

The original documents are located in Box 26, folder “Olson Family Compensation Case” of the John Marsh Files at the Gerald R. Ford Presidential Library.

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THE WHITE HOUSE
WASHINGTON

TO: *Donna*
FROM: MIKE DUVAL / *Helen*

For your information _____

Comments:



OCT 10 1975

THE WHITE HOUSE
WASHINGTON



October 10, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR:

RODERICK HILLS

FROM:

JAMES E. CONNOR *JEF*

SUBJECT:

Olson Family Compensation
Case

The President reviewed your memorandum of September 30 and made the following notation:

"Rod Hills' view but there should be
consultation with Congress"

Please follow-up with appropriate action.

cc: Don Rumsfeld
Jack Marsh ✓



D - What was my comment on paper? M

du 10/16
3:00

Date: October 3, 1975

Time:

FOR ACTION:

cc (for information):

f

Robert Hartmann

Jack Marsh

Jim Lynn

FROM THE STAFF SECRETARY

DUE: Date:

Monday, October 6

Time:

3 P.M.

SUBJECT:

Olsen Family Compensation Claim
Rod Hills' memo of 9/30/75

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

This matter should be EYES ONLY/CLOSE HOLD and needs prompt attention. Thank you.

I am inclined to the Hills view, but it might be helpful to take a few discreet soundings on the Hill attitude as to their view.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Connor
For the President



THE WHITE HOUSE
WASHINGTON

Jack -

I agree with
Rod Hills - the
"s own outrage at
this entire incident
and the public aware-
ness of his views
would appear to
outweigh the danger

THE WHITE HOUSE
WASHINGTON

*inherent in settling"
for such a high
figure.*

Russ

THE WHITE HOUSE

WASHINGTON

September 30, 1975

MEMORANDUM FOR THE PRESIDENT

THROUGH: RICHARD CHENEY
FROM: RODERICK HILLS R.H.
SUBJECT: Olson Family Compensation Claim

The pending law suit by the Olson family against the United States Government by reason of the death of Dr. Olson threatens to be a reality this week if no new effort to settle the case is made. The Attorney General has made a final offer of \$500,000 which has been rejected by the Olson family.

The Olson family has countered with a request for \$3 million but has indicated a willingness to settle for less.

Essentially, the Attorney General concludes that the claim of the Olson family is worth \$1 million, but must be discounted by \$500,000 by reason of the possibility that the government will ultimately succeed in the case on the grounds that exclusive remedy for the Olson family comes from the benefits provided by the Federal Employees Compensation Act. In short, the Justice Department argues that there is a substantial possibility that a court will find that Dr. Olson died in the course of his employment.

I frankly disagree with this analysis and believe that there is a real probability that an appellate court would decide that as a matter of law when one dies under the circumstances such as those causing Dr. Olson's death, he cannot be said to have died "in the course of his employment." In any event, the Department of Justice will not

offer a larger sum in settlement. However, the Justice Department would support a private bill which would waive the FECA defense for a total of \$1 million and would not object if a private bill provided "compensation for the extraordinary deceit" employed in the case of Dr. Olson. For this element of damages they would provide \$250,000.

Adding all the elements of the Justice Department together, they would then support a private bill for \$1,250,000 and they would also forego an offset of the approximately \$150,000 that the Olson family has received to date in compensatory benefits.

The Justice Department analysis is attached at Tab A.

RECOMMENDATION

I recommend that you authorize Special Counsel to the CIA Mitchell Rogovin to attempt a settlement with the Olson family at a sum not to exceed \$1,250,000 plus a waiver of an offset of the monies received to date by the Olson family.

In the event a settlement can be reached within these guidelines, the CIA and the Olson family can jointly petition the Department of Labor to re-consider its 22 year old decision that Dr. Olson did die in the course of his employment. Should the Labor Department so rule, the Justice Department is on record as supporting a settlement of \$1 million without an offset.

The CIA could agree in a settlement with the Olson family that any excess amount would be made the subject of a private bill and supported by the Administration. Alternatively, if the Labor Department does waive the FECA decision, we could ask the Justice Department to re-consider its settlement limitation. In the event that the Labor Department should reaffirm the 22-year-old decision that Dr. Olson did die in the course of his employment, we would agree that the private bill would be in the amount of \$750,000.

Mitchell Rogovin should be authorized to attempt a settlement of the Olson family claim for a sum not to exceed \$1,250,000 without an offset.

