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THE WHITE HOUSE

WASHINGTON

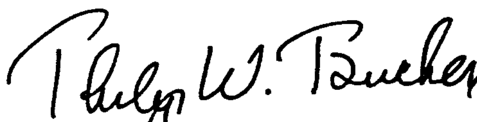
September 16, 1974

Dear Mr. Lerch:

Thank you for your letter of August 30, 1974, in which you requested a meeting to discuss the matters referred to in your letter to former President Nixon dated April 3, 1974.

I have reviewed that letter and the correspondence sent to you by Mr. Roger Semerad. Because the matters about which you have exhibited concern are presently before the United States Court of Appeals for the District of Columbia in a proceeding in which you are a party, I believe that a meeting between ourselves would be inappropriate at this time.

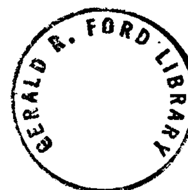
Sincerely,



Philip W. Buchen
Counsel to the President

Mr. Henry F. Lerch
Lerch, Pillote and Lerch
Bowen Building
815 15th Street, N. W.
Washington, D. C. 20005

cc: Mr. Roger Semerad
Dr. Theodore Marrs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Counsel to the President

Mr. Henry F. Lerch
Lerch, Pillote and Lerch
Bowen Building
815 15th Street, N. W.
Washington, D. C. 20005

cc: Mr. Roger Semerad
Dr. Theodore Marrs

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Lerch, Pillote and Lerch
Bowen Building
815 15th Street, N. W.
Washington, D. C. 20005

cc: Mr. Roger Semerad
Dr. Theodore Marrs

9/12

Skip —

Could you tell me what your opinion of this is - and what action is appropriate for our office?

Jay

42 USLW 4313

LAW OFFICES
LERCH, PILLOTE & LERCH
BOWEN BUILDING
815 - 15TH STREET, N. W.
WASHINGTON, D. C. 20005
(202) 393-1404

HENRY F. LERCH
ROBERT L. PILLOTE
HARRY W. LERCH

SUBURBAN TRUST BUILDING
7316 WISCONSIN AVENUE, SUITE 300
BETHESDA, MARYLAND 20014
(301) 656-1803

30 August 1974

Phillip Buchen, Esq.
General Counsel
The White House
Washington, D. C.

Dear Mr. Buchen:

My letter of April 3, 1974 (enclosed) has reached the desk of Dr. Theodore Marrs: Before the transition to President Ford, Dr. Marrs and I were working on a solution to this problem. The appointment of a Veterans Administrator also impeded a prompt solution, but now this has been resolved. A further development is that the Administration Law Section of the American Bar Association, at its recent meeting in Hawaii, passed its resolution dated August 13, 1974 (enclosed) confirming its earlier stand to the effect that the Veterans Administrator should be subject to Judicial Review like all other governmental officials.

A copy of this letter and the ABA resolution is going to Dr. Marrs, who also has additional data on the fee question. I would very much appreciate your attention to the matter, including a possible conference when it could be discussed in greater detail.

Sincerely,

Henry F. Lerch

Enclosures

cc: Dr. Theodore Marrs, White House

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3 April 1974

Mr. President
The White House
Washington, D. C.

Dear Mr. President:

I write this letter both as an attorney in private practice in Washington since 1940 (except World War II service) and also as Senior GOP Chairman in Montgomery County (Precinct 7-21). You and I knew each other casually when you were a Senator, and we were members of the Columbia Country Club of which I am still a member.

The matter concerns the Veterans Administration, and I urge that you not refer this letter to that Administration or to the Department of Justice for reply -- I know their position as stated below and I feel it needs correcting.

