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THE WHITE HOUSE

WASHINGTON

October 25, 1985

MEMORANDUM FOR MAX FRIEDERSDORF

FROM: FRED F. FIELDING

SUBJECT: Request for the President to Serve as the
Honorary National Chairman of the Campaign
for Norman Rockwell

Silvio Conte has asked the President to serve as Honorary Chairman of a fundraising campaign to raise funds to expand a Norman Rockwell museum located in Conte's district. Attached is a letter I propose to send to Conte, denying the request, unless you have different views. Please advise.

Attachment

FFF:JGR:aea 10/25/85

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 23, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Use of Photos in Upcoming Book on the
President's Early Days in Dixon.

Norman Wymbs of the Ronald Reagan Home Preservation Foundation has now written you to request permission to use a photograph of the President flipping through the manuscript of Wymbs's book in the book or on the dust jacket. You will recall that we discussed this earlier, in response to an inquiry from the Photo Office. You determined that the photo should not be used, not only because of the usual concern about implying endorsement of the book, but also because the book apparently contains numerous errors. The attached draft reply to Wymbs advises as tactfully as possible that the photo may not be used, despite the fact that all proceeds from the book will go to the Foundation.

Attachment

THE WHITE HOUSE

WASHINGTON

October 23, 1985

Dear Mr. Wymbs:

Thank you for your letter of October 18, concerning the use of White House photographs in your upcoming book on the President's early years in Dixon.

As you know, you are free to use the photographs provided to you by Kathy Osborne, with the one exception of the photograph of the President reviewing an earlier draft of your manuscript. I am afraid that we must decline to approve any use of this photograph. White House policy generally precludes use of photographs of the President in any manner that suggests endorsement of particular ventures or products, including books. Certainly the photograph in question would convey the impression of Presidential endorsement.

I understand that all proceeds from your book will benefit the Ronald Reagan Home Preservation Foundation, and of course this particular book is something of a special case. Nonetheless, I hope you will appreciate that making an exception in this instance would open us to charges of inconsistency and make it difficult to enforce our policy in other, less appealing cases.

Thank you in advance for understanding the position we must take. With all best wishes,

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Norman E. Wymbs
391 SE Spanish Trail
Egmont Patches, FL 33431

FFF:JGR:aea 10/23/85
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

October 28, 1985

MEMORANDUM FOR RICHARD A. HAUSER

FROM:

JOHN G. ROBERTS 

SUBJECT:

Revisions to the Reagan Record

David Chew has asked that comments on the attached comprehensive review of the Reagan record be sent directly to Tom Gibson by Thursday, October 31. I have reviewed the proposed "record," and have identified a few changes that should be made, in the attached draft reply for your signature.

Attachment

THE WHITE HOUSE

WASHINGTON

October 28, 1985

MEMORANDUM FOR TOM GIBSON
SPECIAL ASSISTANT TO THE PRESIDENT
DIRECTOR, PUBLIC AFFAIRS

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Revisions to the Reagan Record

Counsel's Office has reviewed the proposed Reagan record, and recommends the following:

1. In the third bullet item on page 25, delete "and most Members of Congress." I am not aware that any member disagrees with "equal pay for equal work," and as written the sentence suggests that some do. In the fourth bullet item on the same page, I would substitute "nurse" for "teacher" in the hypothetical, simply to avoid confusing the issue with merit pay and other concerns about compensation of teachers.

2. In the seventh bullet item on page 42, it is misleading to state that the President "created" the National Commission on Space, since the Commission was established by statute. I would substitute "appointed" for "created."