Agree _____

Disagree _____

See Me _____



Office of the Attorney General
Washington, D. C.

September 24, 1975

TO: Mr. Roderick M. Hills
Counsel to the President

FROM: The Attorney General *J.R.*

SUBJECT: Olson Family Compensation Claim.

An amicable disposition of the Olson family claim for damages can be accomplished without litigation either by settlement or private bill. In this regard, the Justice Department has determined that the reasonable settlement value of the Olson family claim is \$500,000. We have also determined that a private bill could reasonably provide compensation in the range \$1 million to \$1.25 million. Some of the factors which generated these values are described below.

I. Settlement Value - \$500,000.

A Tort Claims Act suit can be appropriately settled by the Justice Department at a dollar figure which represents the reasonable value of the claim (absent any defense) minus a discount for the effect of available defenses on the probability that claimants would succeed in litigation.

We have determined that the highest conceivable settlement value of the Olson claim absent any defenses is \$1 million. This figure exceeds by \$250,000 the highest unappealed awards for a single death under the Tort Claims Act -- awards achieved in cases where the decedent left three to five children and possessed an earning capacity many times that of Frank Olson. In addition, this settlement figure exceeds by \$500,000

what Mr. William Marbury recommends as a fair settlement value while matching his estimate of the highest conceivable compensation award in this case.

In reaching this figure, we have appreciated fully the emotional appeal of the unique circumstances of the Olson claim and its likely impact on any court's interpretation of applicable legal principles. On the other hand, we have not ignored the fact that damages in Federal Tort Claims Act suits are established by a judge and not a jury (28 U.S.C. §2402); punitive damages are not permitted (28 U.S.C. §2674); and no action is available for misrepresentation or deceit (28 U.S.C. §2680). In addition, applicable Maryland law may well limit compensation to pecuniary losses. See Plant v. Simmons Co., 321 F.Supp. 735 (D. Md. 1970).

In order to arrive at an appropriate settlement value, we have discounted the \$1 million figure by the possibility that the government will ultimately succeed in this case. We have concluded that whether or not the present FECA decision is vitiated by fraud, the courts will, according to their uniform practice, stay judicial proceedings pending an administrative decision on FECA applicability. Moreover, it seems clear that, consistent with available precedent, the FECA administrators will again find Olson's death compensable under the statute. Therefore, we judge the government's chances of ultimate success to be substantial and claimants' chances to be correspondingly remote. Even substantially overindulging the potential for claimants' success in court, we conclude that the settlement value must be discounted by one-half. Thus, \$500,000 represents the appropriate settlement value of the Tort Claims Act element of this suit. In addition, we have concluded that under the circumstances no offset should be made for the FECA benefits which the Olsons improperly received without any fault of their own. Thus, the total settlement value of the claim to the Olsons reaches \$650,000.

II. Values Appropriate For A Private Bill.

The Justice Department recommendation on compensation values to be included in a private bill would necessarily be responsive to the language and purpose of that legislation. Legislation designed simply to remove the FECA defense to a compensation award should provide for no more than \$1 million - the highest conceivable value of the claim absent defenses. On the other hand, a bill could be designed to explicitly compensate for categories of damages which may not be available in a Tort Claims Act suit. Thus, Congress might provide compensation for the extraordinary deceit in this case, as well as a punitive award. While these elements of damage can not be valued with any precision, we would judge a reasonable value in compensation for these factors to be \$250,000, raising the total compensation award to \$1.25 million. Once again, it may be appropriate to forgo an offset for the FECA benefits received by the Olsons. Such a decision would raise the practical value of this compensation bill to the Olson family by approximately \$150,000.

I assume that if the Olsons are to seek a private bill, the agency which would express its views, if asked, as to the amount would be the DOD or the CIA.

due: 1/17
LOG NO.: noon

Date: July 16, 1975

Time:

FOR ACTION:

cc (for information):

Bob Hartmann
Jim Lynn (Personal Attention Only)
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Thursday, July 17

Time: 12 Noon

SUBJECT:

Roderick Hills' memo July 16, 1975 re
Scheduling of Meeting --- Mrs. Frank Olson
and her three children to meet the President

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

This matter should be EYES ONLY/CLOSE HOLD.
and needs quick turn-around.

Jim Connor
Bo
Bo
Bo

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Connor
For the President



THE WHITE HOUSE

WASHINGTON

July 16, 1975

MEMORANDUM FOR THE PRESIDENT

THROUGH: JERRY JONES
JAMES CONNOR

FROM: RODERICK HILLS R. H.