The matter stems from a series of cases in the United States District Court for the District of Columbia in which I and several other local attorneys accepted appointments by the court to represent indigent widows of Philippine veterans, killed in World War II, or who subsequently died from injuries due to service-connected disabilities. These were unsolicited actions, where plaintiffs filed pro se complaints. I believe I was the first attorney to be appointed in one of these cases in 1956 (de Cartas v. Veterans Administrator). That, and the other early cases involved claims under 38 U.S. Code 784, (gratuitous life insurance). The Veterans Administrator took the position that if the widow cohabited or committed any other act which was in his opinion morally wrong after the husband's death, he refused to pay the insurance. The late Judge Holtzoff ruled that common law marriage was illegal in the Philippines, that the widow had not "remarried" and that she should receive the gratuitous insurance. Many insurance cases were handled successfully for the widows before the U. S. District Court in the early 1960's. The court decided that

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the Administrator was arbitrary and capricious and his actions illegal; many widows received their $5000. insurance. The fee provided by that statute was 10% of the unpaid insurance, which was payable monthly, so none of the lawyers handling that type of case received any substantial remuneration. (monthly checks approximately $2. or less)

A second benefit is provided by 38 USC 101(14), namely, dependency and indemnity compensation for the widow and/or surviving children for life; the sums awarded are relatively modest (but more substantial than insurance) and are in the nature of a pension which has been called a "gratuity" by the Congress and by the Veterans Administrator. The local lawyers again accepted a series of unsolicited court-appointed cases for these benefits in the 1960's and early 70's. These were pro se complaints from indigent widows. Again, the Veterans Administrator took the position that if in his opinion the widow had committed any immoral acts, he could arbitrarily deny her these benefits and he did so in hundreds of cases which went to court. However, our United States District Court for the District of Columbia in a series of decisions from many different judges, rendered verdicts restoring the widows to the rolls and also awarded the court appointed attorneys a 25% fee for theirservices, the fee rate used in Federal Tort Claim and Social Security litigated cases. This series of decisions came in 1969-70 but so far the Administrator has failed and refused to pay out any of the fees to the attorneys, taking the position that the Statute makes his word "final and conclusive" and that he is not subject to judicial review either on the defending or fee awards. The widows have been receiving their 75% but the 25% in each case still remains in the Treasury, awaiting disposition.

Now for the crux!

Prior to August 1972, the Administrator already had very broad decision-making powers in this field. However, on that date and during the pendency of the key case in the Court of Appeals, you signed into law a provision (a rider on the V. A. appropriation bill) which amended 38 U.S.C. 211(a) to read as follows:

> "(a) On and after October 17, 1940, except as provided in sections 775, 784 and as to matters arising under chapter 37 of this title, the decisions of the Administrator on any question of law or fact under any law administered by the Veterans' Administration

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> providing benefits for veterans and their dependents or survivors shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision by an action in the nature of mandamus or otherwise."

This statute (retroactive to 10/17/40) makes the Administrator immune from judicial review; it was under attack in the case of Robison v. Johnson, Administrator, No. 72-1297. On March 4, 1974, the Supreme Court entered its decision upholding the validity of the statute!

In our great Democracy, we do not feel that any government official, dispensing public funds, be they gratuities or monies payable under a contract, should be immune from judicial review, particularly when the question of eligibility is one of morality. We feel that the judgment of such official should be subject to judicial scrutiny, particularly when the decision involves alleged immoral conduct of widows of veterans who are, at the whim of the Administrator, deprived of the benefits which Congress has provided. (When Eisenhower was President, and discovered that contracting officers awarding government construction contracts enjoyed such immunity, he promptly signed legislation terminating such immunity.) As a matter of policy, past Presidents have appointed former presidents of the VFW, DAV, the American Legion, or some other veterans' organization to be the Administrator of Veterans Affairs, and apparently the veterans have had some degree of confidence that the appointee would give them beneficial consideration. We do not quarrel with this policy. However, this policy should not immunize the Administrator from judicial review, in matters involving the morality of the claimant.

My recommendation would be to except morality cases from the scope of 38 USC 211(a). * * * * * * * * *

As stated above, no fees have been paid by the Administrator in these dependency and indemnity cases, even though the court-appointed attorneys have been successful. The brief, filed by the Department of Justice in Rodulfa v. Administrator, #22,947 in the United States Court of Appeals, (Cert. den.) summarizes the benefits and fees of 132 judgments as follows:

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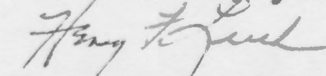
Total Government Liability	$3,463,649.30
Total fees awarded on 25% basis	$ 855,541.82

The courts decline to order the payment of the fees, stating that the above quoted statute removes jurisdiction; the Department of Justice declines to recommend the payment, claiming it is an "administrative" matter for the Administrator to decide; and the Administrator has failed and refused, and continues to fail and refuse to pay any fee to the attorneys, or to pay the 25% to the widows, even though the money has been appropriated and is awaiting disbursement!!

