The original documents are located in Box 22, folder "Justice - Court Cases (2)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

Justice

April 8, 1975

Dear Congressman Pritchard:

I have reviewed the petition of Mr. Loren Berg which you were kind enough to forward to the President under date of March 13, 1975. Enclosed is a copy of my letter to the Attorney General requesting a review of the matter and report to your office as soon as practicable.

I trust this satisfies your request but please contact me directly if I may be of further assistance.

Sincerely,

Kenneth A. Lazarus
Associate Counsel
to the President

Honorable Joel Pritchard
U. S. House of Representatives
Washington, D. C.

Enclosure

bcc: Phil Buchen ✓
Vernon Loen

THE WHITE HOUSE

WASHINGTON

April 8, 1975

Dear Mr. Attorney General:

Enclosed please find a petition and supporting documents which relate to litigation pending in the U. S. District Court, Western District of Washington (Seattle). These materials were forwarded to the President by Representative Joel Pritchard on behalf of the petitioner, Mr. Loren Berg.

Kindly arrange for a review of this matter and report to Representative Pritchard as soon as practicable.

Your cooperation is appreciated.

Sincerely,

Kenneth A. Lazarus
Associate Counsel
to the President

Honorable Edward H. Levi
The Attorney General
Washington, D. C.

Enclosures

bcc: Phil Buchen
Vernon Loen

THE WHITE HOUSE

WASHINGTON

April 22, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: BARRY ROTH BR

SUBJECT: GAO Suit for the Release of Impounded Section 235 HUD Funds

On April 15, 1975, the Comptroller General brought suit against the President, the Director of OMB and the Secretary of HUD to compel the defendants to obligate $264,117,000 of impounded budget authority to carry out Section 235 of the National Housing Act. The Comptroller seeks a declaratory judgment that the impoundment is unlawful as well as an order mandating the expenditure of the funds, on the grounds that expenditure is required pursuant to Title X of the Budget Control Act of 1974. The Attorney General has previously rendered an opinion that this Act does not affect any funds impounded before its effective date of July 12, 1974, thus excluding these funds which were impounded by President Nixon in 1973.

While the Secretary is very pessimistic as to the outcome of this suit, Justice is still considering this matter. The Secretary has offered the following options to Jim Cannon and Jim Lynn for their consideration:

"(1) Litigating the lawsuit on the merits and accepting the likelihood of a judicially mandated expenditure of all the impounded funds;

(2) Releasing the impounded funds and resuming the program as originally devised and operated before the suspension decision; or

(3) Reimplementing Section 235 on a considerably modified basis, so to moot the lawsuit and the underlying controversy with Congress while at the same time ameliorating some of the programmatic defects that led to suspension of the program in the first instance.

The implementation of Section 235 and release of impounded funds is a difficult policy issue, and turns on the likelihood of our success in the impending lawsuit. There appears to be a substantial likelihood that we will lose the lawsuit. Hence, there appears to be substantial merit in immediately taking the initiative, releasing the funds, revising the program, and mooting the controversy."

cc: Ken Lazarus
Dudley Chapman

THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C.. 20410

April 18, 1975

MEMORANDUM FOR: James M. Cannon
Assistant to the President
for Domestic Affairs

James T. Lynn
Director
Office of Management
and Budget

FROM: Carla A. Hills
Secretary of Housing
and Urban Development

SUBJECT: GAO Lawsuit for the Release of
Impounded Section 235 Funds

1. Problem

On April 15, 1975, the Comptroller General filed suit against the President, the Director of OMB and the Secretary of HUD to compel the defendants to obligate $264,117,000 of impounded budget authority to carry out Section 235 of the National Housing Act. The Comptroller seeks a declaratory judgment that the impoundment is unlawful and an order mandating the expenditure of these funds, on the grounds that the expenditure is required pursuant to Title X of the Budget Control Act of 1974. The Office of General Counsel at HUD and the Department of Justice are of the opinion that GAO is quite likely to prevail in the litigation.

This memorandum addresses the question of whether that $264 million in Section 235 funding should now be released.

2. Recommendation

HUD is considering recommending the release of the funds under an administratively modified 235 program:

(1) because of our prognosis for the litigation;

(2) because we believe we have substantially more flexibility to modify the 235 program to mitigate programmatic defects if we act voluntarily and quickly (thereby mooting the lawsuit) rather than under Court mandate;

(3) because we believe that the political ramifications of having the Court rule that the President was wrong on this impoundment issue, which has received substantial focus over the past two years, would be unfortunate, particularly in context of the current depression in the home building industry;

(4) because we believe we have a chance to limit the expenditure to less than that which the Court would be likely to mandate.

3. A Description of Section 235

Section 235, Lower-Income Home Ownership Program, by which direct cash payments were provided to a lender on behalf of a lower income family to enable it to purchase a home, provided:

-- the payments can reduce amortization costs to as low as 1 percent;

-- the homeowner must pay a minimum of 20 percent of adjusted income toward regular monthly payments;

-- the homeowner must provide at least a 3 percent downpayment;

-- the mortgage ceilings are $21,600 ($25,200 in high cost areas) or $25,200 ($28,800 in high costs areas) for a family with 5 or more persons; and

-- to be eligible a family's income must not exceed 80 percent of median income for the area.

4. The 235 Impoundment Decision

In January 1973, Section 235 and several other subsidy programs were suspended. The programs were subsequently evaluated by the Department and serious deficiencies identified. See Housing in the Seventies, pages 83-137. As a result, the programs were permanently suspended. The United States Court of Appeals for the District of Columbia sustained the suspension and the impoundment of unexpended funds in Commonwealth v. Lynn, 501 F.2d 848 (CADC 1974).

5. Background of the GAO Lawsuit

On July 12, 1974, the provisions of Title X of the Budget Impoundment and Control Act became effective. On October 4, 1974, the President sent a message to Congress which included a description of the deferral of obligational authority for the Section 235 program in the amount of $264,117,000. The message indicated, however, that the President had been informed by the Attorney General that the Budget Control Act was not applicable to impoundments pre-dating the effective date of that law and that the 235 deferral was being reported for informational purposes only.

