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THE WHITE HOUSE

WASHINGTON

May 16, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Proposed Testimony of Assistant
Attorney General Dinkins on S. 267

The above-referenced testimony, to be delivered tomorrow before the Senate Committee on Environment and Public Works, concerns S. 267, a bill to extend federal eminent domain to coal slurry pipelines. The testimony reiterates Administration opposition to such authority, expressed in the last Congress, while noting that the issue is being reviewed. The bulk of the testimony considers whether S. 267 adequately preserves the primary of state water law, concluding that it does. Much of the testimony is devoted to an analysis of the recent decisions by the Supreme Court in Sporhase v. Nebraska and by a federal district court in City of El Paso v. Reynolds. Both cases struck down state water restrictions on the basis of the Commerce Clause. Dinkins concludes that Sporhase and El Paso require express statements of Congressional intent to preserve state water laws that would otherwise constitute an impermissible burden on interstate commerce, and that S. 267 contains such an express statement.

I see no legal objection.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 16, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Proposed Executive Order Entitled
"President's Commission on Industrial
Competitiveness"

Richard Darman has asked for comments by May 18 on the above-referenced proposed executive order. The order would establish an advisory committee to provide recommendations on increasing the competitiveness of American industry, with particular emphasis on high technology. This draft includes the sentence we suggested earlier in the process, making the private sector appointees representative of industry, to protect against their being considered government employees.

I have discussed the order with Ralph Tarr and Mike Fitts of the Office of Legal Counsel. They advised that they had reviewed the order with the Office of Government Ethics, and that office had agreed that the private sector appointees would not be considered government employees. This conclusion was consistent with the earlier advice I had received from David Scott, who recommended the inclusion of the sentence we suggested if we did not want the members to be government employees.

In their memorandum on the executive order, however, Tarr and Fitts caution about the need to consider the requirement in 5 U.S.C. App. I § 5(b)(2) that the membership of advisory committees be "fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee." It is apparently their view that making the private members representative of industry (necessary to avoid their being considered government employees) creates tension with the requirement that the commission be balanced. They suggested appointing representatives of consumer groups to balance the membership.

I pointed out to Tarr and Fitts that the balance requirement must be considered in light of the purposes of the commission. Wendell Gunn's office affirmed that the purpose of this commission was to obtain the views of the high tech industry

on steps to improve competitiveness, and that in selecting prospective members they strove to obtain a balanced representation of high tech industry: large and small firms and firms from different market areas. The recent opinion in National Anti-Hunger Coalition v. Executive Committee of the President's Private Sector Survey on Cost Control, rejecting a challenge based on the balance requirement, concluded: "Surely Congress did not intend to prohibit the President from seeking specialized advice and while one may speculate that different choices might have been made to accomplish the President's objective the simple gathering of a discrete group of experts in a particular narrow field is not in itself enough to render such an advisory committee unbalanced in the sense of the FACA." The fact that the members of our commission are representative of industry does not mean they are not also experts -- the executive order specifies that they "shall have particular knowledge and expertise concerning the technological factors affecting the ability of United States firms to meet international competition at home and abroad."

In sum, I think OLC's "caution" is excessive and unnecessary, and based on an overly-broad reading of the FACA balance requirement. Its logic would dictate that whenever we take action to ensure that advisory committee members not be treated as government employees the entire nature of the advisory committee must be changed, so that it represents all affected interests and not simply those from whom the President wants advice in light of the particular purpose of the advisory committee. This advisory committee is balanced in terms of high tech industries, and its purpose is to obtain the views of those industries.