3. With respect to the sixth bullet item on page 49, only the European Community export subsidies of wheat involved direct action under GATT; the other cases involved action under Section 301 of the Trade Act of 1974. Actions under Section 301 often do but need not concern matters that are illegal under GATT. The item could be rephrased as follows:

"For example, the President has directed the United States Trade Representative to initiate or accelerate unfair trade proceedings under Section 301 of the Trade Act of 1974 against canned fruit export subsidies offered by the European Community; Japanese leather and tobacco import restrictions; Korean insurance policy barriers; and Brazil's import restrictions on micro-electronic products. He has also directed

the filing of a proceeding under the General Agreement on Tariffs and Trade (GATT) against wheat export subsidies offered by the European Community."

cc: David L. Chew

RAH:JGR:aea 10/28/85

bcc: FFfielding

RAHauser

JGRoberts

Subj

Chron

THE WHITE HOUSE

WASHINGTON

October 29, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Bicentennial Certificates

I should have mentioned in my previous memorandum that I checked with the Civil Division attorney handling the case (Tom Millet), who said he had no objection to these certificates. The litigation approach is to argue that the Commission is a governmental agency with operational responsibilities, and it is not necessary to decide if it is in the executive, judicial, or legislative branch, or a combination of the three. As a governmental agency with operational responsibilities, the Commission is (1) subject to FOIA (the Commission has conceded this point), and (2) not subject to FACA (since it is operational, and not purely advisory).

A possible response may be that the Commission cannot have operational responsibilities, because the service of the Congressional members would then be unconstitutional. Justice and the Commission are prepared to state, if this issue is raised, that the Congressional members serve only in an advisory and ceremonial role. Millet stated that sending different certificates of appointment to the Congressional members would, if anything, strengthen this surrebuttal.

THE WHITE HOUSE

WASHINGTON

October 29, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Certificates for Legislative and Judicial
Branch Appointees to the Commission on the
Bicentennial of the U.S. Constitution.

The statute establishing the Commission on the Bicentennial of the U.S. Constitution provided that certain appointments to the Commission be made by the President from lists submitted by the Chief Justice and the Hill leadership. This process resulted in the appointment of members of Congress and sitting judges to this executive branch entity. Separation of powers and incompatibility clause concerns generally preclude issuing commissions of appointment as executive officers to those serving in the other branches. Accordingly, while other members of this Commission received commissions of appointment from the President, the representatives of the judiciary and the legislative branch -- Circuit Judges Cornelius Kennedy and Charles Wiggins, Senators Stevens and Kennedy, and Congressman Crane -- did not.

The Chief Justice, who is Chairman of the Commission, has requested that some certificate of appointment be issued to these five. We have prepared an appropriate certificate, modeled on those issued to appointees to quasi-governmental entities. These certificates satisfy the Chief Justice's request without unduly compromising our position that executive commissions generally not be issued to those serving in the other branches.

When signed, these certificates should be returned to me for presentation to the Chief Justice.

FFF:JGR:aea 10/29/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE
WASHINGTON

October 29, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Request for the President and the First Lady
to Autograph Pictures which Appeared on the
Cover of TV Guide for the Southern California
Chapter of American Women in Radio/TV Auction

This is the item that prompted my inquiry at this morning's staff meeting. You will notice that these facts are a bit different than my hypothetical, since the request is that the President and First Lady autograph portraits that appeared on the cover of TV Guide. The attached draft for your signature advises Crispen that the request should be denied (although I readily concede that this is a borderline call).

Attachment

THE WHITE HOUSE

WASHINGTON, D.C.

October 29, 1985

MEMORANDUM FOR ELAINE CRISPEN
PRESS SECRETARY TO THE FIRST LADY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Request for the President and the First Lady
to Autograph Pictures which Appeared on the
Cover of TV Guide for the Southern California
Chapter of American Women in Radio/TV Auction

You have asked for my views on a request from the Southern California Chapter of American Women in Radio and Television that the President and First Lady autograph TV Guide cover portraits. The autographed portraits would then be auctioned off to benefit a children's hospital and a scholarship fund.

