

The original documents are located in Box 25, folder “Schmalzried Case” of the Ron Nessen Papers at the Gerald R. Ford Presidential Library.

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Q. Why does Buchen say the Civil Rights Act of 1964 does not apply to the White House?

A. This is a legal point. In the Schmalzried case, Buchen was saying that the lawyers had cited the wrong section of the statute, a section which does not apply to the White House or Congress. (FYI: It is a Constitutional principle that Congress or the Courts are not allowed to tell the President who to hire.)

However, the major point is that we do not, upon investigation, agree with the statements made in the suit. There is no sex discrimination at the White House.

THE WHITE HOUSE

WASHINGTON

December 4, 1975

Dear Mr. Fax:

This is in response to your letter to the President of November 6, 1975, and related correspondence concerning your client, Ms. Darlene Schmalzried, and her allegations of discrimination on the basis of sex during her employment at the White House Office. We have discussed the statutory provisions you cite in support of her allegations with the staff of the Civil Service Commission, and are advised that these provisions are not applicable to the White House Office.

Regardless of the non-applicability of these provisions to employees of the White House Office, the White House employment policy has been and continues to be one of non-discrimination. Accordingly, my office has reviewed the information available to us concerning Ms. Schmalzried's employment. On the basis of this review, we are unable to agree with your conclusion that Ms. Schmalzried was subject to discrimination on the basis of her sex during her employment at the White House.

For your information, the News Summary Office is presently staffed on a daily basis by four female professional employees, who are responsible for the selection and reduction of the summary's contents, and one clerical employee responsible for typing and xeroxing the summary. All of these individuals are paid at a salary rate less than that at which Ms. Schmalzried was paid when she separated from the White House staff. These individuals are supervised by Mr. James B. Shuman, Editor of the News Summary, who has overall responsibility for the News Summary Office, and also serves as Associate Director of the Office of Communications.

A copy of the contents of Ms. Schmalzried's official personnel file requested in your letter of November 13, 1975, is enclosed. Please note that on an annual basis as a GS 9/2, Ms. Schmalzried would

receive \$2,090 in authorized overtime pay, resulting in an effective annual salary of \$16,021.

On November 25, 1975, Ms. Schmalzried wrote to Mr. Shuman and indicated her willingness to assume "the job of editor of the news summary" if that position were "available at a wage commensurate with the responsibilities the job entails...." As mentioned above, Mr. Shuman is presently serving in the position of Editor, and I am advised that no change in this role is contemplated at the present time. As you may be aware, the White House Office is currently in the process of reducing from 540 to not more than 485 full-time employees. There are no plans at the present time to increase the number of persons presently employed in the News Summary Office and we are not now in a position to state whether any such vacancies will occur in the near future. However, in the event that a vacancy does arise, and should Ms. Schmalzried wish to apply for that vacancy, I can assure you that her application will be carefully considered along with other persons applying for that position.

Sincerely,

Philip W. Buchen
Counsel to the President

Mr. Charles S. Fax
Chapman, Duff and Lenzini
1709 New York Avenue, N.W.
Washington, D. C. 20006

Enclosure

— —

- don't apply to C in hiring practices
- don't apply to WH
- employment at WH is not subject to law she cited
- Congress & CTS cannot tell Pres who to hire ...
- States not cyclic — no; veris
- policy of non-disc —

THE WHITE HOUSE

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Sincerely,

Philip W. Buchen
Counsel to the President

Mr. Charles S. Fax
Chapman, Duff and Lenzini
1709 New York Avenue, N.W.
Washington, D. C. 20006

Enclosure

THE WHITE HOUSE
WASHINGTON

1/29/76

TO: *Row Nessen*

FROM: JIM SHUMAN

*Our reply to
Darlene.*

Jim

THE WHITE HOUSE
WASHINGTON

Date 1/29/76

TO: Jim Shuman

FROM: BARRY ROTH *BR*

ACTION:

Approval/Signature

Comments/Recommendations

✓

For Your Information

REMARKS:

Ron also asked to be kept informed on this, so I have enclosed two copies.



THE WHITE HOUSE

WASHINGTON

January 28, 1976

Re: Schmalzried v. Ford, et al.,
D.D.C., C.A. No. 75-2065

Dear Bob:

As we discussed, I have enclosed the documents we have located which are relevant to the above-referenced complaint. Set out below are our comments with respect to the factual allegations of her complaint (reference numbers are to paragraph numbers in the complaint):

10. Admit in part. Her assignments with the Evening Herald and the Oak Ridger are not referred to in either the SF-171 or SF-86 (security) that she filled out on joining the White House staff.
11. Admit in part. Mr. Warden is no longer at the White House and we are not certain whether he intended her to be his "principal" assistant. In addition to the editorial duties she attributed to Mr. Warden, he was also responsible for hiring and firing within the office, the format and general content of the Summary, and the scheduling of personnel. Mr. Warden was also the person who the Press Secretary and other senior White House officials held as responsible in all respects for the Summary. Mr. Warden's salary was \$26,189 from 9/9/74 to 10/12/74 and \$27,632 from 10/12/74 to 8/16/75 when he left the White House payroll. Mr. Warden was a veteran Washington correspondent of more than 34 years' experience, and was paid at a salary of \$23,000 per year prior to his White House position. We understand that Ms. Schmalzried was hired to prepare the Sunday Summary. This meant that she came in by herself and prepared a Summary of the news items without additional supervision.

Although hired at a GS 8/1 (\$11,029), she received four hours of overtime pay week, giving her an effective annual salary of \$12,682. Prior to joining the White House staff, she reports on the SF-171 that her salary was \$170 per week.

12. Admit in part. It was never resolved whether Ms. Schmalzried or Mr. Jonathan Hoornstra, the male employee referred to in the complaint, was superior. Under Mr. Warden, they both wrote portions of the Summary. Apparently, there were numerous personality conflicts in the office between these two employees as a result. The role was essentially one of equals in an operation that did not distinguish roles to any substantial extent. As evidenced in the enclosed materials, Mr. Hoornstra began working at the White House on February 9, 1972. He was then paid at a GS 7/1 (\$9,053) rate. He also received four hours of overtime pay each week. He was not promoted more than one GS grade in any individual year.

Once Mr. Shuman became Editor, he reorganized the office and in mid-April moved Mr. Hoornstra with him to an office away from that occupied by the Summary staff. His duties then were to analyze trends in the media, as opposed to the simpler, non-analytical editorial function of the Summary staff which is basically to shorten the news. When he was later placed in an unclassified pay status, he no longer received overtime pay.

13. Admit in part. Effective January 2, 1975, Mr. Warden hired Miss Marcie Powers as Assistant to the News Summary Editor, at a GS 9/1 (\$12,841, with overtime \$14,767). She had previously worked as a Press Assistant to Congressman Louis Wyman at an annual salary of \$11,237.88. This base rate was in excess of a GS 8/1, and she was, therefore, hired, we believe at Mr. Warden's request, at the GS 9/1 rate. Note that her title is different from that of Ms. Schmalzried's title of Editorial Assistant. The pay differential appears justified on the basis of their varied experiences.