My office is only three blocks from the White House: I respectfully request the honor of a conference with you or one of your top assistants who would be empowered to research and correct the above self-evident inequities. I feel it is appropriate at this time, when you have publicly expressed concern over treatment the Veterans are receiving.

Respectfully yours,



Henry F. Lerch

AMERICAN BAR ASSOCIATION

1155 EAST 60TH ST. CHICAGO ILLINOIS 60637 TELEPHONE 312 493-0533

LERCH, PILTHE & LERCH
RECEIVED AUG 28 1974

SECTION OF ADMINISTRATIVE LAW

CHAIRMAN
Frank M. Wozencraft
3006 One Shell Plaza
Houston, TX 77002

CHAIRMAN-ELECT
Marion Edwyn Harrison
Suite 500
1701 Pennsylvania, Ave
Washington, DC 20006

SECRETARY
Willis B. Snell
1666 K St., N.W.
Washington, DC 20006

BUDGET OFFICER
Charles Effinger Smoot
2006 Columbia Rd., N.W.
Washington, DC 20009

SECTION DELEGATE TO HOUSE OF DELEGATES
Franklin M. Schultz
Suite 800
888—17th St., N.W.
Washington, DC 20006

COUNCIL MEMBERS
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William H. Allen
Washington, DC

Editor-in-Chief Administrative Law Review
Daniel J. Baum
Toronto, Canada

August 27, 1974

The following Motion was adopted unanimously at a meeting of the ABA Section of Administrative Law held on August 13, 1974:

WHEREAS, the Section of Administrative Law, American Bar Association, has a continuing interest in the judicial review of decisions of the Administrator of Veterans Affairs, and

WHEREAS, on February 24, 1958, the American Bar Association adopted a resolution sponsored by the Section of Administrative Law supporting the enactment of H.R. 272, 85th Congress, 1st Session, a bill to permit judicial review of decisions of the Administrator of Veterans Affairs, which resolution is still in effect, and

WHEREAS, Section 8(a), Public Law 91-376, 84 Stat. 787, 790, amended 38 U.S.C. S211(a) as follows:

> On and after October 17, 1940, except as provided in sections 775, 784, and as to matters arising under chapter 37 of this title, the decisions of the Administrator (of Veterans' Affairs) on any question of law or fact under any law administered by the Veterans' Administration providing benefits for veterans and their dependents or survivors shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision by an action in the nature of mandamus or otherwise.

and

WHEREAS, Public Law 91-376 was intended to overrule Tracy v. Gleason,

AMERICAN BAR ASSOCIATION

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379 F.2d 469, 126 U.S. App. D.C. 415 (1967), which held that the action of the Administrator of Veterans Affairs in refusing to continue paying previously awarded monetary benefits to a disabled veteran was not barred from judicial review by the provisions of 38 U.S.C. S211 (a) then in effect, and

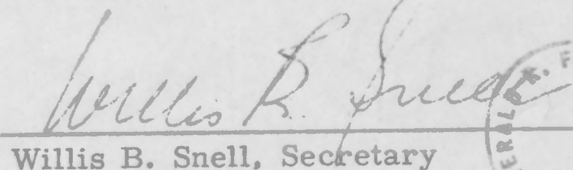
WHEREAS, Public Law 91-376 was enacted without public hearings and without affording the American Bar Association an opportunity to present its views, and

WHEREAS, the Supreme Court in Johnson v. Robison, 94 S. Ct. 1160, 39 L. Ed 2d 389, and Hernandez v. Administrator, 94 S. Ct. 1177, 39 L. Ed 2d 412, both decided March 4, 1974, upheld 38 USC 211(a) unless a constitutional challenge to veterans' benefits is involved, and

WHEREAS, it is the view of the Section of Administrative Law that judicial review of decisions of the Administrator of Veterans Affairs is appropriate and desirable;

NOW, THEREFORE, BE IT RESOLVED, that the Section of Administrative Law reaffirms its position that judicial review of decisions of the Administrator of Veterans Affairs is appropriate and desirable; and

BE IT FURTHER RESOLVED, that the Section of Administrative Law, American Bar Association, opposes the limitation on judicial review contained in Public Law 91-376, 84 Stat. 797, 790, 38 USC 211(a).