As a matter of policy we do not permit official memorabilia to be donated to be auctioned off to benefit charity. Such activity is, in essence, a marketing of the Office, and, in my view, diminishes the prestige of the Office. The President and Mrs. Reagan are free, if they choose to do so, to donate personal items, as opposed to official memorabilia, to be auctioned off to benefit charity. I would not encourage this practice, since it will inevitably precipitate a flood of requests from other charities for similar treatment.

It is not easy to determine into which category a request for an autograph on an item falls. The signature is at once official and personal. Since providing a White House photograph signed by the President would fall into the category of official memorabilia, it is my view that we should consider requests for autographs on submitted portraits in the same light. Accordingly, this request should be declined.

FF:JGR:aca 10/29/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 30, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Portal-to-Portal

You have asked for my comments on Chris Hicks's memorandum to Mr. Regan, analyzing the portal-to-portal bill that Chairman Brooks is prepared to introduce. I have no quarrel with Hicks's analysis, nor with the recommendation of Hicks and Horowitz that we support the bill. I have attached a copy of the bill itself for your information (the marginalia are not mine).

The main problem with the Brooks bill from our point of view is not the scope of coverage -- which will work out to about the same as our bill -- but the manner in which the service is authorized. The Brooks bill has precisely what we tried to avoid -- discretion in the President to choose who does and does not receive portal-to-portal. The President may choose six officials in the EOP and ten others in executive agencies, with no salary level limitation.

Aside from these chosen sixteen, the Brooks bill authorizes portal-to-portal for the Cabinet Secretaries and the United States Trade Representative, one principal deputy for each of these if authorized by the Secretary, ambassadors abroad and the ambassador to the United Nations, the Deputy Secretary of Defense and Under Secretaries of Defense, as well as the Secretaries of the Air Force, Army, and Navy, and the Joint Chiefs and the Commandant of the Coast Guard. The Director of the CIA and FBI, and the Chairman of the Fed, are also covered. There is also authority for temporary emergency portal-to-portal, and for those receiving Secret Service protection.

I think we should support the bill, *faute de mieux*. If we do not support this bill we will end up with no bill, and I think the current confusion is intolerable. The exercise of the President's discretion will doubtless become a major controversy, but at this point I think that is unavoidable.

Latest development: Congressman Bob Walker (R-PA) has told Brooks he will offer amendments to the bill restricting Congressional portal-to-portal. Walker apparently views this as an opportunity to embarrass the Democratic leadership on the Hill. Unless we get Walker to back off, Brooks will not proceed with the bill.

THE WHITE HOUSE

WASHINGTON

October 30, 1985

MEMORANDUM FOR THE ATTORNEY GENERAL

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Threat to Deliberative Privilege
Posed by the Presidential Records Act

This is the first Administration to be subject to the Presidential Records Act of 1978, 44 U.S.C. §§ 2201-2207. That Act provides, among other things, that internal White House memoranda and notes are the property of the United States, and pass under the control of the Archivist of the United States upon the conclusion of President Reagan's second term. Pursuant to 44 U.S.C. § 2204, a President, prior to leaving office, may specify durations, not to exceed 12 years, for which access to certain types of Presidential records shall be restricted. One type of document for which access may be restricted, but for no more than 12 years, is "confidential communications requesting or submitting advice, between the President and his advisers, or between such advisers." 44 U.S.C. §§ 2204(a)(5). President Reagan and Vice President Bush have exercised this option to the fullest extent possible by law.

After expiration of the specified period of restricted access (the year 2001 at the latest), all Presidential records -- even the most sensitive, confidential communications -- will be administered in accord with the Freedom of Information Act (FOIA). Pursuant to 44 U.S.C. § 2205(c)(1), however, exemption (b)(5) of FOIA -- the provision most frequently used to block disclosure of confidential deliberative documents -- is explicitly not available to withhold Presidential records from disclosure. In other words, the most sensitive White House document from this Administration will be fully open to the public by the year 2001. (I should also note that Vice Presidential records are subject to the foregoing in the same manner as Presidential records, 44 U.S.C. § 2207.)