On November 6, 1974, the Comptroller General submitted a message to Congress purporting to reclassify the Section 235 deferral as a recision on the grounds that since the statutory authority to obligate 235 funds is due to expire on August 22, 1975, the purported deferral was a "de facto" recision. Under the Act, if applicable, Congress could disapprove a recision by inaction, but one House must pass a deferral resolution in

order to disapprove a deferral of funds. In view of the doubt regarding the Comptroller General's authority to reclassify a deferral as a recision, on March 13, 1975, the Senate passed a resolution disapproving the 235 deferral. Under Title X, the President has 45 days to begin expending funds after he becomes legally obligated to do so, and if he fails to abide by the Act's requirements, the Comptroller General may bring suit 25 days thereafter. The Comptroller General has brought such a suit claiming that the Section 235 impoundment is subject to the provisions of the Budget Control Act, which require the immediate obligation of the impounded funds.

6. Legal Issues Presented by the Pending Impoundment Suit

Both the Office of General Counsel and the Civil Division of the Department of Justice are pessimistic about the likelihood of our prevailing in the pending impoundment suit. The possible defenses to that suit and their weaknesses are discussed below.

(1) We can assert that the Comptroller General, as a representative of the Legislative Branch, is incapable of suing the Executive because of the "separation of powers" doctrine. The United States v. Nixon, ___ U.S. ___ (1974) decision in the Supreme Court and the congressional standing cases in the District of Columbia Circuit seriously undercut this defense. Moreover, even were we successful in asserting the Comptroller's incapacity to sue, the mere intervention of or filing by a Congressman or a potential 235 recipient (builder or homeowner) would cure this defect.

(2) We could suggest that the Budget Control Act is unconstitutional on the grounds that it impinges on the Executive's power to execute the laws. The actual effect of the law is merely to require a report from the President and, once that report is made, provide a mechanism by which Congress can prospectively

mandate the expenditure of funds. The Solicitor General implicitly conceded, and the Supreme Court observed in Train v. City of New York, ____ U.S. ____ (1974), that Congress has the constitutional power to prospectively mandate the expenditure of appropriated sums. Hence, this defense is apt to be futile.

(3) The Court of Appeals for the District of Columbia in Commonwealth v. Lynn, supra, sustained the suspension of 235 as not being "unreasonable". That determination is, however, irrelevant to the pending suit since the only issue in the pending case is whether the impoundment of 235 funds is subject to Title X of the new Budget Control Act. If it is, Congress has done all that is necessary to mandate the expenditure of those monies.

(4) We can defend the suit on the grounds that the 235 impoundment is not governed by Title X either (a) because that statute does not cover prior impoundments or (b) because it is inapplicable to impoundment decisions in litigation on the effective date of the Act.

(a) The Attorney General has given an opinion indicating that the Budget Control Act does not affect any impoundment of funds announced prior to the statute's effective date of July 12, 1974. Congress, by its deferral resolution and determination to file suit, has indicated its disagreement with the Attorney General's opinion as to the legislative intent. The language of the statute is ambiguous and can be read to support either conclusion.

(b) It has also been suggested that the Act does not cover impoundments subject to litigation on its effective date. The 235 impoundment was in litigation at that time. In Train v. City of New York, supra, which also concerned an impoundment in litigation on July 12, the Supreme Court in a footnote found that the new Act had not rendered the case moot. The Court relied on the language of Section 1001, which provides that nothing ". . . in the Act shall be construed as . . . (3) defenses of any party to litigation concerning any impoundment . . . ." One can read the Train footnote to support an argument that the Act exempts impoundments in litigation on July 12 from its provisions. Alternatively, one can read the footnote to hold that Congress intended by §1001(3) to enable a court to render a decision as to the validity of a challenged impoundment before requiring the court to apply the new Act because the Act's effect becomes moot if the court holds impoundment invalid, under the prior law.

(5) Even if either exemption from the Act were accepted by the Court as a matter of law, there are factual reasons why the 235 impoundment could still come within the coverage of Title X. Two events have occurred since July 12 which may cause this impoundment to be treated as if it occurred after that crucial date.

(a) HUD has continued to utilize 235 rollover funds since July 12. When a 235 mortgage is defaulted and the contractual authority involved recaptured, we

have utilized that recaptured authority to place another 235 eligible family into another unit. Accordingly, it could be said that we did not finally suspend the program as of the effective date of the Budget Control Act.

(b) More importantly, the President signed the Housing and Community Development Act of 1974 on August 22, 1974, more than a month after the effective date of the Budget Control Act. The 1974 housing law substantially revised Section 235. In effect, the 1974 Act created a new 235 program with very different requirements concerning (1) income limits, (2) mortgage limits and (3) downpayment requirements. See Section 211 of the 1974 Act. The new statute also required the Secretary to allocate 235 funds subject to the requirements of Section 213. Section 213(a)(1) provides that when the Secretary reviews an application for assistance under Section 235, he must determine if it is consistent with applicable housing assistance plans. And, subsection (d) requires the Secretary to allocate financial assistance, including Section 235 funds, with reference to certain formula items, housing assistance plans and a limitation on the distribution of assistance between rural and urban communities. Finally, the new Act extended by one year the Secretary's authority to utilize 235 funds until August 22, 1975.

By requiring the Secretary to consider applications for 235 assistance, by making meaningful substantive changes in the program and by transferring the authorization for expending unallocated funds into another year, Congress, in effect, created a new program, which may well be subject to the Budget Control Act.

On the other hand, the funds in question were appropriated before enactment of the Budget Control Act, and OMB has issued no subsequent appropriations of the funds.