SUBJECT: Scheduling of Meeting re Invitation to
Mrs. Frank Olson and her three
children to meet with the President

The circumstances of the death of Dr. Frank A. Olson are described in a previously submitted memorandum, a copy of which is attached (Tab A). His widow and her three children have indicated their shock and outrage at the circumstances surrounding Dr. Olson's death and the fact that the details have been concealed from them for 20 years (See news story at Tab B). The Olson family has hired David Rudovsk~~er~~ to represent them and he has indicated the intention of the family to sue for several million dollars. This memorandum will deal with the question of what considerations are relevant in deciding whether the President should meet with Mrs. Olson and her three children to express his sympathy on behalf of the American people and his apology on behalf of the United States Government.

1. The fact that the President expresses his own outrage at the circumstances of Dr. Olson's death could be some encouragement to the family's determination to sue and could also raise their expectation as to the amount of money they expect to receive in settlement of that law suit. It could also affect the judge who tries the case and will have the authority to set damages.

While this is a factor in determining whether or not to meet with the Olsons, it is not, in our judgement, a conclusive factor, given the circumstances of this incident.

2. The intensity of the family's reaction and background of the lawyer they have hired do raise some possibility that they may react discourteously toward the President's invitation. This factor, however, we do not regard as material, since any such reaction would be more harmful to them than embarrassing to the President. However, it is conceivable that their lawyer may insist that he be present at such a meeting. We recommend that it be made clear that the lawyer not be invited.

3. The Civil Division of the Department of Justice in its initial memorandum (Tab A) stated "upon preliminary review" it is their opinion that any tort action against the United States by the Olsons would be barred by the Federal Employees Compensation Act on the ground that he was injured "in the course of his official duties" and, therefore, the family is entitled to survivors' benefits and nothing more. My further discussion with the Civil Division has led both them and me to conclude that the defense is not conclusive because:

(i) The bizarre circumstances of his death could well cause a court of law to determine as a matter of public policy that he did not die in the course of his official duties.

(ii) Dr. Olson's job is so sensitive that it is highly unlikely that we would submit relevant evidence to the court on the issue of his duties.

The latter circumstance may mean as a practical matter we would have no defense against the Olson law suit. In this connection, you should know that the CIA and the Counsel's office both strongly recommend that the evidence concerning his employment not be released in a civil trial. You may wish to discuss this matter in more detail at this time.

There is a statutory provision saying that the finding by the Bureau of Compensation is conclusive but we have some doubts both as to its applicability and constitutionality in this case.

4. If there is a trial, it is apparent that the Olsons' lawyer will seek to explore all of the circumstances of Dr. Olson's employment

as well as those concerning his death. It is not at all clear that we can keep such evidence from becoming relevant even if the government waives the defense of the Federal Employees Compensation Act. Thus, in the trial it may become apparent that we are concealing evidence for national security reasons and any settlement or judgement reached thereafter could be perceived as money paid to cover-up the activities of the CIA.

5. For all of the above reasons we recommend that the Attorney General be authorized now to seek to negotiate a settlement with the Olsons' lawyer.

(a) The Civil Division has advised us preliminarily that the case has a settlement value between \$500,000 and \$1 million. I have asked for a final recommendation.

(b) The Civil Division also has stated that any settlement may require a private bill to approve the settlement, but they are re-considering this decision in view of point No. 3 above. A private bill in the House would be introduced in Congressman Walter Flowers' subcommittee which probably would not encourage any in depth hearings about Dr. Olson's job. In the Senate the Judiciary Committee assigns private bills to the staff for recommendations back to the full committee. Again, we would expect that there would be only a small chance of extensive hearings on the underlying facts.

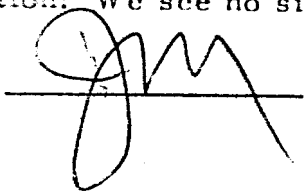
(c) Depending upon the exact amount of the settlement and a final decision from the Department of Justice, it may be possible for the Attorney General to approve a settlement and pay it without a private bill.

DECISION:

1. Should Mrs. Olson and her children be invited to a meeting at the White House to receive from the President an expression of sympathy on behalf of the American people and an apology on behalf of the United States Government?

Recommendation: We see no significant objection to such an invitation.