Attachment

THE WHITE HOUSE

WASHINGTON

May 16, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Executive Order Entitled
"President's Commission on Industrial
Competitiveness"

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

FFF:JGR:aw 5/16/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 16, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Proposed Department of Justice Testimony
on Sexual Exploitation of Children and
Child Pornography

The Department of Justice has submitted the above-referenced proposed testimony. The witness and committee are not identified. The testimony reviews statistics on child pornography prosecutions since enactment of the Protection of Children Against Sexual Exploitation Act in 1977, 18 U.S.C. §§ 2251-2253 and 2423. It then discusses legislative reform proposals, focusing on sections 1502 and 1604 of the Administration's crime package. These provisions would (1) delete the commercial purpose requirement from the child pornography laws, (2) authorize the use of wiretaps in child pornography cases, and (3) delete the obscenity requirement from the child pornography statutes. The latter provision is apt to be the most controversial. In New York v. Ferber, 102 S. Ct. 3348 (1982), the Supreme Court ruled that depictions of minors engaging in sexually explicit conduct could be the basis for a criminal prosecution even if the material is non-obscene, on the theory that society has a valid interest in protecting the minor quite apart from any concern about the status of the material. The statutes on the books carry an obscenity requirement; the reform proposals would delete this to take advantage of the Ferber ruling.

I see no legal objections, and have drafted an appropriate memorandum to Greg Jones of OMB for your signature.

Attachment

THE WHITE HOUSE

WASHINGTON

May 16, 1983

MEMORANDUM FOR GREGORY JONES
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Department of Justice Testimony
on Sexual Exploitation of Children and
Child Pornography

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

FFF:JGR:aw 5/16/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 16, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Presidential Recipients of Exporting Awards

Richard Darman has asked for any comments on the attached list of recipients of "E" and "E Star" exporting awards by 5:00 p.m. today. Executive Order 10978 (Dec. 5, 1961) (copy attached) established a program whereby firms or organizations expanding export markets for American products receive Presidential recognition. The program, administered by the Department of Commerce, has been in place since 1961, and every President except President Carter has issued awards under it. President Reagan has issued several "E" and "E Star" awards, usually in connection with visits to company plants. An award ceremony is contemplated for next week, at which the President will bestow awards on the ten specified companies or organizations.

I called the Department of Commerce to determine what types of background checks had been undertaken to ensure that the President would not be embarrassed by subsequent disclosures concerning the honored companies. A very thorough process is in place, including checks with the Department of Justice Criminal and Antitrust Divisions, the IRS, SEC, NLRB, FTC, Department of Labor, Office of Export Administration and, where appropriate, the Department of Agriculture. The candidate firms sign necessary waivers and also an affirmation that they are not complying with any prohibited foreign boycotts.

I was also concerned about the President appearing to endorse particular commercial enterprises, but that is apparently the entire purpose of the program. Indeed, the Executive Order specifically authorizes award recipients to display their "E" awards in advertising. Our usual concerns would thus seem inapplicable in this circumstance.

I have drafted a memorandum to Darman noting that we have no objection based on assurances received from Commerce concerning clearances.

Attachment

THE WHITE HOUSE

WASHINGTON

May 16, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Recipients of Exporting Awards

Based on assurances received from the Department of Commerce that the proposed award recipients have been cleared by the Departments of Justice, Labor and Agriculture and the IRS, SEC, FTC, NLRB, and the Office of Export Administration, Counsel's Office has no legal objection to the proposed list of recipients.

FFF:JGR:aw 5/16/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

May 17, 1983

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS

SUBJECT: Appointment of Hoyt Gardner as
Alternate Delegate, World Health
Organization Executive Board

I have reviewed the Personal Data Statement submitted by Hoyt Gardner for appointment as the alternate delegate to the World Health Organization Executive Board. The President is authorized to appoint such an alternate delegate by 22 U.S.C. § 290a. Dr. Gardner serves on the boards of National Blue Cross and Blue Shield and Kentucky Blue Cross and Blue Shield. I consulted with Darrel Grinstead, the designated agency ethics official of the Department of Health and Human Services, concerning whether this would present a conflict with the duties of the alternate delegate to the WHO executive board. Mr. Grinstead was of the view that no conflict was presented, and that the concerns of Blue Cross and Blue Shield were unrelated to the activities of the WHO.