Twelve years is a brief time in history and public life. Many of the personalities candidly discussed in sensitive White House memoranda, and certainly many of the authors of the memoranda, will be active twelve years from now. My concern is not so much the embarrassment that might result in the year 2001 when comments made under different

circumstances become public, but the danger that the prospect of disclosure after such a brief period might inhibit the free flow of candid advice and recommendations within the White House. That flow is protected by the constitutionally based doctrine of executive privilege, and a strong argument can be mounted that the statutory 12-year ceiling on restricting access is unconstitutional, at least as applied to the most sensitive White House communications.

This argument was in fact raised by the Carter Department of Justice when the Presidential Records Act was being considered by Congress. A representative of the Department's Office of Legal Counsel testified as follows:

The Supreme Court has clearly recognized that a constitutional privilege rooted in the doctrine of separation of powers extends to confidential communications between the President and his advisers and among those advisers. Although the justifications supporting the privilege may become less critical with the passage of time, there is no indication that it can be said to dissipate altogether after the passage of any particular period of years. An effective declaration that the privilege can be asserted for 10, 13, or 15 years but no longer must consequently be seen as of doubtful constitutionality. Statement of Deputy Assistant Attorney General Larry A. Hammond, Hearing Before the Senate Committee on Governmental Affairs on S. 3494, 95th Cong., 2d Sess. 14 (1978).

The Act contains a statement that "Nothing in this Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former President," 44 U.S.C. § 2205(c)(2), but that statement merely frames the dispute.

As noted, this is the first Administration subject to the Act. Prior Presidents were considered to have control over the records of their Administration, and when these records were donated to the Archives the former Presidents typically reserved to themselves or aides chosen by them the right to restrict access to sensitive communications, for periods considerably longer than the 12-year period permitted under the Act. President Nixon's case was an exception, and the authority of the Government to seize the Nixon papers and open them to public access is still being contested. In any event, the validity of the present Act is very much in doubt.

The difficulty is that no court challenge to the 12-year ceiling on restricting access can be mounted until the case is legally "ripe," which will not be until the year 2001,

when the Archivist actually proposes to release Reagan Administration documents and someone with legal standing sues to block disclosure. At that point any executive privilege claim would hinge to a large extent on the views of the incumbent President, who may or may not be in a position to place the long-term interests of the institution above short-term political interests that may be served by disclosure of Reagan Administration documents. In any event, the existence of the statute, however vulnerable to later challenge, still serves to chill the full and robust exchange of views the President requires to discharge the office.

For these reasons, steps should be taken before the end of the Administration to cure the infirmities of the Act. The most obvious possibility is legislative amendment. Other possibilities include Archives regulations explicitly recognizing the validity of possible executive privilege claims to block disclosure after the expiration of the statutory 11-year period. I welcome your views on these questions and any suggestions you might have on how to proceed.

cc: Donald T. Fagan
M. F. Gleason, Jr.

FFF:JGR:aea 10/30/85
bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 30, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS 

SUBJECT:

Estate and Gift Tax Treaty Regarding
Estate of Lady Alice Sherfield

William McChesney Martin is the U.S. executor of an estate with assets in both the U.S. and Great Britain. He wrote Mr. Regan to obtain assistance in arranging a meeting with Treasury officials, to obtain a determination under the U.S.-U.K. Estate and Gift Tax Treaty with respect to which country should be deemed to have primary jurisdiction for estate tax purposes.

I telephoned Bob Kimmitt for guidance on how to proceed. His office advised that Martin had also written directly to Secretary Baker, and that his inquiry had been routed to Ron Pearlman, Assistant Secretary for Tax Policy, for action. Treasury, in short, is already on the case, and there is no need for White House action.

The attached draft reply for your signature simply advises Martin that you assume the matter is well in hand.