14. Admit in part. In March or April, Mr. Warden did cease to function as Editor; however, he did not leave the White House rolls until August 16, 1975. Mr. Shuman's appointment was effective April 4, 1975.
15. Deny. Per Mr. Shuman, Ms. Schmalzried was neither asked to nor assisted in the reorganization of the News Summary format at that time. Several months later she did suggest, and Mr. Shuman adopted, her proposal that the dateline on the summary be changed by adding "for," so it would read, e.g., "for May 1, 1976." Mr. Shuman believes it would be more accurate to say that he then relied on her more because of her background, but that he did not make her his "Principal Assistant."
16. Admit in part. In moving to a new office, Mr. Shuman also assumed new responsibilities as the Associate Director of the White House Office of Communications, including the preparation of a briefing book for the President (not Mr. Nessen). Ms. Schmalzried was to assume the day-to-day duties of the office and to effectively serve as managing editor. Mr. Shuman makes the analogy to that of a newspaper where the managing editor does the day-to-day work while the editor is responsible for policy matters. Mr. Shuman continued to be held responsible by Mr. Nessen and other members of the staff for the Summary. While frequently following her recommendations, he remained responsible for such matters as the hiring and firing within the office, the format of the Summary, and its general content. He continues to serve today in this role as Editor. Additionally, both then and now, the White House is going through a process of reducing its staff size and overall payroll. It was felt that devoting someone at the level of Mr. Warden full time to the Summary was unnecessary. Mr. Shuman also attempted to organize the office in an egalitarian fashion as much as possible. For example, Sunday and late evening duty was handled on a rotation basis. Consistent with varying backgrounds

and levels of experience, he tried to assure that all of his writing staff was paid at roughly the same rate. With respect to a raise, Ms. Schmalzried had been on the staff then less than a year, and the general White House policy is that a raise in salary takes place only after a year at that rate.

17. Admit. The employee she refers to appears to be Miss Marcie Powers, referred to above.
18. Admit in part. She did not receive a promotion, although her duties did change to some extent.
19. Deny. Mr. Shuman spoke with Mr. Gerald Warren, then Deputy Press Secretary, rather than to Mr. Nessen, in a general conversation about possible reorganization of the Press Office. He did suggest a title change, but Mr. Warren did not respond. Neither Mr. Shuman nor Mr. Nessen has any knowledge of statements that Mr. Shuman had to keep the title because of possible press comments. Mr. Nessen states that he never considered a change in title because Mr. Shuman is continuing to function in what he considers to be the role of the Editor.
20. Deny. Mr. Shuman states he never made such a representation. Mr. Nessen, above, indicates that he contemplated no change in title.
21. Admit in part. Ms. Schmalzried made numerous demands for salary increases. Mr. Shuman was not able to assure her that these demands would be met.
22. Deny. On June 23, 1975, Mrs. Melanie Berney was hired by Mr. Shuman at a GS8/2 rate. Effective June 22, 1975, Ms. Schmalzried had been awarded a quality step increase and she too was then paid at the GS8/2 rate. Mrs. Berney had previously served as a Press Aide to Congressman Larry MacDonald. Her final salary there had been \$11,000 per year, although she had previously been paid \$20,000 per annum by the Congressman.

23. Admit. The language referred to in the complaint is standard language that is used in every quality step increase granted by the White House. Mr. Nessen did not approve the increase, but instead had requested that the office of the Staff Secretary to the President approve the increase. Except for direct Presidential appointments, this office serves as the appointing office for appointments to the White House staff.
24. Admit. The White House policy is that employees not receive more than one grade increase per year. Although not covered by the Civil Service system, once an employee is placed in a graded position, they have always sought a waiver from the CSC on grade increases in excess of one per year. No waiver has been sought from the CSC at least since 1971. However, if the employee is placed in an unclassified (ungraded) position the limit does not apply. Enclosed is a listing of all transfers of persons from graded to ungraded positions during the Ford Administration.
25. Deny. At the recommendation of Ms. Schmalzried, Mr. Shuman hired Miss Ann Reilly effective July 14, 1975, as Assistant to the New Summary Editor. She was hired at a GS8/1 rate which was less than the GS8/2 rate paid to Ms. Schmalzried.
26. Admit in part. On July 17, 1975, Mr. Shuman did send a memorandum to Mrs. White, who was examining the question of Press Office staff salaries. In that memorandum, he said that "The editor of the news summary, a job she is in effect filling, has in the past paid \$26,000." Mr. Shuman indicates he chose his language very carefully and that he meant from the standpoint of day to day operations, she was doing many of the things done by previous editors and not that the jobs were the same.
27. Deny. Mrs. White spoke to neither Mr. Rumsfeld nor to Mr. Cheney on this matter. Instead, she sent a memorandum to Mr. Nessen (relevant portion enclosed) in which she concluded that an \$18,000 salary would be "too large a single leap at this level." Instead she recommended a \$16,000 salary without being able to earn overtime. Effective September 28, 1975, she was promoted to a GS9/2, which, with overtime, is the equivalent of \$16,021 per annum. This promotion was effective only after she had completed her year in grade.

Mrs. White advises that she continues to believe that the present organization of the News Summary Office does not warrant a salary of the level requested by Ms. Schmalzried. It is her belief that the present levels of compensation are sufficient for the job that is required commensurate with experience and the overall salary structure in the Office of Communications.

29. Admit in part. As stated above, her annual salary with overtime was \$16,021.
30. Admit. This paragraph addresses only the content of her letter of resignation. The view by those who had dealt with her was that she did not deserve the salary and title that she had requested.
31. Ms. Schmalzried originally resigned effective September 19, 1975. This was later changed, at her request, to be effective on October 31, 1975, in order that she could receive her promotion to a GS 9/2 and to facilitate a transfer to another Federal agency if she located such a job. From October 1 through October 31, she served in a leave without pay status.
32. Mr. Scott has left the White House staff, and we are and unable to locate such a letter. We have no reason to
33. question the allegation, although generally someone would refer such questions to the office of the Counsel to the President. No one in this office recollects such a referral.
34. Check with the Civil Service Commission.
- 35
- and
- 36.
37. Admit
38. Admit in part. We are not in a position to know when Mr. Fax received the letter from Mr. Buchen. Ms. Schmalzried's complaint was considered by Mr. Buchen's office in an informal manner.

39. Admit in part. Ms. Schmalzried did so advise Mr. Shuman by letter dated November 25, 1975 (enclosed). We assume she is able to return, although she would apparently reject our belief the so-called Managing Editor position she performed warrants a salary at a GS9 level.
40. Admit in part. We are unaware of any further administrative remedies, although this does not mean that she does have a right to maintain the issue.

The following are possible witnesses in addition to the named defendants:

The Honorable Margita White
Assistant Press Secretary to the President
The White House
456-1414

Mr. Jonathan Hoornstra
6410 Piping Rock Road
Madison, Wisconsin 53711
(608) 257-5643

Mr. Philip Warden
Commodity Futures Trading Corporation
Washington, D. C.

I am providing a copy of this letter to the General Counsel's office at the CSC.

I would be pleased to discuss this matter with you further at your convenience.

Sincerely,



Barry N. Roth
Assistant Counsel

Robert Franzinger, Esq.
Civil Division
Room 3328
Main Justice
Washington, D. C. 20530

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DARLENE SCHMALZRIED,)
)
Plaintiff,)
)
v.) Civil Action No. 75-2065
)
RICHARD B. CHENEY, et al.,)
)
Defendants.)

MOTION OF PLAINTIFF TO RECONSIDER
EX PARTE ORDER OF COURT DISMISSING
THE ACTION AS TO GERALD R. FORD,
TO VACATE SUCH ORDER AND TO REINSTATE
GERALD R. FORD AS A PARTY DEFENDANT

Plaintiff, Darlene Schmalzried, moves this Court pursuant to the provisions of Rule 7(b)(1) and Rule 54(b) of the Federal Rules of Civil Procedure to reconsider its ex parte Order entered on December 18, 1975 dismissing this action as to defendant Gerald R. Ford, withholding service of process on Gerald R. Ford and quashing such process; to vacate such Order; and to reinstate Gerald R. Ford as a party defendant herein.