Under 22 U.S.C. § 290a, "no person shall serve as [a] representative, delegate, or alternate until such person has been investigated as to loyalty and security by the Office of Personnel Management." Dr. Gardner must be so investigated before he can commence service.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 17, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Presidential Letter on Freedoms Foundation
and Enterprise America Merger

Justin Dart has sent the President a draft of a letter to be sent over the President's signature to those on the mailing lists of the Freedoms Foundation and Enterprise America, announcing the merger of the two groups. The President is honorary chairman of both groups, although the organizations are inexplicably missing from the current honorary chairmanship list. Both groups are 501(c)(3) organizations.

I do not think the President should agree to sign the letter. The role of honorary chairman does not include advising members of events such as this merger, which should be done by those actively involved in managing the groups. The letter suggests a greater degree of personal involvement by the President in the affairs of the two organizations than is warranted by the facts. The fifth and sixth paragraphs are particularly objectionable. The fifth paragraph is a thinly-veiled plea for funds. The White House has not been provided with any of the information referred to in the sixth paragraph, and accordingly we cannot clear it. We also have no conception of who is on these mailing lists, which could easily include individuals doing business with the White House, or subject to federal regulatory activities.

If some sort of letter must be sent, it would be far better to have a shorter letter from the President to a Freedoms Foundation official or officials, perhaps Mr. Dart himself. Those officials can then mail it out to their supporters. This insulates the President from the recipients, and lessens the appearance of his personal involvement. I have drafted such a letter, and a transmittal memorandum for your signature to Darman.

Attachments

THE WHITE HOUSE

WASHINGTON

May 17, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Presidential Letter To Those on
Freedoms Foundation and Enterprise America
Mailing Lists (Suggested by Justin Dart)

Counsel's Office has reviewed the above-referenced proposed letter, and recommend that it not be approved in its present form. We do not view such a communication to the membership of the two organizations as consistent with the limited role of an honorary chairman. We also find the fifth paragraph objectionable as involving the President in fundraising, and cannot clear the sixth paragraph because we have not been provided with the materials in question. In any event, we do not think the President should be forwarding materials of private organizations. Finally, we are very concerned about sending letters over the President's signature to unknown recipients, some of whom could have business with the White House or be regulated by the federal government.

If the President is in fact interested in expressing support for the Freedoms Foundation-Enterprise America merger, it would be preferable to do so in a letter to an official or officials of Freedoms Foundation, perhaps Mr. Dart himself. The letter could then be quoted or used in mailings by that organization. We have prepared a draft of such a letter, based on the original draft provided by Mr. Dart.

FFF:JGR:aw 5/17/83

cc: FFFielding
JGRoberts
Subj.
Chron

[DATE]

Dear [Freedoms Foundation Official, Perhaps Mr. Dart]:

As Honorary Chairman of both organizations, I was delighted to learn that Enterprise America will be merged into the Freedoms Foundation at Valley Forge. Having pooled their resources and programs, these two fine groups should form a stronger nationwide force in support of freedom, the American private enterprise system and the importance of the political process to individual freedom.

Both organizations have made valuable contributions to our society in the past. By weaving Enterprise America into its ongoing programs, the Freedoms Foundation will strengthen its operations and reach a larger segment of the national population.

You have my best wishes for a successful union.

