitation of contributions at the Office of Private Sector Initiatives. Further, in the event that any political contributions to the Committee are received at your office, such contributions should be returned directly to the donor with instructions as to the appropriate mailing address for the Committee.

Section 201(c) of Executive Order No. 11222 provides in part:

> It is the intent of this section that employees avoid any action . . . which might result in, or create the appearance of:
>
> (1) using public office for private gain;
> (2) giving preferential treatment to any organization or person;
> (3) impeding government efficiency or economy;
> (4) losing complete independence or impartiality of action;
> (5) making a government decision outside official channels; or
> (6) affecting adversely the confidence of the public in the integrity of the Government.

You and the Committee should, therefore, avoid soliciting or accepting unsolicited contributions whose receipt will create the appearance of precluding your exercise of independent judgment or impartial action with regard to the issues coming before you. Accordingly, you and the Committee should not accept contributions from individuals or political committees who have not previously contributed to your political committees and whose contributions, in light of your current position, could be viewed as efforts to affect your independence and impartiality in issues

coming before you. Additionally, the Committee should not solicit contributions in any manner that suggests that you are using your appointment to Federal office for personal gain. Solicitations by the Committee referring to your current position could create such an appearance, and should, therefore, be avoided.

Finally, the issues raised by settlement of the debts of the Committee for less than their full amount are governed by the provisions of the Federal Election Campaign Act of 1971, as amended, and its regulations. Although a full discussion of those provisions is beyond the scope of this memorandum, you should be aware that all of the above considerations which apply to contributions would also apply to the forgiveness of all or part of an existing debt.

If you have any questions concerning the appropriateness of accepting any particular contributions, or concerning any other matters discussed in this memorandum, please do not hesitate to contact this office for guidance.

Attachment

SUMMARY OF GENERAL GUIDELINES FOR ACCEPTANCE OF POLITICAL CONTRIBUTIONS

I. GENERAL RULE:

The Committee should not solicit or accept contributions from any individual, political committee, or organization (a) if the individual or entities represented by the Committee or organization has interests in matters which are or may be pending before your office or is affected or regulated by any policies, decisions or regulations of your office, or (b) if such solicitation or acceptance would create the appearance of precluding your exercise of independent judgment or impartial action with regard to the issues coming before you, or otherwise affect adversely the confidence of the public in the integrity of the government.

II. SPECIFIC PROHIBITIONS:

Fundraising activity is permitted only to retire debts from your past campaign. You personally should not actively engage in soliciting contributions or organizing fundraising activities.

Do not accept any contributions from individuals whom you may wish to appoint to positions within the Office of Private Sector Initiatives.

Do not accept any contributions from individuals who are seeking appointments within the Office of Private Sector Initiatives or any other position within the Federal government.

Do not solicit any Senators, Congressmen or officers or employees of the Federal government for contributions to the Committee.

Do not accept any contributions from individuals presently employed by the Office of Private Sector Initiatives.

Do not solicit or accept any contributions in your Federal offices. If any contributions are received at these offices, such contributions should be returned directly to donors with instructions as to the appropriate mailing address of the Committee.

Do not solicit contributions in any manner which suggests that you or the Committee are using your appointment to Federal office for your personal gain. Solicitations should not include reference to the fact of your current Federal employment.

THE WHITE HOUSE

WASHINGTON

April 5, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Civil Aeronautics Board Decisions in Transamerica; U.S.-People's Republic of China and Airborne Express, Inc.

Richard Darman's office has requested comments by April 7, 1983 on the above-referenced CAB decisions involving international aviation, which were submitted for Presidential review as required by § 801(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 1461(a). Under this section, the President may disapprove, solely on the basis of foreign relations or national defense considerations, CAB actions involving either foreign air carriers or domestic carriers involved in foreign air transportation. If the President wishes to disapprove such CAB actions, he must do so within sixty days of submission (in these cases, by April 29, 30 and 30, 1983, respectively).

The orders here have been reviewed by the appropriate departments and agencies, following the procedures established by Executive Order No. 11920 (1976). OMB recommends that the President not disapprove, and reports that the NSC and the Departments of State, Defense, Justice and Transportation have not identified any foreign relations or national defense reasons for disapproval. Since these orders involve domestic carriers, judicial review is theoretically available. Hence, the proposed letter from the President to the CAB Chairman prepared by OMB includes the standard sentence designed to preserve availability of judicial review, as contemplated by the Executive Order for cases involving domestic airlines.