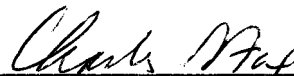
In support of such motion, plaintiff submits that: (a) plaintiff should, in all fairness, be accorded the opportunity to respond to the motion and suggestion of amicus curiae, the United States Attorney, that the action be dismissed as to Gerald R. Ford; (b) the appearance of the United States Attorney as amicus curiae, for the purpose of suggesting that the Court lacks jurisdiction over Gerald R. Ford, is unwarranted for the reason that Gerald R. Ford can be adequately represented in this action by his own counsel; (c) the appearance of the United States Attorney as amicus curiae, for the purpose of suggesting that the Court lacks jurisdiction over Gerald Ford, is contrary to the public interest, and (d) the Court has jurisdiction over Gerald R. Ford in this action and he is amenable to suit.

LAW OFFICES

CHAPMAN, DUFF AND LENZINI
1709 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20006
TELEPHONE (202) 878-8311

WHEREFORE, for the reasons set forth above and delineated further below in plaintiff's accompanying memorandum of points and authorities in support of its motion, plaintiff submits that the Court should reconsider its ex parte Order dismissing this action as to defendant, Gerald R. Ford, withholding service of process on Gerald R. Ford and quashing such process; vacate such Order; and reinstate Gerald R. Ford as a party defendant in this action.

Respectfully submitted,




Charles S. Fax
Chapman, Duff & Lenzini
1709 New York Avenue, N.W.
Washington, D. C. 20006
(202) 872-8311

Attorney for Plaintiff

December 23, 1975.

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Motion of Plaintiff to Reconsider Ex Parte Order of Court Dismissing the Action as to Gerald R. Ford, to Vacate Such Order and to Reinstate Gerald R. Ford as a Party Defendant, Memorandum of Points and Authorities in support thereof and proposed Order has been made by mailing copies thereof to: defendants Cheney, Nessen and Shuman, The White House, Washington, D. C., 20500; to defendant Rumsfeld, The Pentagon, Washington, D. C. 20301; to Gerald R. Ford, The White House, Washington, D. C. 20500; and to the United States Attorney for the District of Columbia, U. S. District Courthouse, Room 3438-A, Washington, D.C. 20001, on this 23rd day of December, 1975.



Charles S. Fax
Chapman, Duff and Lenzini
1709 New York Avenue, N. W.
Washington, D. C. 20006
(202) 872-8311

Attorney for Plaintiff

December 23, 1975.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DARLENE SCHMALZRIED,)
Plaintiff,)
v.) Civil Action No. 75-2065
RICHARD B. CHENEY, et al.,)
Defendants.)

MEMORANDUM OF POINTS AND AUTHOR-
ITIES IN SUPPORT OF MOTION OF PLAIN-
TUFF TO RECONSIDER EX PARTE ORDER
OF COURT DISMISSING THE ACTION AS TO
GERALD R. FORD, TO VACATE SUCH
ORDER AND TO REINSTATE GERALD R.
FORD AS A PARTY DEFENDANT

1. Statement of Facts

On December 10, 1975, plaintiff, Darlene Schmalzried, a former employee of the White House Office, Executive Office of the President of the United States,^{1/} filed this action against defendants Gerald R. Ford, Richard B. Cheney, Donald R. Rumsfeld, Ronald Nessen and James B. Shuman, claiming that she had been the subject of discrimination in employment on the ground of sex while serving as a White House employee, and that such discrimination was violative of the Fifth Amendment to the United States Constitution and the laws of the United States.^{2/} The complaint

^{1/} See Exhibit 1 attached hereto.

^{2/} Paragraph 1 of the complaint recited inter alia that:

The claim herein arises under the Fifth Amendment to the United States Constitution and the laws of the United States, including Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., as amended by the Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000e-16; The Equal Pay Act of 1963, 29 U.S.C. § 206(d), as amended; and Executive Order No. 11478, 34 Fed. Reg. 12984 (August 12, 1969), as amended by Executive Order 11490, 36 Fed. Reg. 7831 (April 27, 1971), 3 C.F.R. 207 (1974), which charge defendants with the affirmative responsibility of providing equal employment opportunities for employees in the Executive Office of the President of the United States regardless of sex, and which prohibit defendants from discriminating against such employees on account of their sex.

alleged that each of the defendants named was a White House official at the time that the illegal, discriminatory acts described in the complaint occurred. The complaint further alleged that each of the defendants was responsible or shared responsibility for the illegal and discriminatory acts set forth therein. With specific reference to Gerald R. Ford, the complaint recited, inter alia, at paragraph 5, that:

As president, defendant Ford is charged with execution of the law and policy of the United States Government to provide equal opportunity in all branches of Federal employment, including the Executive Office of the President, on the basis of fitness and merit and without regard to sex. Further, as Chief Executive, defendant Ford is responsible for the policies and practices of the Executive Office of the President.

On or about December 16, 1975, the United States Attorney for the District of Columbia filed a motion for leave to appear as amicus curiae "for the purpose of suggesting to the Court that it lacks jurisdiction over the President of the United States", and a self-styled "Suggestion for Dismissal of Action as to Gerald R. Ford, President of the United States." As of the date of the filing of the moving papers of the United States Attorney, counsel for Gerald R. Ford had not entered an appearance in the case, not even for the limited purpose of challenging jurisdiction over Gerald R. Ford or seeking to quash service of process as to him.

In his suggestion for dismissal of the action as to defendant Ford, amicus does not challenge the allegation contained in paragraph 5 of the complaint and quoted above, that, in his capacity as Chief Executive, Gerald R. Ford is head of the Executive Office of the President. Nor does amicus argue that this Court lacks jurisdiction of this action pursuant to the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (hereinafter, Title VII), which provides, at

42 U.S.C. § 2000e-16(c), that the head of the appropriate federal office shall be named as defendant in a suit brought pursuant to that section.

Amicus has merely cited black letter law to the effect that a president can only be sued when he has violated a ministerial duty, and has included a copious list of string citations in support of such proposition.

As stated above, the described motion and suggestion were filed by amicus on or about December 16, 1975. The motion and suggestion were received by counsel for plaintiff at his office on the morning of December 18, 1975, whereupon he promptly commenced preparation of an opposition to the motion and suggestion of amicus. On December 19, 1975, however, counsel for plaintiff was served with an Order of Court, issued ex parte on December 18, 1975, granting the relief requested by amicus, dismissing the action as to defendant Ford, withholding service of the summons and complaint upon Gerald R. Ford and quashing service of process as to him.

Plaintiff had no opportunity to oppose the motion and suggestion of amicus prior to the issuance of the ex parte Order by the Court. Plaintiff submits that it should have been accorded that opportunity; that, in fact, the arguments articulated by amicus are groundless and erroneous as a matter of law, and that Gerald R. Ford should be reinstated as a party defendant, for the reasons set forth below.

II. Argument

A. The appearance of the United States Attorney as amicus curiae, for the purpose of suggesting that the Court lacks jurisdiction over Gerald R. Ford, is unwarranted and therefore should not be permitted, for the reason that Gerald R. Ford can be adequately represented in this action by his own counsel.