Sincerely,

Ronald Reagan

THE WHITE HOUSE

WASHINGTON

May 17, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Testimony of Assistant Attorney General Reynolds Before the House Subcommittees on Post-Secondary Education and Civil and Constitutional Rights

The above-referenced testimony is scheduled to be delivered tomorrow, partly in response to a letter from the subcommittees raising specific questions on civil rights enforcement with respect to higher education. The testimony reviews the enforcement authorities available to the Department of Justice, including Title VI (race), Title IX (gender), and section 504 (handicap). It discusses consent decrees and negotiation efforts to correct the existence of predominantly black and white institutions in the college systems of Louisiana, Mississippi, and North Carolina, noting that the Department relies on enhancing the quality of education at predominantly black institutions and out-reach programs at the white institutions, rather than admissions quotas. In the gender area the testimony discusses the determination not to appeal the University of Richmond v. Bell decision, and the direction to the Department of Education (based on the North Haven decision) that it may only investigate specific programs receiving federal financial assistance. In the handicap area the testimony notes that efforts to revise 504 regulations for federally assisted programs have been abandoned, but that the Department has sent federal agencies prototype regulations for federally conducted programs, and expects the different agencies to issue such regulations soon.

The subjects covered by the testimony are always controversial, but there is nothing new in this testimony. I see no legal objections.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 17, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: H.J. Res. 219: Support for Soccer
World Cup to Come to U.S. in 1986

Richard Darman has requested comments by close of business May 18 on enrolled resolution H.J. Res. 219, which declares the support of the U.S. Government for the efforts of the U.S. Soccer Federation (USSF) to bring the World Cup to the U.S. in 1986. The prolegomenon of the resolution states, inter alia, that "the United State is already capable of meeting all the requirements imposed on a host country." As you know, and as the State Department notes in its views letter, this is not quite true. The operative language of the resolution, however, simply expresses support for the efforts of the USSF. Section 2 of the bill designates the Secretary of Commerce as the official representative for dealing with the Federation Internationale de Football Association.

OMB and Commerce recommend approval, State has no objection, and Justice defers. I do not think the above-mentioned inaccuracy in the resolution should deter the President from approving it, since it is somewhat vague and in any event does not commit the government to any specific action.

Attachment

THE WHITE HOUSE

WASHINGTON

May 17, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: H.J. Res. 219: Support for Soccer
World Cup to Come to the U.S. in 1986

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

FFF:JGR:aw 5/17/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

May 18, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Action by NLRB to Restrict Authority
of NLRB General Counsel

Sherrie Cooksey has conveyed your request that I examine the legal authority for the NLRB's recent decision to transfer enforcement and appellate authority from the General Counsel to the Solicitor. The report of that action is attached at Tab A, with press stories at Tab B. Briefly, the NLRB required all pleadings and briefs in proceedings involving enforcement, review, Supreme Court, contempt, and miscellaneous litigation to be reviewed and approved by the Solicitor. Hitherto such pleadings and briefs had been the sole responsibility of the General Counsel appointed by the President with the advice and consent of the Senate. The NLRB also indicated that it "retains for itself the authority to transfer, promote, discipline, discharge, and take any other necessary and appropriate personnel action" with regard to the attorneys performing the above-mentioned functions. The press reports portrayed the move as one to restrict the authority of the incumbent Democratic General Counsel William Lubbers and elevate the Republican Solicitor Hugh Reilly. Lubbers is the darling of organized labor; Reilly hails from the Right to Work Legal Defense Fund.

The pertinent provision of the statute states that "The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 160 of this title, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law." The office of General Counsel was added by the Taft-Hartly Act of 1947 to separate the investigatory and prosecutorial functions of the NLRB from the adjudicative functions. As the Conference Report on the Act noted, "The General Counsel . . . is to have the final authority to act in the name of, but independently of any

direction, control, or review by, the Board in respect of the investigation of charges and the issuance of complaints of unfair labor practices . . ." H. Rep. No. 510, 80th Cong., 1st Sess. (1947). The actions of the General Counsel in issuing complaints are not reviewable by the Board, see Vaca v. Sipes, 386 U.S. 171, 182 (1967).