My review of the orders and related materials confirms the OMB description of these as "routine, noncontroversial" matters. The order in Transamerica denies that airline's request to become back-up carrier on Pan American's China route, in keeping with CAB practice only to assign back-up

carriers on routes being served for the first time by a U.S. carrier. The order in U.S.-People's Republic of China selects Northwest Airlines as the second U.S. carrier to serve China, and the order in Airborne Express authorizes service from Washington and Cleveland to Toronto, and vice versa.

A memorandum for Darman is attached for your review and signature.

Attachment

THE WHITE HOUSE

WASHINGTON

April 5, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decisions in Transamerica; U.S.-People's Republic of China and Airborne Express, Inc.

Our office has reviewed the above-referenced CAB decisions and related materials and has no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(a).

We also have no legal objection to OMB's recommendation that the President not disapprove these orders or to the substance of the letter from the President to the CAB Chairman prepared by OMB.

FFF:JGR:aw 4/5/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

April 5, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Correspondence from Alyn H. Denham

Alyn H. Denham of Nashville, Tennessee has copied you, along with several Republican senators, on a letter he sent to Senator Helms. The letter opposes as a waste of money a pending bill to fund renovation of a Davidson County, Tennessee train depot. Denham also enclosed excerpts from a newsletter he has written on Soviet initiatives in Nicaragua and Angola. I doubt a response is expected and see no reason for one.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 5, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Presidential Seal Inquiry from Harlan R. Crow

Harlan R. Crow of the Trammell Crow Company has written requesting permission to use the Presidential Seal in a sculpture. The sculpture, to be executed by a Dallas artist, would be installed next to a collection of letters from different Presidents acquired by Mr. Crow. The letters are in a Dallas office building (presumably Mr. Crow's) and the display is open to the public without charge.

Executive Order 11649 permits use of the Seal "in libraries, museums, or educational facilities incident to . . . exhibits relating to . . . the Presidency," and "on a monument to a former President." Mr. Crow's contemplated use comes close, but does not fall within these permitted categories. The Seal can thus only be used if you sanction the use in writing as one for an exceptional historical, educational, or newsworthy purpose. While I am sure Mr. Crow treasures his collection, I do not think his use satisfies the applicable criteria. I have drafted a reply to Mr. Crow for your signature.

Attachment

THE WHITE HOUSE

WASHINGTON

April 5, 1983

Dear Mr. Crow:

Thank you for your letter requesting authorization to use the Seal of the President in a sculpture. It is our understanding that the sculpture would accompany a display of Presidential letters you have collected.

The permitted uses of the Seal of the President are limited by statute and executive order. I have attached a copy of the pertinent provisions for your information. Since your contemplated use of the Seal does not fall within any of the categories of uses permitted by law, I must decline to grant the permission you seek.

Thank you for your inquiry. I am sorry that our response could not be a favorable one.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Harlan R. Crow
Partner
Trammell Crow Company
717 North Harwood Street
Suite 2200
Dallas, Texas 75201

Enclosures

FFF:JGR:aw 4/5/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

April 5, 1983

MEMORANDUM FOR THE FILE

FROM: JOHN G. ROBERTS JGR

SUBJECT: Drug Awareness Campaign

Based on a discussion with FFF, I advised Sheryl Eberly that Counsel's Office had no objection to the proposed letter from Mrs. Reagan to be sent to 35,000 grade school principals, announcing the imminent arrival of the anti-drug comic books. I also advised Eberly that White House envelopes could be given to the Education Department for addressing, stuffing, and mailing, and that the envelopes could be run through a postage meter rather than individually stamped.

On April 1, I met with Dr. Turner and expressed to him our concern that our office had not been consulted earlier with respect to the Warner-Keebler involvement. I noted that we would have deleted specific mention of the companies in his letter in the teacher's guide, and that no such mention should be made of other companies in any future similar projects. I also raised the general concern over involving the White House in commercial endeavors, and the importance of avoiding augmentation of appropriations problems. Turner indicated that future projects were planned, and agreed to consult more closely with our office on those projects.

THE WHITE HOUSE

WASHINGTON

April 5, 1982

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: CAB Decision Re: U.S. Canada "Seat Sale" Fares Proposed by Air Canada - 10 Day Case

This memorandum is addressed to you because Eastern Air Lines, Inc., is involved in the subject CAB order.

Richard Darman's office asked for comments by 3:00 p.m. April 6 on the above-referenced CAB 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 1482(j) of Title 49, "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 by the Board (in this case, by April 7, 1983).