Willis B. Snell, Secretary

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WASHINGTON, D. C. 20005

WHITE H
RECEPTION & SECURITY
AUG 31 1974
Processed

GERA
BRARY

Phillip Buchen, Esq.
General Counsel
The White House
Washington, D. C.

Pleadings filed in top drawer of safe "Justice Dept representation govt for employees"

November 15, 1974

MEMORANDUM FOR: Don Lowitz

FROM: Phil Buchen

SUBJECT: Court Pleadings Received from Herod E. McLeod, Plaintiff per se, Naming Donald Rumsfeld

To provide you with record of delivery of McLeod's pleadings to the Department of Justice by me on November 8, 1974.

Attachment

PWBuchen:ed

THE WHITE HOUSE

WASHINGTON

November 5, 1974

MEMORANDUM

TO: PHIL BUCHEN

FROM: DONALD RUMSFELD

SUBJECT: Court Pleadings Received from Herod E. McLeod, Plaintiff per se, Naming Donald Rumsfeld

Attached as Tab A are purported pleadings I have received in the mail from a Herod E. McLeod. I have no knowledge who he is or what matter he is referring to in the pleadings. Obviously, from these documents one can not even be certain that a court action is pending. However, this should be checked out since it has to do with my government tenure. If my representation is necessary, I presume it will be handled by the Office of Legal Counsel in the Justice Department. Therefore, I would appreciate your taking the necessary steps to have this matter forwarded to the Justice Department.

I call your attention to the fact that in all of the documents I am referred to as Rumfeld or Rumfield, instead of Rumsfeld. You will also notice that this matter is supposedly set for hearing on Friday, November 15th at 9:00a.m.

I would appreciate your keeping me advised of what happens in this matter.

Attachments

Delivered to Justice (Jim Wanderstter) which made copy 11/8/74

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Monday 9/22/75

2:15 Mark Martin, an attorney in Dallas, called to talk with Mr. Buchen. He had with him on the phone his co-counsel in a case -- Warren Whitham. They represent the Dallas Independent School District. The reason for the call is that the constitutionality of the Education Opportunity Act of 1974 that the President has made some reference to recently has been called into question in the Supreme Court. They have done what is called for in their view by the Presidential statute and Supreme Court rule in that they have notified the Solicitor General that the constitutionality of this has been called into question. This leaves it with the Solicitor General to intervene or participate in whatever way he sees fit. However, since it has obvious political implications, they thought it would be wise if they alerted the President's counsel and tell him about the situation. (214) 747-9211

Mr. Whitham will stay in Mr. Martin's office for a time -- and if someone will be getting back to them later, he will arrange to return to Mr. Martin's office at a convenient time.

I called Ken Lazarus but he was unavailable; checked with Bobbie; she will call the Solicitor General and then call Messrs. Martin and Whitham. I called to let them know she would be back to them within half an hour or the secretary would call to let them know otherwise.

Tuesday 9/23/75

9:45 Checked with Bobbie; she did call and talk for a long time with both gentlemen.

She will call Keith Jones in Bob Bork's office this morning. Messrs. Martin and Whitham had properly notified the Solicitor's office.

THE WHITE HOUSE

WASHINGTON

November 24, 1975

MEMORANDUM FOR: DICK CHENEY

FROM: PHIL BUCHEN

The Attorney General has called to advise us that antitrust suits are about to be filed against Lockheed Corporation and Bechtel Corporation for allegedly conspiring with subcontractors to effectuate the Arab boycott. You may want to pass this information on to the President.