The case has been assigned at the District Court level to Judge June Green who is an advocate of lower income subsidized housing programs like 235 and not a careful jurist, increasing the likelihood that we will lose the case at the trial level. It is possible that the Court of Appeals would grant a stay and expedite the decision. We believe it likely that the Appellate Court would be persuaded by the argument concerning the 1974 Act and that the Supreme Court would deny certiorari because of the limited future application of this issue.

7. Implications of the Lawsuit

If the suit is lost, it is likely that the Court will order that all impounded funds be expended regardless of the August 22, 1975 termination of the statutory authorization. The courts have done so on several occasions and the Judge to whom this case has been assigned took exactly that course in Rooney v. Lynn, ___ F.Supp. ____ (D. D.C. 1974).

On the other hand, if the program is reimplemented, we can argue the suit is moot and that no order should be entered. If the suit is dismissed, then our authority to expend 235 funds terminates on August 22. It is unlikely we will have obligated all of the appropriated funds by that time. Moreover, by the end of August, Section 8 may be operating smoothly, dispelling some of the Congressional interest in an extension to 235.

The Comptroller General could argue that our legal obligation, under the Budget Control Act, to begin expending the impounded 235 funds arose 45 days after the Senate passed its deferral resolution. Accordingly, the Court might be urged to enter an order requiring continuation of the program beyond the August 22 termination date, and until all impounded funds are expended. To this we could reasonably respond that the program is underway and funds are being expended, hence we are complying with our legal obligations under the Budget Control Act and Section 235, the authority for which ends on August 22. To the extent Congress wants to extend the authority for expending the 235 funds, it should do so by legislation not by judicial order. That argument has some possibility of success.

8. The Current 235 Political Controversy

Principal Congressional interest in release of 235 funds stems from two factors other than the issues posed in the lawsuit.

(1) We are in a period of serious depression in the housing industry. Housing starts are at a depressed level and employment in the construction industry is over 15 percent. We have projected that the number of housing starts during calendar 1975 will be no greater than in the disastrous 1974 period. Even that projection may be too optimistic in view of the January, February and March 1975 start and permit statistics. Congress is considering a panoply of devices to induce housing starts, running the gamut from interest subsidies to cash incentive payments. Accordingly, the housing industry is generating much of the pressure for a resurrection of the Section 235 housing subsidy program.

(2) The Section 235 program was suspended in 1973 with the promise of a rapid replacement. Its successor came in the 1974 Act as the Section 8 Lower Income Housing Assistance Program. The implementation of Section 8, however, has been an extremely slow process. We cannot expect Section 8 to be producing significant housing starts until probably a year hence. We have projected 40,000 contract reservations from Section 8 this fiscal year and admit to some optimism even with the low figure. There has been particular Congressional interest in a continuation of 235, at least as an interim measure, until full implementation of Section 8.

Historically, the 235 program has been much more popular in the Senate than the House. In August of 1973, the Senate added to an FHA extender a mandated reimplementation of Section 235. The Conference Committee accepted the Senate's language. When the bill went to the floor, the House rejected the Conference Committee Report by approximately 30 votes. The House objected not only to the Section 235 mandate but also to provisions concerning Section 518 and other procedural problems. Thus, the rejection of the 235 mandate was ambiguous. With the large turnover in House members and given the current crisis in the housing industry, we are advised by our Legislative Office that it is unlikely that the House would reject such a 235 mandate today.

There is substantial support for 235 in the Senate, which has already voted to reject the President's impoundment of 235 funds. The vocal supporters of the program and those interested in its resurrection include several members of the Senate Committee on Banking, Housing and Urban Affairs, such as Senators Tower, Brooke, Sparkman and Proxmire.

9. Reasons for Suspension of 235

The Section 235 program was suspended in January, 1973 for programmatic and budgetary reasons. The programmatic reasons are identified in Housing in the Seventies, pages 104-110.

(1) There was a perceived inequity to subsidizing ownership in the sense that poor families with a subsidy could accrue the benefits of homeownership at a lower monthly cost than their middle income neighbors.

(2) There was also a horizontal inequity in the sense that only one out of fifty income-eligible families was selected for homeownership benefits.

(3) There was a geographical inequity as a result of the very low statutory mortgage limits and differences in regional construction costs which resulted in an over-concentration of starts in low cost areas like the South.

(4) There was a vertical equity problem in that higher income groups had a greater rate of participation and higher subsidies because they tended to have larger families and purchased more expensive homes. The program particularly benefited families in the $6,000 to $7,000 per year income range.

(5) Concern was expressed that the program had a substitution effect in that subsidized starts reduced the availability of mortgage funds and building resources for non-subsidized starts being delayed or never undertaken.

(6) Particularly when the minimum downpayment was only $200, there was concern that purchasers would not have a sufficient incentive to care for their property. The minimum downpayment was increased to 3 percent, by the 1974 Housing and Community Development Act.

(7) Finally, there has been a significant problem with defaults on 235 mortgages, particularly in existing housing and in large 235 subsidized subdivisions. The program has too often resulted in abandonment, defaults, foreclosures and significant losses to the FHA fund. Currently, defaults coupled with our losses on acquired mortgages are running at a rate that makes the program actuarily unsound.

10. Identified Advantages of 235

HUD's study of the 235 program indicated that it was not without its benefits as well as its costs.

(1) The program did provide lower and moderate income families with the stabilizing influence of an opportunity for home ownership.

(2) 235 was particularly useful for minority families and marginally increased the geographic dispersion of inner-city inhabitants to suburban areas, thereby contributing to the racial balance of some communities. However, the numbers were not great enough to impact significantly on the racial complexion of major metropolitan areas.

(3) Construction costs for 235 units were no higher than for similar conventional houses, to some extent because a Section 235 house is not actually designated as such until an eligible buyer is certified. Thus, the builder is not always assured of subsidy benefits and is likely to build competitively. Also, HUD's appraisals and cost analyses tend to keep the selling price of Section 235 units in the range of similar priced homes within the community.

(4) Section 235 has a relatively low first-year cost but a long run-out period.