The CAB order would vacate a February 22, 1983 CAB order, which suspended certain proposed discount fares. According to the CAB order, negotiations between the U.S. and Canada have resulted in a mutually satisfactory resolution of the issues which occasioned the original suspension.

The order here has been reviewed by the appropriate departments and agencies, following the procedures established by Executive Order No. 11920 (1976). OMB recommends that the President allow the order to go into effect, and reports that the NSC and the Departments of State, Defense, Justice and Transportation have no objection to the Board's 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 CAB orders not being disapproved, rather than sending a "no disapproval" letter to the Board.

The letter to the President from CAB Chairman McKinnon contains an error, which I note for completeness and not because it requires any action on our part. The letter states the proposed decision is being submitted under

section 801(a) of the Federal Aviation Act of 1958 -- the sixty-day provision -- although it is clear from the order and the rest of the letter that section 801(b) -- the ten-day provision -- is applicable.

I see no reason for disagreeing with the recommendation that the President not disapprove this order.

Attachment

THE WHITE HOUSE

WASHINGTON

April 5, 1982

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: CAB Decision Re: U.S. Canada "Seat Sale" Fares Proposed by Air Canada - 10 Day Case

We have reviewed the above-referenced CAB 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.

Mr. Fielding did not participate in the review of this matter.

FFF:JGR:aw 4/5/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 5, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Draft Letter to Senator Hawkins Re: National Foundation on Youth and Drugs

Yet another redraft of the Senator Hawkins letter has been submitted for our review, containing what I consider to be minor stylistic changes. I still see no legal ojbections, and have prepared another memorandum for your signature to Darman.

Attachment

THE WHITE HOUSE

WASHINGTON

April 5, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Letter to Senator Hawkins Re:
National Foundation on Youth and Drugs

Counsel's Office has reviewed the April 5 draft of the above-referenced letter, and finds no objection to it from a legal perspective.

FFF:JGR:aw 4/5/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

April 6, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Gift Inquiry from Pam Turner

Pam Turner has advised us that Senator Abdnor has requested an opportunity for one of his constituents to present a sculpture (value $8,000, cost to donors $3,500) to the President. She has asked for our assistance in preparing the paperwork. I have prepared a memorandum to Turner advising that the President can accept such a gift on behalf of the American people for possible repose in a Presidential library. The memorandum also advises her that the necessary paperwork is filled out after receipt of the gift, and that she should contact Fred Ryan concerning scheduling a meeting with the President for Senator Abdnor and his generous constituent.

THE WHITE HOUSE

WASHINGTON

April 6, 1983

MEMORANDUM FOR PAM TURNER

FROM: FRED F. FIELDING

SUBJECT: Gift Inquiry from Senator Abdnor

You have advised this office that Senator Abdnor has requested an opportunity for one of his constituents to present a sculpture to the President. The President could accept such a gift on behalf of the people of the United States, for possible inclusion in a Presidential library. Scheduling a meeting with the President for Senator Abdnor and his constituent is of course the province of Fred Ryan and the Scheduling Office. There is no necessary paperwork to be completed prior to any presentation of the gift. Once the gift is received, it will be appraised and a brief form will be filled out indicating that the gift was accepted on behalf of the American people for possible inclusion in a Presidential library.

FFF/JGR:sts
FFFielding
JGRoberts
Subj.
Chron.

THE WHITE HOUSE

WASHINGTON

April 6, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Presidential Letter to be Published in Pharmacy Times

Richard Darman has requested comments by close of business today on the above-referenced draft letter. The letter, prepared in Carlton Turner's office, is to be included in a special issue of Pharmacy Times devoted to drug abuse. Pharmacy Times is the trade journal of the pharmacy profession, and the salutation of the draft letter reads "Dear Pharmacist".

I see no legal objection to the letter, although it does contain two grammatical errors. I have drafted a memorandum to Darman correcting them.

THE WHITE HOUSE

WASHINGTON

April 6, 1983

MEMORANDUM FOR RICHARD G. DARMAN

FROM: FRED F. FIELDING

SUBJECT: Presidential Letter to be Published in Pharmacy Times

Counsel's Office has reviewed the above-referenced draft letter, and finds no objection to it from a legal perspecitve.

The draft letter does, however, contain two grammatical errors. In the second sentence of the second paragraph "too" should be deleted, since the point of the sentence has not been previously made in the letter. In the first sentence of the third paragraph, "which" should be "that".