It is curious that in this action the United States Attorney charac-

terizes himself as "amicus curiae," suggesting an arm's length relationship with the Executive Office of the President and a detached posture before this Court. In fact, it is typically the United States Attorney or its parent department, the U. S. Department of Justice, that represents the President in litigation. See, e.g., Dickson v. Nixon, 379 F.Supp. 1345 (W.D. Tex. 1974) vacated, 419 U.S. 1085 (1974); Drinan v. Nixon, 364 F.Supp. 854 (D.Mass. 1973); Campen v. Nixon, 56 F.R.D. 404 (N.D. Cal. 1972). Accordingly, it is mere form over substance to characterize the United States Attorney here as amicus curiae. In fact, the U. S. Attorney is very much an interested party and merely seeks, by this artificial stratagem, to avoid the necessity of making an appearance and thereby subjecting his client-in-fact to discovery that would elucidate who the "head" of the White House Office or Executive Office of the President is, for purposes of Title VII liability.^{3/}

However, taking the self-serving representations of the United States Attorney at face value for purposes of this argument, and assuming that Gerald R. Ford has or would have separate counsel in this litigation, it is apparent that the United States Attorney, for that very reason, should not be permitted to file his motion and suggestion herein. The U. S. Attorney, in his moving papers, has not alleged that counsel for Gerald R. Ford is unable to adequately represent Mr. Ford's interests. Accordingly, the rationale for permitting the appearance of the U.S. Attorney as amicus curiae does not exist.

^{3/} See 42 U.S.C. § 2000c-16, which provides that the head of the appropriate federal agency, department or unit shall be named as defendant in a suit brought pursuant to that section.

Courts which have permitted suggestions from amici have grounded their action on the expressed need to insure a plenary presentation of difficult issues that might not otherwise be properly aired. Banco Nacional De Cuba v. Sabbatino, 307 F.2d 845 (2d Cir. 1962), rev'd on other grounds, 376 U.S. 398 (1964); Robinson v. Lee, 122 F. 1010 (C.C.D.S.C. 1903). In Universal Oil Products Co. v. Root Ref. Co., 328 U.S. 575 (1946), for example, the Court emphasized the importance of amici in that case, in safeguarding the adversary proceedings. "If the rights of parties are to be adjudicated in such an investigation, the usual safeguards of adversary proceedings must be observed." 328 U.S. at 580.

As noted above, in the present case there has been no showing or allegation that Gerald R. Ford would be inadequately represented in the absence of an amicus. For that reason, the appearance of the U. S. Attorney should not be permitted.

B. The appearance of the United States Attorney as amicus curiae, for the purpose of suggesting that the Court lacks jurisdiction over Gerald R. Ford, is contrary to the public interest and therefore should not be permitted.

Plaintiffs assert, and amicus in no way contradicts, the principle that fairness and nondiscrimination in federal employment practices is a vital public policy, deeply rooted in American beliefs and the letter of the law. Amicus, however, would have the Court believe that even though nondiscrimination is a vital public policy, and even though defendant Gerald R. Ford may be directly responsible for illegal discriminatory acts, defendant Ford is excused from accountability. Such an argument, at best, counsels the court to impede and obstruct the vindication of individual rights because of the position of one of the defendants. Amicus does not

assert that the present action would divert even an insignificant amount of attention from the "imposing duties of [the President's] Office." (Memorandum of Amicus at 2.) The facts of this case are unique, and retention of defendant Ford would not set a precedent that would serve to consume the time of future presidents. Accordingly, it is manifest that the public interest favors the maintenance of this action, which seeks to hold the White House and Gerald R. Ford to the same standards for employment free from discrimination required of other federal agencies, departments and establishments and their heads.

It is acknowledged that "... a federal court can always call on law officers of the United States to serve as amici." Universal Oil Co. v. Root Ref. Co., 328 U.S. 575, 581 (1946). However, and crucial to the distinction to be drawn in this case, such appearance by amicus is only appropriate when, by its presence, the amicus will be able to assist the court in the furtherance of the public interest. For example, in Williams v. Georgia, 349 U.S. 375 (1955), it was held that it was proper for the Supreme Court to appoint an amicus curiae, for purposes of oral argument, where the defense attorney appointed by the state court in a capital case was unable to appear to present oral argument before the Court. Clearly, it was in the public interest that an amicus be appointed for that limited purpose.

Further, it should be noted that in each of the cases cited and relied upon by the United States Attorney in his memorandum of points and authorities in support of his motion for leave to appear as an amicus herein, a public interest was at stake and it was deemed that the appearance of the United States Attorney or U. S. Department of Justice as an amicus would further that public interest. Faubus v. United States,

254 F.2d 797 (8th Cir.), cert. denied, 358 U.S. 829 (1958), for example, concerned a proceeding to enjoin defendants from utilizing the National Guard to prevent Negro children from attending city schools pursuant to a court approved plan of gradual integration. The appellate court held that it was appropriate for the district court to invite the United States Attorney to appear as amicus curiae. However, the court emphasized that the amici were representing "the public interest in the due administration of justice." 254 F.2d at 805.

In Costello v. Dugger, 353 F.Supp. 1323 (M.D. Fla. 1971), the federal district court appointed the United States Attorney as amicus curiae to represent the interests of state prisoners who alleged that they had been denied medical treatment by prison officials. There the court emphasized the important public interest that needed to be protected and that warranted the appointment of the U.S. Attorney as amicus. Similarly, in Federal Deposit Ins. Corp. v. Fireman's Fund Ins. Co., 271 F.Supp. 684 (S.D. Fla. 1967), the necessity of furthering the public interest was the paramount consideration in the court's decision to appoint the U. S. Attorney as amicus curiae in an action by the Federal Deposit Insurance Corporation as assignee of a bank on two bonds issued by defendants, where defendants had raised the affirmative defense of fraudulent inducement. The court there noted:

A Federal Court can call on law officers of the United States to serve as amicus curiae to represent the public interest in the administration of justice . . .
The public interest should be protected.
271 F.Supp. at 691.

The remaining cases cited by the United States Attorney for the proposition that he should be permitted to appear as amicus curiae here can similarly be characterized and distinguished as the case above. In each of these

cases, the U. S. Attorney was permitted to enter an appearance as amicus curiae for the purpose of furthering the public interest.

Here, however, as noted above, the public interest favors the maintenance of this action, which seeks to hold all persons who discriminate in violation of the law, including Gerald R. Ford, accountable for their actions. Amicus, by his motion and suggestion, would prevent the public interest from being asserted and would thwart its consideration in this case. The law neither condones nor permits the appearance of amicus curiae for that purpose, and, accordingly, the U. S. Attorney should not be given leave to make an appearance as amicus curiae here.

C. The Court has jurisdiction over Gerald R. Ford in this action and he is amenable to suit.

The complaint herein alleges that the claim arises, inter alia under Title VII. Title VII, at 42 U.S.C. § 2000e-16(c), provides that "the head of the [executive] department, agency, or unit, as appropriate, shall be the defendant." Plaintiff was an employee of the White House Office, Executive Office of the President of the United States. Named as parties defendant were those persons who may have been considered head of the White House Office or Executive Office of the President, whichever entity is deemed to be the appropriate one for purposes of this suit, at the time the alleged illegal actions occurred. Frankly, at this stage of the proceedings, absent discovery, plaintiff does not know definitively who the head of the White House Office or Executive Office is, for purposes of this suit. It is clear, however, and the amicus does not deny, that Gerald R. Ford is presumptively that person. Certainly he is the Chief Executive and is directly in charge of both the White House Office and the

Executive Office. So too, plaintiff was his employee in a very direct sense (See Exhibit 2, attached hereto). Accordingly, as to that portion of the claim arising under Title VII, Gerald R. Ford is presumptively the person who "shall be the defendant." Id. (Emphasis added.)^{4/} Given this statutory predicate, the Court has jurisdiction over Gerald R. Ford in this case.