11. Possible Administrative Revisions of 235

There are several ways in which the perceived deficiencies in the 235 program could be ameliorated, although not eliminated. The following administrative steps are possible under the statute and would significantly improve the operation of the program.

(1) To avoid defaults and minimize ultimate run-out costs, pre-purchase counselling and a pre-screening process to select homeowners likely to work themselves out of eligible subsidy range could be utilized. A recently reported experiment with counselling and pre-selection criteria in the San Francisco area has proved extremely successful in avoiding delinquencies.

(2) The downpayment requirement could be conformed to Section 203(b), requiring 3 percent of the purchase price up to $25,000 and 5 percent of excess, with the purchaser to pay full closing costs. This would give the homeowner a greater cash investment in his home and focus the program more on moderate income families.

(3) The interest rate could be changed from 1 percent. The maximum subsidy should equal the amount necessary to reduce amortization costs on the highest cost-eligible unit in the community to 4 percent. Since a recipient is required to pay 20 percent of adjusted income towards monthly payments, the depth of the subsidy would depend on the price of the house. This approach would have several benefits:

   (a) The shallower subsidy would limit participation to a higher income group than under the previous program. There would still be over 8 million families within the relevant income level who could obtain a 235 mortgage on these terms.

   (b) An incentive would be created to sell less expensive units, since doing so would increase the potential depth of the subsidy. The possibility of a subsidy to 1 percent for some families would be retained. However, because of the program's very low house-price limits, most construction would be at the top of the eligible range, hence most subsidies only reduce amortization costs to 4 percent.

(c) Decreasing the interest differential between FHA and 235 purchasers would decrease the perceived inequity of the subsidy.

(d) By making the subsidy shallower, funding would be available for more units, increasing the coverage of the program. Assuming an average mortgage of $23,000 at an 8-1/2 percent market rate, the available $260 million would support 210,000 units at 1 percent and 324,000 units at 4 percent.

(4) 235 funds should be made available only for new construction so as to have the greatest immediate impact on housing starts.

(5) 235 funding should only be available for the lesser of 20 homes or 30 percent of the total units in a subdivision or other concentrated development. This would avoid the large 235 financed subdivisions which have plagued us in places like Detroit. It would particularly encourage rural scattered site development. This restriction might also encourage non-subsidized housing starts by, in effect, assuring a developer of a relatively quick sale of 30 percent of his stock when he builds a subdivision. 1/

1/ Condominiums could be covered by a revised 235 program since they provide a significant amount of the housing in the relevant price range. Similar strictures could be put on condominiums as on subdivisions by requiring that no more than 30 percent of the available units be subsidized and that the 235 tenants be reasonably dispersed within the entire development.

Mobile homes should not be included except to the extent that mobile homes on a permanent foundation would meet minimum property standards and be insurable by FHA under 203(b).

(6) A general requirement for dispersal of the 235 units within the development should be provided to insure that a developer does not construct a small 235 subdivision next to his larger non-subsidized subdivision. This restriction should be broadly phrased so as not to prevent the developer from utilizing construction techniques such as townhouses for 235 families.

(7) The present utilization of 235 would require compliance with Section 213 of the 1974 Housing and Community Development Act. That Section requires the allocation of 235 monies to be on a geographical eligibility basis and in conformance with housing assistance plans. As a result, geographical inequities of the old 235 program could be mitigated and local authorities given some control to assure the rational location of 235 construction.

12. Reimplementation

(1) Timing. According to our Housing Production personnel, if regulations were published simultaneously for effect and comment, Section 235, with the suggested changes, could be implemented in 30 to 45 days. Some processing of larger scale developments, such as subdivisions, would take 90 to 120 days. Hence, the program would be having its greatest effect in five to six months or by the Fall of 1975. Implementation will divert some manpower resources from other programs.

(2) Housing Starts. At a 4 percent interest rate, the available $260 million would cover 324,000 starts. Given the limitations suggested, those starts would not occur immediately and it is not clear that the total available funding would ever be utilized. As to the substitution effect, given the current market conditions, where there is sufficient mortgage credit and little construction activity, it is unlikely there would be any immediate significant substitution for unsubsidized starts.

(3) Total Costs. The 1975 cost of releasing 235 funding, if all of it were utilized, would be $260 million. If the program is terminated on August 22, it is unlikely all the available funding will be obligated by that time. Assuming that few recipients work themselves up to an income level where they were no longer eligible for the subsidy, the total potential run-out cost of the program over 30 years would be (discounted) approximately $3 billion. However, the higher interest rate and pre-purchase screening envisioned should insure that a substantial proportion of the recipients will work themselves out of the subsidy.

(4) Nature of Development Encouraged. Requiring that no more than 30 percent of a subdivision be subsidized will substantially deter immediate large-scale construction, as a result of re-implementation of 235. A builder must have confidence that he can market three non-subsidized homes for each unit subsidized in order to undertake a development pursuant to the program. If he has such confidence, he may often opt to limit his sales effort to non-subsidized homes altogether to avoid having the subdivision stigmatized as being a subsidized lower income project. Having a shallow 4 percent subsidy, hence a smaller income gap between subsidized and non-subsidized buyers should ameliorate this consideration. Our Housing Production staff has indicated that a 30 percent of subdivision limitation and 4 percent interest rate are an optimal accommodation. Anything below 30 percent would not induce construction and any percentage significantly above 30 percent approaches the tipping point, at which unsubsidized homes in the development become difficult to market. Nonetheless, the program will not produce the same level of starts as the old 235 program. Production will, in all probability, be rather modest. Also, a larger proportion of production under the suggested implementation of 235 would be rural or scattered-site as opposed to subdivision housing.