Attachment

THE WHITE HOUSE

WASHINGTON

October 30, 1985

Dear Mr. Martin:

Thank you for your letter of October 28 to Chief of Staff Don Regan, which has been referred to me. In that letter you requested assistance in arranging a meeting with the appropriate officials at the Department of the Treasury, to obtain a determination under the United States-United Kingdom Estate and Gift Tax Treaty with respect to which country should exercise primary jurisdiction over the estate of the late Lady Alice Sherfield.

I am advised that this matter has already been referred to Ron Peariman, the Assistant Secretary of the Treasury for Tax Policy, for appropriate action. You should be hearing from his office, if you have not already, in the near future.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. William McChesney Martin, Jr.
Suite 904
888 17th Street, N.W.
Washington, D.C. 20006

bcc: Robert Kimmitt
FFF:JGR:aea 10/30/85
cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 30, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Presidential Message Request from Pen James
Congratulating Pan Am on the 50th Anniversary
of the China Clipper

November 22, 1985, will mark the fiftieth anniversary of the historic first flight of Pan Am's China Clipper from San Francisco to Honolulu, Midway, Wake, Guam, and Manila. The flight, which initiated commercial air service across the Pacific (it was, like all of Pan Am's groundbreaking international aviation flights, a mail run for the U.S. Government), will be re-enacted by Pan Am, using a modern 747. Tickets will be sold for the special anniversary flight. Pen James has asked for a congratulatory message from the President, noting that President Roosevelt sent a message to launch the first flight fifty years ago.

Of course, we have a firm policy against Presidential messages for commercial anniversaries. As you know, we have insisted upon adherence to this policy in the case of other golden anniversaries, and even in the case of centenaries and beyond. The fact that Pan Am is selling tickets for the special anniversary flight is another reason the President should not send a message. A third reason -- if one is needed -- is the pending controversy over Pan Am's proposed sale of most of its Pacific routes to another carrier. Competitors argue that those routes are not an asset that Pan Am can sell, but must be re-awarded by the Department of Transportation (successor to the Civil Aeronautics Board) in a proceeding open to all. Any comments by the President concerning Pan Am's historic role in opening up the Pacific to commercial aviation could conceivably be seen as interfering with the resolution of this issue.

On the other hand, the first flight of the China Clipper was not simply a purely commercial event but also an historic one with dramatic ramifications for the United States. This aspect of the event is well-documented in the contemporary accounts included by Pen James as an attachment. (If you have any interest in the history of the period or of aviation, you will want to peruse these attachments.) Largely through the skills of Pan Am founder Juan Trippe's young New York lawyer, Henry J. Friendly, Pan Am acquired monopolies on transporting both U.S. and foreign mail, and exclusive

routes and landing rights in foreign countries. The successes of Pan Am in opening new countries to commercial air travel were viewed at the time as matters of national pride. A good analogy may be the driving of the golden spike in Utah, joining the Union Pacific and the Central Pacific in the first transcontinental railroad. A commercial event, to be sure, but one we would probably approve the President commemorating. Finally, this is not the typical commercial anniversary -- it is not the fiftieth anniversary of Pan Am's founding.

A close call, but on balance I think we should decline. The key problem for me is that while this is a very historic commercial anniversary, the commemoration is being sponsored by the commercial entity. Indeed, Pan Am is selling tickets for the anniversary flight. In addition, a "historic" anniversary exception to the commercial anniversary prohibition might soon swallow the prohibition, as almost any significant commercial anniversary can be portrayed as an historic event.

I am sufficiently uncertain of this case to present alternative drafts for your review. Sign whichever reads better.

THE WHITE HOUSE

WASHINGTON

October 30, 1985

MEMORANDUM FOR ANNE HIGGINS
SPECIAL ASSISTANT TO THE PRESIDENT
DIRECTOR OF CORRESPONDENCE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Message Request from Pen James
Congratulating Pan Am on the 50th Anniversary
of the China Clipper

You have asked for my views on a request for a Presidential message commemorating the fiftieth anniversary of the first flight of Pan Am's China Clipper, which opened the Pacific to commercial aviation. I have no objection to the President sending such a message.