As acknowledged by amicus herein, the President of the United States is not totally immune from suit. He may, under certain circumstances, be sued or compelled to perform ministerial, nondiscretionary acts. United States v. Nixon, 418 U.S. 683 (1974); Nat'l Treasury Employees Union v. Nixon, 492 F.2d 587 (D.C. Cir. 1974); Nixon v. Sirica, 487 F.2d 700, 712 (D.C. Cir. 1973).

The partial immunity that is enjoyed by the President and other members of the Executive Branch of the government includes immunity from suits which involve political questions, or which involve actions or activities that are discretionary in nature. Baker v. Carr, 369 U.S. 186 (1962); Mississippi v. Johnson, 71 U.S. (4 Wall.) 475 (1867).^{5/} The President alone is given further limited immunity. He is not required to defend himself where another official may appropriately serve as the

^{4/} Plaintiff, by this argument, does not mean to imply that only one person should be the defendant in this action. Several jurisdictional bases underlying the maintenance of this action have been advanced, and plaintiff is prepared to argue that under one or more of these bases, all defendants are properly named parties.

^{5/} The string citation set forth at p. 3, fn. 2 of the suggestion of amicus, containing both reported and apparently unreported cases supporting the proposition that a President cannot be sued, in fact, insofar as can be verified by reference to the reported cases cited, mentions only cases where a political question has been raised. See Mitchell v. Laird, 488 F.2d 611 (D.C. Cir. 1973); Eminente v. Johnson, 361 F.2d 73 (D.C. Cir.) cert. denied, 385 U.S. 929 (1966); Allen v. United States, 154 F.2d 329 (D.C. Cir. 1946); Suskin v. Nixon, 304 F.Supp. 71 (N.D. Ill. 1969). Amicus has not, however, alleged that this is such a case. (cont.)

defendant. Minnesota Chippewa Tribe v. Carlucci, 358 F.Supp. 973 (D.D.C. 1973). None of these exceptions is applicable to this case, however.

As set forth above, Title VII requires that the head of the agency be named as the defendant. Accordingly, for purposes of Title VII there is presumptively no other official who may appropriately serve as the defendant. At the very least, at this stage of the proceedings, prior to discovery, it is premature and potentially prejudicial to plaintiff to assume that Gerald R. Ford is not the head of the White House or Executive Office and therefore not the person who should be named as the defendant for purpose of compliance with Title VII. See Jones v. United States, 376 F.Supp. 13, 14 n. 3 (D.D.C. 1974).

Moreover, this is not a case where discretionary acts of the President are involved. Gerald R. Ford has no discretion to discriminate against his employees on the basis of race, color, religion, sex or national origin. Nor has amicus suggested that President Ford has this discretion. The language of Title VII is clear. "All personnel actions affecting employees ... in executive agencies ... shall be made free from any discrimination based on race, color, religion, sex or national origin." 42 U.S.C. §2000e-16(a). (Emphasis added.) Gerald R. Ford has a ministerial duty to see that this law is obeyed and violation of this ministerial duty subjects him to the jurisdiction of this Court. Nat'l Treasury

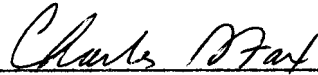
5/ - Cont'd. - The remaining cases, with one exception, cited by amicus in support of his argument that the President cannot be sued are cases wherein discretionary acts were challenged. But, as argued infra by plaintiff, discretionary acts are not at issue in this action and accordingly these cited cases are inapposite. The only case so cited by amicus that involves neither the polical oquestion doctrine nor discretionary acts is San Francisco Redevelopment Agency v. Nixon, 329 F.Supp. 672 (N.D. Cal. 1971). The rationale of that case, however, was expressly rejected by the United States Court of Appeals for the District of Columbia Circuit in Nat'l Treasury Employees Union v. Nixon, supra.

Employees Union v. Nixon, supra. If compliance with the law by executive officers were deemed "discretionary", then actions in violation thereof would fall within the sphere of limited immunity reserved for executive officers and render the statute a nullity. The law is, however, very much a reality, and should be applied equally to all persons, including Gerald R. Ford.

III. Conclusion

For the reasons set forth above, plaintiff submits that this Court should reconsider its ex parte Order entered on December 18, 1975 dismissing this action as to defendant Gerald R. Ford, withholding service of process on Gerald R. Ford and quashing such process; that the Court should vacate such Order; and that this Court should order that Gerald R. Ford be reinstated as a party defendant herein.

Respectfully submitted,



Charles S. Fax
Chapman, Duff and Lenzini
1709 New York Avenue, N. W.
Washington, D. C. 20006
(202) 872-8311

Attorney for Plaintiff

December 23, 1975.

TABLE OF CITATIONS

Statutes

Equal Pay Act of 1962, 29 U.S.C. § 206(d), as amended	1
Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e <u>et seq.</u> , as amended by the Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000 e-16	<u>passim</u>

Executive Orders

Executive Order No. 11478, 34 Fed. Reg. 12985, as amended by Executive Order No. 11590, 36 Fed. Reg. 7831, 3 C.F.R. 207 (1974)	1
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Cases

Allen v. United States, 154 F.2d 329 (D.C.Cir. 1946)	9
Baker v. Carr, 369 U.S. 186 (1962)	9
Banco Nacional De Cuba v. Sabbatino, 307 F.2d 845 (2d Cir. 1962)	5
Campen v. Nixon, 56 F.R.D. 404 (N.D.Cal. 1972)	4
Costello v. Dugger, 353 F.Supp. 1324 (M.D.Fla. 1972)	7
Dickson v. Nixon, 379 F.Supp. 1345 (W.D.Tex. 1974), vacated, 419 U.S. 1085 (1974)	4
Drinan v. Nixon, 364 F.Supp. 854 (D.Mass. 1973)	4
Eminente v. Johnson, 361 F.2d 73 (D.C.Cir. 1966), cert. denied, 385 U.S. 929 (1966)	9
Faubus v. United States, 254 F.2d 797 (8th Cir.), cert. denied, 358 U.S. 829 (1958)	6
Federal Deposit Ins. Corp. v. Fireman's Fund Ins. Co., 271 F.Supp. 689 (S.D. Fla. 1967)	7
Jones v. United States, 376 F.Supp. 13 (D.D.C. 1973)	10

Minnesota Chippewa Tribe v. Carlucci, 358 F.Supp. 973 (D.D.C. 1973)	10
Mississippi v. Johnson, 71 U.S. (4 Wall.) 475 (1867)	9
Mitchell v. Laird, 488 F.2d 611 (D.C.Cir. 1973)	9
*Nat'l Treasury Employees Union v. Nixon, 492 F.2d 587 (D.C. Cir. 1974)	9,10, 11
*Nixon v. Sirica, 487 F.2d 700 (D.C.Cir. 1973)	9
Robinson v. Lee, 122 F. 1010 (C.C.D.S.C. 1903), aff'd, 196 U.S. 64 (1904)	5
San Francisco Redevelopment Agency v. Nixon, 329 F.Supp. 672 (N.D. Cal. 1971)	10
Suskin v. Nixon, 304 F.Supp. 71 (N.D.Ill. 1969)	9
* United States v. Nixon, 418 U.S. 683 (1974)	9
Universal Oil Products Co. v. Root Ref. Co., 328 U.S. 575 (1946)	5,6
Williams v. Georgia, 349 U.S. 375 (1955)	6

* Cases chiefly relied upon are marked by asterisks.