Agree

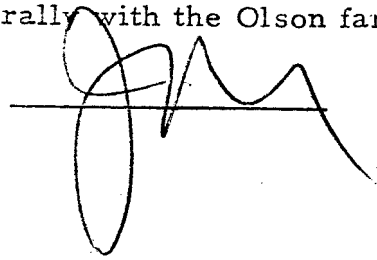
A handwritten signature in dark ink, appearing to be 'JM', is written over a horizontal line.

Disagree

2. Should the Attorney General be authorized to attempt a negotiated settlement with attorneys for the Olson family?

Recommendation: We recommend that he be so authorized and further that the President during his meeting with the Olson family suggest that the Attorney General would be willing to discuss the matter generally with the Olson family attorneys.

Agree

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, is written over the horizontal line under the word 'Agree'.

Disagree

The Rockefeller Report states on p. 226:

"In the late 1940's, the CIA began to study the properties of certain behavior-influencing drugs (such as LSD) and how such drugs might be put to intelligence use. This interest was prompted by reports that the Soviet Union was experimenting with such drugs and by speculation that the confessions introduced during trials in the Soviet Union and other Soviet Bloc countries during the late 1940's might have been elicited by the use of drugs or hypnosis. Great concern over Soviet and North Korean techniques in 'brainwashing' continued to be manifested into the early 1950's."

Dr. Frank A. Olson, a bio-chemist, was a civilian employee of the Army working at Fort Detrick in a cooperative effort with the CIA. On November 19, 1953, at one of the periodic meetings of Ft. Detrick and CIA personnel, a dosage of LSD was placed by CIA personnel in drinks consumed by Dr. Olson and others, all of whom were members of the group. Prior to receiving the LSD, Dr. Olson had participated in discussions where the testing of such substances on unsuspecting subjects was agreed to in principle. However, neither Dr. Olson, nor any of the others was made aware that they had been given LSD until about 20 minutes after the fact.

During the next several days Dr. Olson developed side effects, as a result of which he was taken to New York City on November 24, 1953, to be treated by a doctor who was a consultant to the agency on drug-related matters. Dr. Harold A. Abramson. On November 24, 25 and 26, he met with Dr. Abramson.

After seeing him on the 27th, Dr. Abramson believed that hospitalization would be in Dr. Olson's best interest. Arrangements were made for a hospital room near Dr. Olson's home (in the Washington area), but his room could not be prepared until the following day. Consequently, Dr. Lashbrook, of CIA, and Dr. Olson stayed at the Hotel Statler in New York on the night of November 27.

Dr. Lashbrook reported that during cocktails and dinner Dr. Olson appeared cheerful and spoke freely of his forthcoming hospitalization. Lashbrook and Olson retired at about 11:00 PM. They occupied separate twin beds in the same room on the tenth floor. At approximately 2:30 Saturday morning, Lashbrook was awakened by a loud noise; he reported that Olson had crashed through

the closed window blind and closed window and had fallen to his death.

The CIA General Counsel rendered an opinion that the death resulted from "circumstances arising out of an experiment undertaken in the course of his official duties for the U. S. Government.

The Bureau of Employee's Compensation adopted this view, thus awarding survivor benefits to the widow and children. To date \$143,582.22 have been paid to the widow and three children. These tax-free benefits continue to be paid in the current total amount of \$792.00 per month. The payments to the children terminate when they reach majority (as two already have), but the widow's benefits continue until death or re-marriage, and are periodically adjusted for cost of living increases.

The CIA has never made any contact with the family. Prior to the publication of the Rockefeller Report, no government representative has ever disclosed the full details concerning Dr. Olson's death.

Upon a preliminary review of the facts, it is the opinion of Justice Department lawyers that any tort action against the United States arising out of the above-stated facts would be barred by the Federal Employees' Compensation Act, and specifically 5 USC 8116(c). This Act would not bar suit against any individuals.