As you know, we adhere firmly to the policy of not sending Presidential messages for commercial anniversaries. This, however, is not a request for a message on the fiftieth anniversary of Pan Am's founding, but rather for a message commemorating an historic event with ramifications far beyond the particular company involved. The opening of the Pacific to commercial aviation, like the driving of the golden spike to create the first transcontinental railroad, can properly be viewed less as a commercial anniversary and more as a national milestone, suitable for Presidential commemoration.

Having said this, I am concerned that Pan Am is selling tickets for the anniversary flight, and could not approve any message if it were to be used in promoting Pan Am's commercial activities. Pen James's letter to Chris Hicks requesting the message contains a guarantee that the message will not be used in any commercial promotion whatsoever, and my approval is conditioned on strict observance of this commitment.

Finally, the text proposed by Pan Am is unacceptable. The President's message should not so much praise Pan Am as focus on the historic significance of the opening of the Pacific to commercial aviation. This office should review whatever alternative draft your office develops.

FFF:JGR:aea 10/30/85

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 30, 1985

MEMORANDUM FOR ANNE HIGGINS
SPECIAL ASSISTANT TO THE PRESIDENT
DIRECTOR OF CORRESPONDENCE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Message Request from Pen James
Congratulating Pan Am on the 50th Anniversary
of the China Clipper

You have asked for my views on a request for a Presidential message commemorating the fiftieth anniversary of the first flight of Pan Am's China Clipper, which opened the Pacific to commercial aviation. Pursuant to our general policy of not providing Presidential messages for commercial anniversaries, the request should be declined.

It is true that the anniversary is not only a commercially significant one for Pan Am, but an historically significant one for the Nation as well. Nonetheless, Pan Am is sponsoring the commemoration to promote its commercial activities. Indeed, Pan Am is selling tickets for a special anniversary flight. Furthermore, Pan Am is currently involved in a very sensitive proceeding, seeking to sell off most of its Pacific routes. Since this matter may be presented to the President for decision, I think he should avoid saying anything about Pan Am, particularly about Pan Am in the Pacific.

FFF:JGR:aea 10/30/85

cc: FFFielding
JGRoberts
- Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 31, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS, JR.

SUBJECT: Radio Talk: Gramm-Rudman-Hollings

David Chew has asked that comments on the attached proposed radio talk be sent directly to Ben Elliott by 2:00 p.m. today. The draft assumes passage of a debt ceiling bill with the Gramm-Rudman-Hollings amendment, and raises the question of what, if anything, we are going to do about the constitutional infirmities in that amendment.

In his remarks the President refers, in the third paragraph on page two, to the requirement that the President submit a budget within certain limits. Justice objects to any requirement that the President submit a particular type of budget. I think this concern can be easily finessed not only in the remarks but as a general matter (surely there can be no sanction if the President, in the future, were to submit a budget that did not comply with the requirements of Gramm-Rudman-Hollings, just as there could be no sanction if Congress passed a budget that failed to comply, and explicitly overrode Gramm-Rudman-Hollings). In the present case, I would just change "The President must submit..." to "The President is to submit..."

The more difficult issue concerns the references in the remarks to the automatic spending reductions if deficit reduction targets are not met. Justice's major concern -- the role of the Congressional Budget Office -- is probably sufficiently removed from the general statements in the President's remarks that the remarks are tolerable. The President refers to what happens if targets are not met. The objectionable CBO role is in assessing whether targets are or are not met by the budget, a role the CBO would share with OMB. OMB and CBO would each calculate how much a proposed budget reduces the deficit, and if their calculations differ by more than a set margin, the average would be used. If the final figure is not within the Gramm-Rudman-Hollings target, the automatic reductions are triggered. This gives CBO -- not an executive agency -- the power to have significant legal impact.