APPOINTMENT AFFIDAVITS

Editorial Assistant
(Position to which appointed)

9/23/74
(Date of appointment)

Executive Office of the President, The White House Office, Washington, D. C.
(Department or agency) (Bureau or division) (Place of employment)

I, Darlene Schmalzried, do solemnly swear (or affirm) that—

A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

B. AFFIDAVIT AS TO STRIKING AGAINST THE FEDERAL GOVERNMENT

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof.

C. AFFIDAVIT AS TO PURCHASE AND SALE OF OFFICE

I have not, nor has anyone acting in my behalf, given, transferred, promised or paid any consideration for or in expectation or hope of receiving assistance in securing this appointment.

Darlene Schmalzried
(Signature of appointee)

Subscribed and sworn (or affirmed) before me this 27th day of September A.D. 1974,

at Washington,
(City)

District of Columbia
(State)

[SEAL]

Thomas J. English
(Signature of officer)

Commission expires September 23, 1975
(If by a Notary Public, the date of expiration of his Commission should be shown)

Notary Public
(Title)

NOTE.—The oath of office must be administered by a person specified in 5 U.S.C. 2993. The words "So help me God" in the oath and the word "swear" wherever it appears above should be stricken out when the appointee elects to affirm rather than swear to the affidavits; only these words may be stricken and only when the appointee elects to affirm the affidavits.

THE WHITE HOUSE

WASHINGTON

August 9, 1975

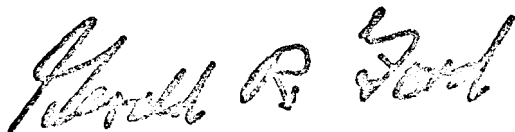
Dear Darlene:

Although I much prefer looking forward to looking back, I do want you to know on this first anniversary of assuming the Presidential office that whatever I have been able to accomplish for our country has been due in large measure to your loyalty and untiring help.

Time races by without adequate opportunity for me to say personal "thanks" to all who work here. But I do want you to know that I am mindful and deeply appreciative of your cooperation and your commitment, and for the tolerance shown by your family and friends at the over-long hours you put in -- not just for me, but for the big job we are all trying to do together.

I can't promise any shorter hours in the future but I am looking forward eagerly to more challenges and more achievements -- with your assistance and your continued support. Mrs. Ford joins me in warm good wishes to you and yours.

Sincerely,

A handwritten signature in cursive script that reads "Gerald R. Ford". The signature is written in dark ink and is positioned above the typed name of the recipient.

Miss Darlene Schmalzried
1517 Corcoran Street, NW.
Washington, D.C. 20009

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DARLENE SCHMALZRIED,)
)
 Plaintiff,)
)
 v.) Civil Action No. 75-2065
)
 RICHARD B. CHENEY, et al.,)
)
 Defendants.)

ORDER

Upon consideration of the complaint; the motion of the United States Attorney for leave to appear as amicus curiae herein for the purpose of suggesting to the Court that it lacks jurisdiction over the President of the United States; the suggestion for dismissal of this action against Gerald R. Ford, President of the United States; the motion of plaintiff to reconsider ex parte Order of Court dismissing the action as to Gerald R. Ford, to vacate such Order and to reinstate Gerald R. Ford as a party defendant; and the memorandum of points and authorities in support thereof, it is this _____ day of _____, 197___,

ORDERED that the motion of plaintiff to reconsider ex parte Order of Court dismissing the action as to Gerald R. Ford, to vacate such Order and to reinstate Gerald R. Ford as a party defendant should be, and it hereby is, granted; and it is,

FURTHER ORDERED that the Order of Court entered on December 18, 1975 is hereby vacated; and it is,

FURTHER ORDERED that Gerald R. Ford is hereby reinstated as a party defendant in this action; and it is,

FURTHER ORDERED that the Clerk of the Court shall so note all pleadings, memoranda, dockets and other documents pertaining to this case.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DARLENE SCHMALZRIED,)
)
 Plaintiff,)
)
 v.) Civil Action No. 75-2065
)
 GERALD R. FORD, et al.,)
)
 Defendants.)
)

PLAINTIFF'S INTERROGATORIES

SET ONE

Plaintiff, Darlene Schmalzried, requests that defendants answer under oath, in accordance with the provisions of Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

1. Please identify each independent establishment existing within the Executive Office of the President of the United States as of February 1, 1976 and state as to each:
 - a. The date of its creation;
 - b. The statutory, regulatory or administrative authority for its creation;
 - c. The statutory, regulatory or administrative authority for the determination of salaries of all employees within it;
 - d. The functions or purposes for which it was created;
 - e. Whether the provisions of 42 USC §2000e-16 (Supp. II 1972) are deemed applicable to it by the Executive Office of the President;

- f. The basis for the determination that the provisions of 42 USC §2000e-16 (Supp. II 1972) are or are not applicable to it;
- g. A description of all documents or memoranda containing an opinion or position concerning the applicability or non-applicability of the provisions of 42 USC §2000e-16 (Supp. II 1972) to it.

2. Please identify each establishment, office, agency or unit existing within the White House Office of the Executive Office of the President of the United States as of February 1, 1976, and state as to each:

- a. The date of its creation;
- b. The statutory, regulatory or administrative authority for its creation;
- c. The statutory, regulatory or administrative authority for the determination of salaries of all employees within it;
- d. The functions or purposes for which it was created;
- e. Whether the provisions of 42 USC §2000e-16 (Supp II 1972) are deemed applicable to it by the Executive Office of the President;
- f. The basis for the determination that the provisions of 42 USC §2000e-16 (Supp. II 1972) are or are not applicable to it;
- g. A description of all documents or memoranda containing an opinion or position concerning the applicability or non-applicability of the provisions of 42 USC §2000e-16 (Supp. II 1972) to it.

3. Please state the name, birth date, sex, last known residence address, job description, salary (as of the dates hereinbelow set forth), and GS rating, if applicable, of each person employed in the Office of the White House News Summary as of the following dates:

- a. September 1, 1974;
- b. November 1, 1974;
- c. May 1, 1975;
- d. July 1, 1975;
- e. September 9, 1975;
- f. November 1, 1975;
- g. January 1, 1976;
- h. February 1, 1976;

4. With respect to each person identified in response to Interrogatory No. 3 who was not employed continuously by the Office of the White House News Summary on all dates set forth in Interrogatory No. 3, please state:

- a. The date on which such person commenced or terminated his or her employment;
- b. The reason for such termination of employment;
- c. A description of all documents and memoranda relating to such termination of employment.

5. Please state whether any person employed in the Office of the White House News Summary at any time between September 1, 1974 and February 1, 1976 received a promotion or increased responsibilities within or without that Office during that period of time.

6. If the answer to Interrogatory No. 5 is in the affirmative, please identify each instance of a promotion or assignment of increased responsibilities by stating:

- a. The date of such promotion or assignment of increased responsibilities;
- b. The recipient of the promotion or increased responsibilities;
- c. The person or persons who awarded such promotion or assigned such increased responsibilities;
- d. The position of the recipient of the promotion or increased responsibilities, and a description of his or her duties, prior to such promotion or assignment of increased responsibilities;
- e. The position of the recipient of the promotion or increased responsibilities, and a description of his or her duties, subsequent to such promotion or assignment of increased responsibilities;
- f. A description of all documents and memoranda relating to each such promotion or assignment of increased responsibilities.

7. Please state, with respect to each date set forth in Interrogatory No. 3, the organizational chart or equivalent thereof of the Office of the White House News Summary, and for each such date please state, if not previously stated in response to another interrogatory, where each person identified in response to Interrogatory No. 3 was placed in such organizational chart or equivalent thereof, and identify all documents and memoranda relating to such organizational chart or equivalent thereof.