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THE NEW YORK TIMES - July 10, 1975

Family Plans to Sue C.I.A. Over Suicide in Drug

By SEYMOUR M. HERSH

Special to The New York Times

FREDERICK, Md., July 9—The widow and children of a researcher who committed suicide in 1953 after being made an unwitting participant in a Cen-

KAIRYS & RUDOVSKY
ATTORNEYS AT LAW
1427 WALNUT STREET
PHILADELPHIA, PENNSYLVANIA 19102

(218) LO 3-8312

DAVID KAIRYS
DAVID RUDOVSKY
HOLLY MAGUIGAN
JAYMA ABDON, LEGAL WORKER

21 October 1975

Mitchell Rogovin
Special Counsel to the Director
Central Intelligence Agency
Washington, D.C. 20505

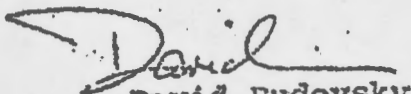
Re: Olson Claim

Dear Mitch:

Our understanding of the Government's present offer in the captioned matter is as follows: that by October 31, 1975, we will be in receipt of a formal offer, approved in writing by the Attorney General of the United States pursuant to 28 U.S.C. §2672; of \$1,250,000 for settlement of the Olson claim. This amount is acceptable to the Olsons and we are ready to settle the claim for that amount.

Please notify me immediately if this statement does not conform to our conversations of October 20 and 21.

Sincerely,


David Rudovsky

Mike



*I important
Discuss to day
Need map help
M*

X

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D. C. 20505

29 October 1975

*Mike -
where does
this stand?
M*

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

Pursuant to your instructions, efforts were made to negotiate a settlement of the claim of the family of Mr. Frank R. Olson against the Government based on the circumstances of his untimely death. Although the family has agreed to settle its far larger initial claim for \$1,250,000, the Attorney General is not prepared to certify under existing law that such a settlement is appropriate.

The Olson family is prepared to file suit. Such litigation would doubtless be prolonged and in the view of the Department of Justice, it would fail. Under the circumstances this would not appear to be in the best interests of the nation or the Olson family. I believe in good conscience that the circumstances of this case require an equitable response from the Government.

The only vehicle by which to obtain such recompense would be by passage of private legislation. Consequently, I recommend that you forward a request to the Congress for passage of a private bill in the sum of \$1,250,000.

Respectfully,

W. E. Colby
W. E. Colby
Director



Olson

November 12, 1975

MEMORANDUM FOR: MIKE DUVAL

FROM: JACK MARSH

Where do we stand on the Olson settlement matter?

JOM/dl



THE WHITE HOUSE
WASHINGTON

FYI

November 25, 1975

M

MEMORANDUM FOR JACK MARSH
FROM: MIKE DUVAL *Mike*
SUBJECT: STATUS OF OLSON CASE

Attorneys for the Olson family have negotiated with Mitch Rogovin at the CIA. An attempt was made to settle this case without special legislation, but the Justice Department would agree to a settlement only up to \$500,000 under the Federal Tort Claims Act.

Since this amount was unacceptable to the family, a private bill will be necessary. The President has approved such a bill in the amount of \$1,250,000. The family has agreed to this amount. The CIA is currently drafting this bill and it will soon be ready for submission to Congress. In the White House this matter is being handled by Ed Schmultz.



THE WHITE HOUSE

WASHINGTON

RECOMMENDED TELEPHONE CALL

TO: Rep. Walter Flowers, Chairman, Subcommittee on Administrative Law and Governmental Relations, House Judiciary Committee.

DATE: A.M., Monday, August 30, 1976
M.B.

RECOMMENDED BY: Max Friedersdorf, Ed Schmults and Ken Lazarus

PURPOSE: To encourage final Congressional action this Session on S. 3035, a private relief bill in the amount of \$1.25 million for the benefit of the survivors of Dr. Frank Olson (the man who died as the result of the CIA experiments with LSD).

BACKGROUND: Last year, you met with the Olson family and thereafter directed that an effort be made to compensate the family for their losses arising out of the death of Dr. Olson. Since current law did not provide an adequate basis for compensation to the family, the Administration supported the introduction of private relief legislation in February of this year. This legislation (S. 3035) passed the Senate in May. Although there would appear to be unanimity within the House Judiciary Committee on the desirability of this relief, your personal involvement would be helpful at this stage to ensure that the measure is not lost in the rush of the closing days of the Session.

TOPICS OF DISCUSSION:

1. Express appreciation for his prompt and discreet consideration of the bill. (The Subcommittee met privately with representatives of the CIA, Justice and Ken Lazarus of Counsel's Office.)
2. Confirm understanding that there is no opposition to the measure in its current form in either Subcommittee or full House Judiciary Committee.
3. Request assurance that Subcommittee will report measure to full Committee prior to Labor Day recess. This will allow sufficient time for final passage prior to adjournment.

Date of submission: August 27, 1976

Action _____