(5) A Focus on Rural Development. Because of the 1974 amendments to the 235 program, we cannot construct a program explicitly limited to rural areas. Section 235 is now subject to the requirements of Section 213 of the 1974 Act. Subpart (d)(1) of 213 specifically provides that as to the enumerated categories of assistance, which includes 235, not less than 20 nor more than 25 percent can be allocated to non-metropolitan areas in any fiscal year. The Act defines "metropolitan area" as a "standard metropolitan statistical area as established by OMB." §102(a)(3). Thus the program cannot be limited to purely rural areas. On the other hand, SMSA's include relatively sparsely populated areas around metropolitan cities. As the program is intended to be structured, even the 75 percent of funding which would have to be allocated SMSA's would most likely be used in their more rural, hence, less costly areas.

13. Conclusions

a. Benefits of Releasing 235 Funds

"Turning on" 235 now would have several benefits:

(1) If Congress is successful in its suit, the President will not only be embarrassed by having been found in violation of the law, but also, (i) the Court may require implementation of 235 in its original 1 percent form, limiting our discretion to administratively improve the program and (ii) the program may be extended beyond its statutory termination date of August 22, 1975. By releasing 235 funds now, we moot the lawsuit.

(2) We would be defusing a rancorous test of wills between Congress and the Executive Branch over the impoundment decision.

(3) Release of impounded funds could relieve legislative interest in a new 235 program. By August 22 (or the time the existing funding runs out), Section 8 will be in place and we can justly look to that program as an appropriate successor to 235.

(4) We might relieve some of the criticism about dilatory implementation of Section 8 by pointing to 235 as an interim measure.

(5) Particularly if, as appears likely, the FHA interest rate must be raised, it would be useful to be able, at the same time, to announce reimplementation of a low-interest housing program like 235.

(6) Finally, we can respond to questions about what we are doing for the severely depressed housing industry by noting that we are using all our available tools, including Section 235, as temporary catalysts for housing starts.

b. Costs of Implementation

(1) Since the program, as we suggest it be revised, may produce comparatively few housing starts before the statutory termination date, the Administration may be criticized for gutting 235 as a means of providing home ownership opportunities for lower income families.

As a result, legislative pressure may be brought to bear to suspend the higher (4 percent) interest rate and the subdivision limitations.

(2) Legislative pressure may also be brought to bear to extend the program to rehabilitated or existing housing. The pressure from realtors to cover existing housing will be intense.

(3) If 235 is implemented in our revised form and appears successful, it may add to the pressure for a continuation of the program.

(4) The 235 program is philosophically inconsistent with two doctrines which we are currently espousing:

(a) that the Government should subsidize housing but not home-ownership; and

(b) that existing stock rather than new construction should be emphasized in meeting the housing needs of lower income families.

14. Options

The following are the possible options to GAO's lawsuit for the release of impounded 235 funding.

(1) Litigating the lawsuit on the merits and accepting the likelihood of a judicially mandated expenditure of all the impounded funds;

(2) Releasing the impounded funds and resuming the program as originally devised and operated before the suspension decision; or

(3) Reimplementing Section 235 on a considerably modified basis, so to moot the lawsuit and the underlying controversy with Congress while at the same time ameliorating some of the programmatic defects that led to suspension of the program in the first instance.

The implementation of Section 235 and release of impounded funds is a difficult policy issue, and turns on the likelihood of our success in the impending lawsuit. There appears to be a substantial likelihood that we will lose the lawsuit. Hence, there appears to be substantial merit in immediately taking the initiative, releasing the funds, revising the program, and mooting the controversy.

THE WHITE HOUSE

WASHINGTON

May 8, 1975

MEMORANDUM FOR: JIM LYNN

FROM: PHILIP BUCHEN P.W.B.

Last month at a staff meeting you suggested that our office request from the Office of Legal Counsel in the Department of Justice what changes in the law may be necessary as a result of the decision of the Supreme Court in Weinberger v. Wiesenfeld, 43 USLW 4393 (March 19, 1975) in which the Court held unconstitutional a gender-based distinction under Sec. 202(g) of the Social Security Act of 1935 as amended (42 USC, Sec. 402(g)).

Attached is a copy of Nino Scalia's memo to me dated April 28, 1975, along with attachments A & B. He also included reports of the Advisory Council on Social Security which are referred to in his memo, but due to the bulk of these reports, I am not furnishing them with this memo.

I suggest that you or someone in your office to whom you assign the matter get in touch with me to discuss what steps should be initiated by the Administration. I am sending a copy of this memo with enclosures to Richard Parsons of the Domestic Council staff for his consideration as well.

Attachments

CC: Richard Parsons

THE WHITE HOUSE

WASHINGTON

May 30, 1975

MEMORANDUM FOR: DUDLEY CHAPMAN
JAY FRENCH

FROM: PHILIP BUCHEN P.W.B.

Attached is a copy of a letter received by the President which is signed by nine members of Congress. The letter was acknowledged by Vern Loen to Congressman Traxler on May 26, copy attached.

Please suggest what further reply, if any, we should send.

Attachments

May 26, 1975

Dear Mr. Traxler:

This is to acknowledge receipt of the May 21 letter to the President from you and several of your colleagues regarding the case of Bradley v. Milliken. I shall see that your letter is called to the President's attention as soon as possible.

With kind regards,

Sincerely,

Vernon C. Loen
Deputy Assistant
to the President

The Honorable Bob Traxler
House of Representatives
Washington, D.C. 20515

VCL:EF:ah

bcc: w/inc to Dick Parsons - FYI
bcc: w/inc to Philip Buchen - for further handling

LUCIEN N. NEDZI
14TH DISTRICT, MICHIGAN

CHAIRMAN
SELECT COMMITTEE
ON INTELLIGENCE

COMMITTEE ON ARMED
SERVICES

COMMITTEE ON
HOUSE ADMINISTRATION

Congress of the United States

House of Representatives

Washington, D.C. 20515

May 21, 1975

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

In re: Justice Department
intervention in
Bradley v. Milliken

Dear Mr. President:

We are writing to ask that the Executive, in consultation with the Justice Department, express its opposition to a busing remedy in the case of Bradley v. Milliken, the so-called "Detroit busing case."

It is our view that busing in a school district which is more than 70% black would be futile and self-defeating.