8. Please describe the nature of the supervisory authority exercised by each person identified in response to the preceding interrogatory as a superior, over his or her indicated subordinates, if not described in answer to a previous interrogatory, and identify all documents and memoranda relating thereto.

9. Please state, with reference to each date set forth in Interrogatory No. 3, the person or persons to whom the Editor of the White House News Summary was responsible, either directly or indirectly, and state the nature and extent of the authority exercised over the Editor of the White House News Summary by each person so identified.

10. Please state whether any policies exist or existed at any time subsequent to September 1, 1974 with respect to non-discrimination in employment in the Executive Office of the White House and if so, please describe any such policies and state when they were instituted, by whom they were instituted and identify all documents and memoranda relating thereto.

11. Please state whether any position or positions within the Office of the White House News Summary are considered to be either directly or indirectly related to national security and, if so, please identify the following:

- a. Each such position;
- b. Whether the relationship to national security is considered to be direct or indirect as to each such position;
- c. The reason for the determination that such position is either directly or indirectly related to national security;
- d. The date on which such determination was made;
- e. The person or persons who made such determination; and
- f. All documents and memoranda relating to such determination or relationship.

12. Please state whether any person or persons have ever charged the White House Office or an office, establishment, agency or unit thereof with job discrimination in employment; and if so, identify the following:

- a. The name, sex, and last known residence address of the person who made the charge;
- b. Against whom the charge was made;
- c. The precise nature of the charge;
- d. The date the charge was made;
- e. The procedural steps (including but not limited to, filing suit) taken by the complainant;
- f. The outcome or ultimate disposition of the charge;
- g. All documents and memoranda relating thereto.

13. As of each of the dates listed in Interrogatory No. 3, please identify the following:

- a. The person or persons who determined the number of persons to be employed in the Office of the White House News Summary;
- b. The person or persons who had appointment and dismissal authority over employees in the Office of the White House News Summary;
- c. The person or persons who set or approved the starting salary and GS level, if applicable, of new employees in the Office of the White House News Summary;
- d. The person or persons who determined when an employee in the Office of the White House News Summary News Staff was to be promoted, demoted or transferred.

14. Please describe the method or methods by which applicants for positions in the Office of the White House News Summary are chosen or were chosen at any time subsequent to August 31, 1974.

15. Please identify all documents and memoranda relating to hiring and promotion policies in the Office of the White House News Summary, if not identified in response to a previous interrogatory.

16. Please identify the person or persons who hired or approved the hiring of plaintiff Schmalzried, and the person or persons who set or approved her starting salary and GS rating. As to each person identified, please describe the nature of the authority he or she exercised.

17. Please state whether plaintiff Schmalzried has ever personally met with Gerald R. Ford or any of the defendants, and if so, state the following:

- a. The date(s) of such meeting(s);
- b. With whom she met;
- c. The duration of such meeting(s);
- d. The subject(s) discussed; and
- e. Identify all documents and memoranda relating thereto.

18. Please identify each instance when there was a meeting between two or more people employed in the Executive Office of the President in which plaintiff Schmalzried was a subject, and for each instance please identify the following:

- a. The participants;
- b. The substance of such meeting(s); and
- c. All documents and memoranda relating thereto.

19. Please state whether Gerald R. Ford or any of the defendants has ever written memoranda, correspondence or notes about or concerning plaintiff Schmalzried, either directly or indirectly, and if so, please identify such memoranda, correspondence or notes.

20. Please state whether Gerald R. Ford or any of the defendants has been notified at any time either orally or in writing of the salary plaintiff Schmalzried received at any time during her White House employment, or of her GS level(s) during the course of her employment, or

the fact that plaintiff Schmalzried received less compensation than certain persons whom she supervised; and if so, please state the following and identify all documents and memoranda relating thereto;

- a. Who was notified;
- b. By whom was that person notified;
- c. The action, if any, that Gerald R. Ford or any of the defendants took in response to such notification.

21. Please describe with particularity the official duties of defendant Richard B. Cheney in his capacity as Assistant to the President with respect to oversight of the Executive Office of the President, the White House Office, the Office of the White House News Summary and the offices, units and agencies thereof, as applicable.

22. Please describe the nature and extent to which Gerald R. Ford oversees the duties of Richard B. Cheney set forth in response to the preceding interrogatory.

23. Please state whether a legal opinion or opinions have been written by anyone respecting the issue of coverage of the White House Office by Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act as amended, or Executive Order No. 11478 as amended, and if so, identify said opinion(s).

24. Please state the reason for the termination of Phillip Warden as Editor of the White House News Summary in March, 1975; and please identify all documents and memoranda relating thereto.

25. Please state whether there exists a policy paper or memorandum indicating an intent or desire to downgrade the importance of the Office of the White House News Summary, including but not limited to proposals to reduce its staff or output; and if so, identify such documents or memoranda.

26. Please describe with particularity the duties that plaintiff Schmalzried performed as of each date listed in Interrogatory No. 3

27. With respect to the duties described in the preceding interrogatory, please identify the person or persons who performed such duties before plaintiff Schmalzried assumed them.

28. Please identify the head(s) of the Executive Office of the President, between September 1, 1974 and the present, if not identified in response to a previous interrogatory, and state as to each such head the dates of his tenure.

29. Please identify the head(s) of the White House Office, between September 1, 1974 and the present, if not identified in response to a previous interrogatory, and state as to each such head the dates of his tenure.

30. Please identify the head(s) of the Office of the White House News Summary, between September 1, 1974 and the present, if not identified in response to a previous interrogatory, and state as to each such head the dates of his tenure.

31. Please identify all documents and memoranda concerning proposed salary increases or GS level increases for plaintiff Schmalzried or proposed changes in her formal title.

32. Please identify all documents not previously identified which relate to the following:

- a. The organization of the Office of the White House News Summary;
- b. The selection of plaintiff Schmalzried for employment on the staff of the White House News Summary and the method by which her compensation rate and GS level were determined;

- c. The selection of employees for staff of the White House News Summary;
- d. The determination of compensation rates for White House Office employees in general and for employees of the White House News Summary staff in particular;
- e. The issue of who is the head of the White House Office or the Office of the White House News Summary.

33. Please identify all documents which have not been previously identified which might assist in answering any of the preceding interrogatories.

Respectfully submitted,

151
Charles S. Fax
Chapman, Duff & Lenzini
1709 New York Avenue, N.W.
Washington, D.C. 20006
(202) 872-8311

Attorney for Plaintiff

Of Counsel:

Chapman, Duff & Lenzini
1709 New York Avenue, N.W.
Washington, D.C. 20006
(202) 872-8311

January 30, 1976

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Plaintiff's Interrogatories, Set One, has been made by mailing copies thereof: to defendants Cheney, Nessen and Shuman, The White House, Washington, D. C. 20500; to defendant Rumsfeld, The Pentagon, Washington, D. C. 20301; to Gerald R. Ford, The White House, Washington, D. C. 20500; and to the United States Attorney for the District of Columbia, U. S. District Courthouse, Room 3438-A, Washington, D. C. 20001, on this 30th day of January, 1976.