The President's remarks, however, do not refer to how the calculations are arrived at, only to what happens if the targets are not met. Accordingly, I think we can live with them, particularly since we are hardly writing on a clean slate. Some on the Hill argue that the automatic reductions are themselves an

unconstitutional delegation of legislative power to the Executive, but I do not see this argument: in passing Gramm-Rudman-Hollings, Congress is making the reductions, and no discretion is given to the President to choose where to cut.

The attached memorandum for Elliott and Chew approves the remarks, but notes they gloss over potentially serious problems.

Attachment

THE WHITE HOUSE

WASHINGTON

October 31, 1985

MEMORANDUM FOR BEN ELLIOTT
DEPUTY ASSISTANT TO THE PRESIDENT AND
DIRECTOR OF SPEECHWRITING

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Radio Talk: Gramm-Rudman-Hollings

I have reviewed the proposed radio talk, which assumes passage of a debt ceiling bill with the Gramm-Rudman-Hollings amendment. That amendment raises serious constitutional concerns, but has, of course, already been endorsed by the President. The remarks avoid specific discussion of the most troubling aspect of the current version of Gramm-Rudman-Hollings, the role it accords the Congressional Budget Office. Of lesser concern is the constitutional objection to Congress requiring the President to submit a budget within certain constraints. I believe that concern can be adequately papered over for present purposes by changing "must" in line 14 on page 2 to "is to."

cc: David L. Chew

FFF:JGR:jk 10/31/85

bcc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

October 31, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS 

SUBJECT:

Radio Talk: Budget -- Version #2

Attached is an alternate version of the radio talk, based on the assumption that a debt ceiling extension with Gramm-Rudman-Hollings does not pass. The President in this version reiterates his support for Gramm-Rudman-Hollings, so the constitutional concerns noted in my memorandum on the previous version of the radio talk are similarly implicated. For the same reasons discussed in that memorandum, I would delete "be required to" in line 18 on page 2. As in the other draft, the President's remarks do not touch upon the role of the Congressional Budget Office, and do not mire us any deeper in the constitutional quagmire we are in already.

I have a number of non-legal concerns. The President, in the second paragraph on page 3, indicates he may be forced to disinvest Social Security trust funds. I doubt many listeners will know what this means (I am not certain myself), and the remark could be widely misinterpreted as meaning the President will use Social Security funds to meet other Government obligations.

The first sentence of the third paragraph on page 3 is inaccurate. We will not be forced to balance the budget overnight; we simply will not be able to incur additional debt. Balancing the budget overnight would entail paying off all past debt.

I should also note that the remarks are very ominous and dramatic, urging everyone to reach out to those who will need food and shelter. I assume this is the result of a conscious decision, but I think the President will sound ludicrous if he tries to paint this financial crisis as America's darkest hour.

Attachment

THE WHITE HOUSE

WASHINGTON

October 31, 1985

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Radio Talk: Budget -- Version #2

I have reviewed version two of the proposed radio talk. For the same reasons stated in my memorandum on the first version, I recommend deleting "be required to" in line 18 on page 2.

I also question whether it is wise to mention disinvestment of Social Security trust funds in the second paragraph on page 3. Few listeners will know what this means, and the remark could be widely misinterpreted as a threat to use Social Security funds to meet other Government obligations.

The first sentence of the third paragraph on page 3 is inaccurate. We will not be forced to balance the budget overnight; we simply will not be able to incur additional debt. Balancing the budget overnight would entail paying off all past debt.

Finally, I think the fourth paragraph on page 3 paints too dire a picture. I do not mean to minimize the seriousness of this deadlock, but the public has been through the "shut down the Government" drill before, and I do not know how credible the President will be if he tries to portray this as America's darkest hour.

cc: David L. Chew

FFF:JGR:aea 10/31/85
bcc: -FFFielding
JGRoberts
Subj
Chron