Indeed, the facts have so dramatically altered since the case began in 1970 that a busing remedy is neither sensible nor legally appropriate.

Ironically, however, there is no representation at the trial court level of the majority view of parents and public officials. Knowing of your interest in the issue in the past, we are asking that the White House become actively engaged in opposing a busing "remedy" in this case.

Pursuit of the will-of-the-wisp of racial balance will lead to chaos for an already economically distressed, demoralized Detroit.

We further note that in the city of Inglewood, California, the judge who in 1970 imposed the first busing

order in California for racial balance has now abandoned it. White enrollment had gone from 62% to 19% in that period and "there weren't enough white children left to integrate."

In Detroit, white enrollment has fallen from 51% to 29% in the five years since Bradley v. Milliken began. If busing for racial balance, hitherto sought but not yet attained by the lawsuit, is now imposed, then a further sharp decline is predictable.

Regrettably, the active litigants on one side, and the School Board on the other, both favor large-scale busing, while the majority view of parents, the public, and public officials is ignored or unrepresented.

Accordingly, on April 10, 1975, in a bi-partisan letter signed by eight Michigan Members of Congress, we asked Attorney General Edward Levi to intervene at the trial court level. We urged that the Justice Department assert the key provisions of P.L. 93-380, which reflect the carefully considered congressional view on the issue. We believe that the "neighborhood school" concept is not only desegregated, but workable, equitable, and widely acceptable to all parts of the community.

To date we have not received a written response from the Justice Department. Meanwhile, the trial court hearing grinds toward a climax which may be based on data which is incomplete and on arguments which do not reflect important and critical points of view.

We would, accordingly, appreciate your personal involvement in this highly important matter.

Respectfully,

BOB TRAXLER
Member of Congress

LUCIEN N. NEDZI
Member of Congress

JAMES J. BLANCHARD
Member of Congress

WILLIAM D. FORD
Member of Congress

WILLIAM S. BROOMFIELD
Member of Congress

JAMES G. O'HARA
Member of Congress

MARVIN L. ESCH
Member of Congress

WILLIAM M. BRODHEAD
Member of Congress

JOHN D. DINGELL
Member of Congress

THE WHITE HOUSE

WASHINGTON

June 13, 1975

Dear Mr. Lee:

The enclosed Complaint with respect to the case of Smith v. National State Bank of Boulder, et. al., in the United States District Court for the District of Texas, C.A.-3-75-0695 was served on a member of my staff on June 12, 1975.

This is to request that the Department of Justice handle this matter on behalf of the President. If additional information or assistance is required, please contact Mr. Barry Roth of this office. I would appreciate very much your sending this office copies of any materials that you may file in this matter.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

The Honorable Rex Lee
Assistant Attorney General
Civil Division
Department of Justice
Washington, D.C. 20530

THE WHITE HOUSE

WASHINGTON

June 25, 1975

Re: United States v. Mobil Oil Company, District of Colorado, Civil No. C-4135

Dear Mr. Miller:

This is in response to your letter of June 11, 1975, regarding interrogatories in the above-captioned case.

As you discussed with Mr. Roth of my staff, this matter concerns the time period of 1958-1965. With the exception of employee personnel records, it is my understanding that the papers of Presidents Eisenhower, Kennedy and Johnson, along with those of their staffs, were removed from the White House at the end of each Administration. This was in accordance with the historical treatment then afforded to Presidential papers.

Generally, these materials have been returned to Government custody by deed, will or similar method of transfer, by these Presidents or their families. For specific information with respect to the contents of the materials and the restrictions on access imposed by the donor, I recommend that you contact the Office of Presidential Libraries within the National Archives and Records Service of the General Services Administration, which operates the facilities in which these papers are now maintained.

The papers of certain offices, e.g., the then Bureau of the Budget or the National Security Council, have not been considered to be Presidential papers, and instead are treated in accordance with the Federal Records Act. Information with respect to the materials that agencies within the Executive Office of the President, other than the White House, may have, should be obtained by contacting these agencies directly. This office has no knowledge of either the matters or papers needed to respond to the defendant's interrogatories.

The only materials that the White House has with respect to the subject matter of these interrogatories are the personnel records. On the basis of these records, the following persons have been identified as working in the Special Counsel's Office during the relevant period of time:

Name	Title	Dates
Theodore C. Sorensen	Special Counsel to the President	1/21/61 - 2/29/64
Myer Feldman	Deputy Special Counsel to the President	1/21/61 - 2/28/65
Lee C. White	Assistant Special Counsel to the President	1/21/61 - 4/26/64
	Associate Counsel to the President	4/27/64 - 2/28/65
	Special Counsel to the President	3/1/65 - 3/2/66
Hobart (NMN) Taylor, Jr.	Associate Counsel to the President	5/10/64 - 9/20/65

We do not have current addresses for these individuals.

I trust that this is responsive to your request. If my office can be of further assistance to you in this regard, please don't hesitate to contact Mr. Roth.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

Mr. David W. Miller
Land and Natural Resources Division
Department of Justice
Washington, D.C. 20530

June 11, 1975

FLF:DWM
90-1-18-813

Philip W. Buchen, Esquire
Counsel for the President
The White House
Washington, D.C. 20050

Dear Mr. Buchen:

Re: United States v. Mobil Oil Corporation,
District of Colorado, Civil No. C-4135.

Enclosed is a set of interrogatories which are due forresponse by June 30. We would hope that you could give the information available to you by June 25 so that we will have time to put it in the proper form for response.

Those questions as to which we need your assistance are:

1. a-d, e, j. As to these questions you may not know the authors of the various documents, copies of which are enclosed, but if you doknow them, the indentifficatión procedures data respecting those persons should be supplied. The indentification procedure required for each person named in the interrogatory or named in the response to the interrogatory is that set out in paragraph 5 enclosure (2) hereto. These are the instructions with Mobil's first set of interrogatories.