FFF/JGR:sts
FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

April 6, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS JGR

SUBJECT: Holdover Status of Federal Reserve Board Chairman

You requested that I amend my memorandum of March 24, 1983 on the above-referenced topic in order that it could be sent from Fred Fielding to Helene von Damm. An appropriately revised draft is attached. In light of the sensitive nature of the topic, my previous memorandum was stamped "Administratively Sensitive". Since this memorandum is to be signed by the Counsel, I did not presume to stamp it, but I recommend that it also bear the "Administratively Sensitive" label.

THE WHITE HOUSE

WASHINGTON

April 6, 1983

MEMORANDUM FOR HELENE VON DAMM

FROM: FRED F. FIELDING

SUBJECT: Holdover Status of Federal Reserve Board Chairman

You have inquired of this office concerning the consequences of the expiration of the term of the Chairman of the Federal Reserve Board, and in particular whether the incumbent could hold over as Chairman until qualification of a successor. The pertinent statute provides that the Chairman of the Federal Reserve Board shall serve "for a term of four years." 12 U.S.C. § 242. Paul Volcker's term as Chairman expires August 5, 1983; his term as a member of the Board does not expire until January 31, 1992.

In an opinion dated January 31, 1978, the Office of Legal Counsel of the Department of Justice considered the status of the Chairmanship of the Federal Reserve Board in the event the President's nominee was not confirmed by the time the incumbent's term expired. That opinion concluded that the statutory holdover provision applicable to members of the Board did not apply to the office of Chairman. The Chairman cannot hold over; his term expires when the statutory period has run. The opinion further concluded that the Vice Chairman should not assume the responsibilities of the Chairman upon expiration of the Chairman's term. The statute provides that the Vice Chairman shall preside at Board meetings in the "absence" of the Chairman, 12 U.S.C. § 244, but the opinion concluded that the term "absence" referred to a temporary condition, not a vacancy.

The opinion determined that, when a vacancy arises in the office of Chairman while the President's nominee is awaiting Senate confirmation, the President should designate a member of the Board to serve as Acting Chairman. This was in fact done by President Carter on February 2, 1978, when he designated Arthur F. Burns, the previous Chairman, to serve as "Acting Chairman" until designation of a successor. Mr. Burns served as Acting Chairman until March 8, 1978, when G. William Miller was designated Chairman. (The need to have an Acting Chairman was occasioned by the fact that Mr. Miller was not

confirmed as a member of the Board until March 3, 1978; at the time the office of Chairman did not require separate Senate confirmation, as it now does.)

The option of designating an Acting Chairman, however, would not seem to be available in the absence of a pending nomination or other circumstance indicating that the designation was only to cover a short-term, emergency situation. There is pertinent case law to the effect that the President cannot appoint "acting" officers in the face of statutes requiring Senate confirmation, in the absence of an emergency situation.

The leading case is Williams v. Phillips, 360 F. Supp. 1363 (D.D.C.), motion for stay pending appeal denied, 482 F. 2d 669 (D.C. Cir. 1973). President Nixon appointed Howard Phillips Acting Director of the Office of Economic Opportunity; the post of Director required Senate confirmation. The district court enjoined Phillips from taking any action as Acting Director of OEO, ruling that "in the absence of . . . legislation [providing for an acting director] or legislation vesting a temporary power of appointment in the President, the constitutional process of nomination and confirmation must be followed." 360 F. Supp., at 1371. The Court of Appeals noted that even if the power existed "to appoint an acting director for a reasonable period of time before submitting the nomination of a new director to the Senate," such a power would not justify the situation before it, in which Phillips had served as Acting Director for four months with no nomination having been submitted to the Senate. 482 F. 2d, at 670-671. The previously cited O.L.C. opinion specifically distinguished the Phillips case on the ground that in Phillips no name had been submitted to the Senate, while in the case considered in that opinion a nomination was pending.

According to the O.L.C. opinion, the Chairman of the Federal Reserve Board cannot hold over; in the event of a vacancy, the President must designate an Acting Chairman. According to Phillips, such an acting official can only be appointed for a short period and in an "emergency" situation. The combined effect of these authorities is that, upon expiration of Chairman Volcker's term, the President may appoint any member of the Board Acting Chairman (including Volcker), but only if a nomination for Chairman is pending or soon to be submitted.

Attachments

FFF/JGR:sts subj.
FFFielding chron.
JGRoberts