CS
Charles S. Fax
Chapman, Duff and Lenzi
1709 New York Avenue, N. W.
Washington, D. C. 20006
(202) 872-8311

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DARLENE SCHMALZRIED,)
)
 Plaintiff,)
)
 v.) Civil Action No. 75-2065
)
 GERALD R. FORD, et al.,)
)
 Defendants.)
 _____)

PLAINTIFF'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS

Plaintiff, Darlene Schmalzried, pursuant to Rule 34 of the Federal Rules of Civil Procedure, hereby requests that defendants produce for inspection and copying, or provide a duplicate of, each document and memorandum required to be identified in answer to Plaintiff's Interrogatories, Set One, that is within their possession, custody or control, or the possession, custody or control of any employee(s), servant(s), representative(s), attorney(s) or agent(s) of the United States government responsible to defendants or subject to their authority. Plaintiff further requests that the documents and memoranda so specified be produced at 10:00 a.m. on March 5, 1975, at the office of Chapman, Duff and Lenzini, 1709 New York Avenue, N. W., Washington, D. C., Telephone (202) 872-8311, or at such other

time or place as is mutually agreed upon by the parties.

Respectfully submitted,

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Charles S. Fax
Chapman, Duff and Lenzini
1709 New York Avenue, N.W.
Washington, D.C. 20006
(202) 872-8311

Attorney for Plaintiff

Of Counsel:

Chapman, Duff and Lenzini
1709 New York Avenue, N.W.
Washington, D.C. 20006
(202) 872-8311

January 30, 1976

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Plaintiff's First Request For Production of Documents has been made by mailing copies thereof: to defendants Cheney, Nessen and Shuman, The White House, Washington, D. C. 20500; to defendant Rumsfeld, The Pentagon, Washington, D. C. 20301; to Gerald R. Ford, The White House, Washington, D. C. 20500; and to the United States Attorney for the District of Columbia, U. S. District Courthouse, Room 3438-A, Washington, D. C. 20001, on this 30th day of January, 1976.

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Attorney for Plaintiff

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DARLENE SCHMALZRIED,)
)
Plaintiff,)
)
v.)
)
GERALD R. FORD, et al.,)
)
Defendants.)
)

Civil Action No. 75-2065

PLAINTIFF'S OPPOSITION TO RENEWED MOTION
OF THE UNITED STATES ATTORNEY FOR LEAVE
TO APPEAR AS AMICUS CURIAE AND SUGGESTION
FOR DISMISSAL OF AMENDED COMPLAINT AS TO
GERALD R. FORD, PRESIDENT OF THE UNITED
STATES

1. Introduction

The above-captioned lawsuit was filed on December 10, 1975 against defendants Gerald R. Ford, Richard B. Cheney, Donald R. Rumsfeld, Ronald Nessen and James B. Shuman. On or about December 16, 1975 the United States Attorney for the District of Columbia filed a motion for leave to appear as amicus curiae "for the purpose of suggesting to the Court that it lacks jurisdiction over the President of the United States," and a self-styled "suggestion for dismissal of action as to Gerald R. Ford, President of the United States." On December 18, 1975 the Court issued an ex parte order granting the relief requested by amicus, dismissing the action as to defendant Ford, withholding service of the summons upon Gerald R. Ford and quashing service of process as to him. On December 23, 1975 plaintiff filed a motion to reconsider, which was denied on January 13, 1976.

On January 16, 1976 plaintiff filed an Amendment to Complaint as of right pursuant to the provisions of Rule 15(a) of the Federal Rules of Federal Procedure, alleging as an additional jurisdictional predicate 28 U.S.C. § 1361 (1970). By motion and suggestion filed on or about January 28, 1976, the United States Attorney again seeks the opportunity to appear as amicus curiae for the purpose of suggesting to the Court that the amended complaint in the above captioned action should be dismissed as to the President of the United States. It is clear, from the face of the motion and suggestion of the United States Attorney, that he has misconstrued the function of the Amendment to Complaint, and that his motion and suggestion should be denied for the reasons set forth below.

2. Argument

Plaintiff has argued that Gerald R. Ford should properly be a named defendant in this case. See Motion of Plaintiff to Reconsider Ex Parte Order of Court Dismissing the Action as to Gerald R. Ford, to Vacate such Order and to Reinstate Gerald R. Ford as a Party Defendant, filed with the Court on December 23, 1975. The Court having issued an interlocutory order dismissing the action as to Gerald R. Ford, however, it was not plaintiff's intention to attempt to circumvent the law of the case in filing its amended complaint. Rather, the amended complaint merely sought to add an additional jurisdictional count, 28 U.S.C. § 1361 (1970). The statement of the United States Attorney in his moving papers "that plaintiff has named the President of the United States as a party defendant to the amended complaint" is simply not the case; Gerald R. Ford's name merely appears in the abbreviated caption in conformity

with the local practice in this jurisdiction of maintaining, for purposes of identification and reference, the name of the case as docketed with the Clerk of the Court. Further, the statement of the United States Attorney that plaintiff has "attempted service upon the President" by mailing a copy thereof to Mr. Ford at the White House is similarly misleading. True, a copy of the amended complaint was served on the President, but merely as a formality. The certificate of service recites that service has been made by mailing copies thereof to defendants Cheney, Nessen and Shuman... defendant Rumsfeld... to Gerald R. Ford... and the United States Attorney for the District of Columbia...." (Emphasis added). Clearly, Gerald R. Ford is not denominated as a defendant in the Certificate of Service. He was served with a copy of the Amendment to Complaint, and will continue to be served with plaintiff's pleadings and motions, merely as a courtesy.

Accordingly, although plaintiff reserves the right to argue, if necessary, at the appropriate time and in the appropriate forum, that Gerald R. Ford should be named as a party defendant in this action, it is manifest that the Amendment to Complaint does not seek to vitiate the effect of the Court's interlocutory order. For this reason, the motion and suggestion of the United States Attorney are gratuitous and irrelevant, and should be denied.

3. Conclusion

For the reasons set forth above, the Motion of the United States Attorney for Leave to Appear as Amicus Curiae and Suggestion

for Dismissal of Amended Complaint as to Gerald R. Ford, President
of the United States, should be denied.

Respectfully submitted,

JSI
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Washington, D.C. 20006
(202) 872-8311

Attorney for Plaintiff

Of Counsel:

Chapman, Duff & Lenzini
1709 New York Avenue, N.W.
Washington, D.C. 20006
(202) 872-8311

February 4, 1976

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Plaintiff's Opposition to Renewed Motion of the United States Attorney for Leave to Appear as Amicus Curiae and Suggestion for Dismissal of Amended Complaint as to Gerald R. Ford, President of the United States, and a proposed Order, has been made by mailing copies thereof: to defendants Cheney, Nessen and Shuman, The White House, Washington, D. C. 20500; to defendant Rumsfeld, The Pentagon, Washington, D. C. 20301; to Gerald R. Ford, The White House, Washington, D. C. 20500; and to the United States Attorney for the District of Columbia, U. S. District Courthouse, Room 3438-A, Washington, D. C. 20001, on this 4th day of February, 1976.

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(202) 872-8311

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DARLENE SCHMALZRIED,)
)
Plaintiff,)
)
v.) Civil Action No. 75-2065
)
GERALD R. FORD, et al.,)
)
Defendants.)
_____)

ORDER

Upon consideration of the amendment to complaint, the motion of the United States Attorney for leave to appear as amicus curiae herein for the purpose of suggesting to the Court that it lacks jurisdiction over the President of the United States, the suggestion for dismissal as to the amendment to complaint against Gerald R. Ford, President of the United States, plaintiff's opposition thereto, and all of the papers filed in this action, it is this _____ day of _____, 1976,

ORDERED that the motion and suggestion of the United States Attorney should be, and the same hereby are, denied.

UNITED STATES DISTRICT JUDGE