2. (a), (b), and (e).
3, 4.
5, 6.
7, 8.
12.
13, 14.
15.
38, 40.

We will be pleased to work with you in connection with these interrogatories. It may be that some of these requests are too burdensome vis-a-vis the needs of Mobil, and we can discuss this with you if you think such might be the case. Insofar as question 15 is concerned, we intend to object to producing such records unless Mobil can show some need, but we would like for you to advise if there are such records. If we can help please contact Gerald Fish, 739-3796.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By:

David W. Miller
Attorney

Enclosures

Justice

THE WHITE HOUSE

WASHINGTON

July 3, 1975

Dear Mr. Martindale:

Your letter of May 8 to Donald Rumsfeld requesting the President's assistance in your contemplated suit against the Secret Service has been referred to me for response.

I have referred your correspondence to the Department of Justice for appropriate consideration in connection with your intention to litigate this matter.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

Mr. Michael D. Martindale
209 Braddock Street
Bay City, Michigan 48706

THE WHITE HOUSE

WASHINGTON

October 14, 1975

Dear Mr. Lee:

The attached civil complaint for a declaratory judgment and injunction in the case of Johnson v. Ford, et al., D.N.D.C.A., C.A. No. C 75-2076 LHB, was received by mail in my office on October 10, 1975.

This is to request that the Department of Justice handle this matter on behalf of President Ford. If additional information or assistance is required, please contact Barry N. Roth of my staff. I would appreciate your providing this office copies of any materials that are filed with the Court in this matter.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

The Honorable Rex Lee
Assistant Attorney General
Civil Division
Department of Justice
Washington, D.C. 20530

Justice

THE WHITE HOUSE

WASHINGTON

October 24, 1975

Dear Mr. Thornburgh:

In accordance with your conversation with a member of my staff, enclosed is a copy of the subpoena directed to the President with respect to United States v. Fromme, E. D. Cal., CR. No. S-75-451, for appropriate handling.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

The Honorable Richard Thornburgh
Assistant Attorney General
Criminal Division
Department of Justice
Washington, D. C. 20530

Enclosure

10/24/75

Form No. USM-52 (Rev. 6-1-65) SUBPOENA TICKET

District Court of the United States

Eastern DISTRICT OF California

Gerald R. Ford, President of The United States
Washington, D .C .
To _____

BY VIRTUE OF A SUBPOENA issued out of the District Court of the United States, you are required to be and appear before the said Court at .....

at ..... o'clock ..... m., on the ..... day of ....., 19.....

then and there to testify on behalf of the ..... in the case of

United States of America vs. Lynette Alice Fromme
CR. No. S-75-451

~~and to bring with you the following documents~~

YOU ARE HEREBY REQUIRED TO APPEAR AT A LOCATION TO BE DETERMINED BY YOU AT ANY TIME CONVENIENT TO YOU ON OR BEFORE OCTOBER 31, 1975, TO TESTIFY IN THE ABOVE ENTITLED CASE BY WAY OF A VIDEO-TAPED DEPOSITION.

and not to depart without leave. If you fail to obey such subpoena, you may be fined and imprisoned, as the Court may direct.

George K. McKinney U. S. Marshal.

John E. Virga
Attorney for defendant
721 11th St.
Sacramento, California 95814
Tel: (916) 444-6595

U. S. GOVERNMENT PRINTING OFFICE : 1971 O - 449-064

THE WHITE HOUSE

WASHINGTON

October 29, 1975

Dear Mr. Palm:

By this letter, I hereby acknowledge receipt of your letter dated September 24, 1975, concerning your "Petition for Writs of Mandamus" in the matter of Palm v. United States, et al.

By law, the Department of Justice is responsible for handling suits against the United States. Accordingly, I have referred this correspondence to the Office of the Attorney General for appropriate handling.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

Mr. Herbert L. Palm
Bahnpostlagernd
6 Frankfurt/Main 11
Germany

THE WHITE HOUSE

WASHINGTON

October 29, 1975

Palm, Herbert L.

Dear Mr. Palm:

By this letter, I hereby acknowledge receipt of your letter dated September 24, 1975, concerning your "Petition for Writs of Mandamus" in the matter of Palm v. United States, et al.

By law, the Department of Justice is responsible for handling suits against the United States. Accordingly, I have referred this correspondence to the Office of the Attorney General for appropriate handling.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

Mr. Herbert L. Palm
Bahnpostlagernd
6 Frankfurt/Main 11
Germany

Herbert L. Palm
Bahnpostlagernd
6 Frankfurt/Main 11
Germany

September 24, 1975

AIR MAIL-REGISTERED RETURN RECEIPT REQUESTED

Mr. Philip W. Buchen
Counsel to the President
The White House
Washington, D.C. 20500, USA

Dear Mr. Buchen:

I take the liberty of enclosing herewith

1. My Letter of Petition dated September 24, 1975 addressed to the President;
2. My Affidavit dated September 9, 1974,

with the request that after examination you hand these documents over to the President for his consideration.

With best thanks, I remain

Sincerely yours,

Herbert L. Palm

2 Enclosures

THE WHITE HOUSE

WASHINGTON

November 10, 1975

Dear Mr. Lee:

On behalf of Richard Ober, I today accepted service of process of a summons and complaint in the case of Mary Chandler, et. al. v. Richard Helms, et. al., Civil Action No. 75-1773, United States District Court for the District of Columbia.

Transmitted herewith for appropriate handling is a copy of the summons and complaint. By copy of this letter, I am also providing these materials to Mr. Ober.

Sincerely yours,

S/

James A. Wilderotter
Associate Counsel
to the President

Honorable Rex E. Lee
Assistant Attorney General
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

Enclosures

bcc: Mr. Buchen

SUMMONS IN A CIVIL ACTION

CIV. 1a (2-64)
(Formerly D.C. Form No.45a Rev. (6-49))

United States District Court

FOR THE

District of Columbia

CIVIL ACTION FILE NO. 75-1773

Mary Chandler, et al.