The Board has apparently drawn a distinction between legal action with respect to its orders -- primarily enforcement actions or defenses in the Courts of Appeals -- and the investigation and filing of an unfair labor practice complaint leading up to a Board order. The statute by its terms reserves only the latter category of actions to the General Counsel, and the concern to separate investigatory and prosecutorial functions from adjudicatory functions only applies to the latter category. Once the Board issues an order, it is not in a conflict position with respect to enforcing it.

The real difficulty with the Board position is with the statutory provision granting the General Counsel "general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members)." The Board's order essentially transfers supervision of the appellate and enforcement attorneys to the Solicitor, and specifically retains for the Board itself "the authority to transfer, promote, discipline, discharge, and take any other necessary and appropriate personnel action" with respect to those attorneys. This seems flatly inconsistent with the statutory grant of general supervision over all attorneys to the General Counsel. The exception in the statute for "legal assistants to Board members" would not seem pertinent, since the role of those assistants has been generally understood to be limited to assisting Board members in drafting Board opinions. The Board styled its action as a revocation of a 1955 "delegation" memorandum, but it is not clear that the 1955 memorandum actually delegated the authority in question as opposed to simply describing the authority conferred on the General Counsel by law.

I discussed the issues with John Irving, who is convinced that the Board lacks the authority to do what it did. He fears a request from the General Counsel for an Attorney General opinion (which he is confident will be against the Board), personnel action by the affected attorneys, and Congressional hearings. Organized labor strongly supports Lubbers and detests Reilly, so it is unlikely that this affair will quietly go away. I am not wholly convinced that the Board is acting illegally, since the General Counsel

still has independent authority with respect to investigations and filing complaints -- the basis for the creation of his office. The conflict with the statute on the supervision point is rather stark, however, and at least at this stage looks like a loser for the Board. The Board would have to argue that the words "general supervision" in the statute should be given only a very loose interpretation. The NLRB is an independent agency, but I recommend you call Dotson to express your doubts and make sure he has a solid legal base for his actions.

cc: Sherrie M. Cooksey

THE WHITE HOUSE

WASHINGTON

May 18, 1983

MEMORNADUM FOR CRAIG L. FULLER
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Fair Housing Amendments Act of 1983

Counsel's Office has received the Cabinet Council on Legal Policy materials on the above-referenced subject. Based on the limited amount of time for review, we see no legal objections.

FFF:JGR:aw 5/18/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 18, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Draft Press Release Re: National Medal of Science Recipients

Richard Darman has requested comments on the above-referenced draft press release, including a recommendation as to whether it should be released by the White House or the Office of Science and Technology Policy, by close of business May 19. The release will accompany a ceremony in the East Room at which the President will present the Medal of Science to twelve individuals, including Edward Teller, reportedly the scientific inspiration for the "Star Wars" speech.

I have no legal objections to the draft press release. I have no strong views on whether it should be released by the White House or OSTP, but since the President will award the medals -- as provided by statute, 42 U.S.C. § 1881(d) -- it seems fitting that any announcement emanate from the White House press office.

Attachment

THE WHITE HOUSE

WASHINGTON

May 18, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Press Release Re: National
Medal of Science Recipients

Counsel's Office has reviewed the above-referenced draft release and finds no objection to it from a legal perspective. We have no strong views on whether the announcement should be released from the Office of Science and Technology Policy or the White House. Since the President himself will present the awards, however, it seems fitting that any announcement emanate from the White House press office.

FFF:JGR:aw 5/18/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

May 19, 1983

Dear Mr. Messner:

With regard to your prospective appointment as Assistant Administrator for Administration at the Environmental Protection Agency, it will be necessary for you to complete the enclosed Personal Data Statement and Financial Disclosure Report. Please return these forms to me at your earliest convenience.

With best wishes,

Sincerely,



John G. Roberts
Associate Counsel
to the President

Mr. Howard M. Messner
9653 White Acre Road
Columbia, Maryland 21045

Enclosures

THE WHITE HOUSE

WASHINGTON

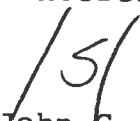
May 19, 1983

Dear Mr. Pendley:

With regard to your prospective appointment as Assistant Secretary of Interior for Energy, it will be necessary for you to complete the enclosed Personal Data Statement and Financial Disclosure Report. Please return these forms to me at your earliest convenience.

With best wishes,

Sincerely,


John G. Roberts
Associate Counsel
to the President

Mr. William Perry Pendley
4501 N. 18th Street
Arlington, Virginia 22207

Enclosures

THE WHITE HOUSE

WASHINGTON

May 19, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Draft Omnibus Bill Re: Terrorism

Assistant Attorney General McConnell has submitted a proposed anti-terrorism bill to OMB for clearances. Title I of the bill would prohibit conspiring in the United States to commit a crime of violence against a foreign official outside the U.S. Title II outlaws providing technology and training to governments supporting terrorism or to terrorist groups. The President would identify covered governments and groups by proclamation. Title II also creates a new offense of falsely posing as a U.S. intelligence agency operative and under that guise inducing others to commit crimes. Title III provides for rewards for those furnishing information on terrorist acts. Titles IV and V implement treaties signed by the U.S. governing hijacking (ratified 1972) and the taking of hostages (awaiting ratification), respectively.

The bill represents the common views of the Departments of Justice and State, with the exception of Title III. The State Department has proposed a rewards bill of its own, covering only foreign terrorism and administered by the Secretary of State. Under Justice's bill rewards for domestic terrorism would also be available, and the program would be run by the Attorney General. In my view it makes sense to have the Secretary of State run the rewards program if it is limited to foreign terrorism, while the Attorney General should run it if it includes domestic acts. We have not yet been asked to "weigh in" on one side or the other.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 19, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Letter from Congressman Goodling on
Department of Justice Antitrust Enforcement

Congressman Goodling (R-Pa.) wrote the President on April 28 to object to the purported decision of the Department of Justice not to enforce antitrust prohibitions against resale price maintenance. He asks the President to direct the Department to return to enforcing the law barring this practice. Ken Duberstein sent Goodling an interim response noting that his letter was brought to the President's attention and was being shared with you.

I recommended asking Justice to draft a response for your signature. The Antitrust Division has received numerous complaints concerning Bill Baxter's pronouncements on resale price maintenance (a legitimate practice, in Baxter's view) and presumably has a comprehensive response readily available. I have attached a draft memorandum to the Deputy Attorney General.

Attachment

THE WHITE HOUSE

WASHINGTON

May 19, 1983

MEMORANDUM FOR EDWARD C. SCHMULTS
DEPUTY ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Letter from Congressman Goodling on
Department of Justice Antitrust Enforcement

I would appreciate it if the Antitrust Division could prepare a draft response to the above-referenced letter, for my signature. Since this issue has surfaced before, I assume that division has the substance of a response readily available.

Many thanks.

FFF:JGR:aw 5/19/83

cc: FFFielding
JGRoberts
Subj.
Chron

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 19, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Proposed Presidential Letter Concerning
Freedoms Foundation-Enterprise America
Merger

Richard Darman's Office has asked that we prepare a cover letter from the President to Justin Dart, explaining why we have revised Dart's proposed Presidential letter on the above-referenced subject and why it is being sent to Dart rather than the mailing lists of the two groups. A draft is attached. I believe it to be entirely inoffensive.

Attachment

THE WHITE HOUSE

WASHINGTON

May 19, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Presidential Letter Concerning
Freedoms Foundation-Enterprise America
Merger

You have asked that this office prepare a letter to Mr. Dart for the President's signature, explaining the decision to send a short letter to Mr. Dart on the Freedoms Foundation-Enterprise America merger, rather than send Mr. Dart's proposed letter directly to the membership of the two groups. A proposed letter is attached.

Attachment

FFF:JGR:aw 5/19/83

cc: FFFielding
JGRoberts
Subj.
Chron