Plaintiff

v.

Richard Helms, et al.

Defendant

SUMMONS

To the above named Defendant : Richard Ober

You are hereby summoned and required to serve upon Jerry J. Berman

plaintiff's attorney , whose address 122 Maryland Avenue, N.E.
Washington, D.C. 20002

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JAMES F. DAVEY

Clerk of Court.

Evelyn M. Gadsden

Deputy Clerk.

Date: OCT 28 1975

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

----------X

MARY CHANDLER
11042 Newport Mill Road
Silver Spring, Maryland 20902;
ADELE HALKIN
56 E. Bellevue Place
Chicago, Illinois 60611;
STEVE HALLIWELL
c/o Goddard College
Plainfield, Vermont 05667;
DON LUCE
c/o Clergy and Laity Concerned
235 East 49th Street
New York, N.Y. 10017;
JONATHAN MIRSKY
Thetford, Vermont 05074;
SIDNEY PECK
15 Farrar
Cambridge, Mass. 02138;
NANCY ANN RAMSEY
1826 Varnum Street, N.W.
Washington, DC 20011;
DANIEL SCHECHTER
5005 Prudential Tower
Boston, Mass. 02199;
ETHEL TAYLOR
41 Conshohocken State Road
Apt. 714
Bala Cynwyd, Pa. 19004;
EDITH VILLASTRIGO
10216 Sutherland Road
Silver Spring, Maryland 20901;
CORA WEISS
5022 Waldo Road
Riverdale, New York 10471;
AMERICAN INDIAN MOVEMENT
704 University Avenue
St. Paul, Minnesota 55101;
AMERICAN FRIENDS SERVICE COMMITTEE, INC.
1501 Cherry Street
Philadelphia, Pennsylvania 19102;
CLERGY AND LAITY CONCERNED
235 East 19th Street
New York, New York 10017;
COMMITTEE OF CONCERNED
ASIAN SCHOLARS, c/o Angus
McDonald, National Coordinator,
614 Social Science Building,
University of Minnesota,
Minneapolis, Minn. 55455;
COMMITTEE OF LIAISON WITH
FAMILIES OF SERVICEMEN
DETAINED IN VIETNAM
365 West 42nd Street
New York, New York 10036;
WOMEN STRIKE FOR PEACE
145 South 13th Street, Room 407
Philadelphia, Pa. 19107;

on behalf of themselves and all other persons
and organizations similarly situated,

Plaintiffs,

v.

CIVIL ACTION
NO. 75-1773

COMPLAINT-CLASS
ACTION FOR
DECLARATORY AND
INJUNCTIVE RELIEF
AND MONEY DAMAGES

RICHARD HELMS
Department of State
2201 C Street, N.W.
Washington, DC 20520;
JAMES R. SCHLESINGER
Department of Defense
The Pentagon
Washington, DC 20301;
RUFUS N. TAYLOR
90-A North Lake View Drive
Whispering Pines, North Carolina 28389;
ROBERT E. CUSHMAN, JR.
Commandant of the Marine Corps,
Navy Department, Washington, D.C. 20380;
VERNON A. WALTERS
22955 Ocean Boulevard
Palm Beach, Florida 33480;
WILLIAM E. COLBY
Central Intelligence Agency
Washington, DC. 20505;
CORD MEYER, JR.
Central Intelligence Agency
Washington,DC 20505;
JAMES J. ANGLETON
4814 33rd Road
North Arlington, Va. 22210;
WILLIAM HOOD
Central Intelligence Agency
Washington, DC 20505 ;
RAY ROCCA
Central Intelligence Agency
Washington, DC 20505;
RICHARD OBER
Old Executive Office Building
Washington, DC 20505;
HOWARD OSBORN
Central Intelligence Agency
Washington, DC 20505;
JAMES MURPHY
Central Intelligence Agency
Washington, DC 20505;
MARSHALL CARTER
2120 Hill Circle
Colorado Springs, Colo. 80904;
NOEL GAYLER
Department of the Navy
The Pentagon
Washington, DC. 20301;
SAMUEL C. PHILLIPS
Department of the Air Force
The Pentagon
Washington, DC 20301;
LEW ALLEN
National Security Agency
Fort Meade, Maryland;
WESTERN UNION TELEGRAPH COMPANY
60 Hudson Street
New York, N.Y. 10013;

RCA GLOBAL COMMUNICATIONS, INC.
60 Broad Street
New York, N.Y. 10004;
AMERICAN CABLE AND RADIO CORPORATION
67 Broad Street
New York, New York 10004;
ITT WORLD COMMUNICATIONS, INC.
67 Broad Street
New York, New York 10004,

Defendants.
----------X

Plaintiffs, by their attorneys, allege as follows:

JURISDICTION

1. This is a civil action for declaratory and injunctive relief and money damages, arising under the First, Fourth, Fifth and Ninth Amendments to the Constitution, and Title 18, United States Code, Sections 2510-2520. The jurisdiction of this court is predicated on Title 28, United States Code, Sections 1331 (a), 1343(4) and 1361; Title 5, United States Code, Section 702; Title 42, United States Code, Section 1985(3); Title 50, United States Code, Section 403 (d)(3); and the First, Fourth, Fifth, and Ninth Amendments to the Constitution.

2. The matter in controversy, exclusive of interests and costs, exceeds $10,000.

PARTIES

3. Plaintiffs:

a. MARY CHANDLER is an American Citizen and a member of Women Strike for Peace.

b. ADELE HALKIN is an American citizen and a member of Women Strike for Peace.

c. STEVE HALLIWELL is an American citizen, a former officer of Students for a Democratic Society and a founding member of the Committee for Liaison with Families of Servicemen Detained in Vietnam.

d. DON LUCE is an American citizen and Executive Director of Clergy and Laity Concerned.

e. JONATHAN MIRSKY is an American citizen and from 1963 to to the present he has been a leader of anti-war activities.

f. SIDNEY PECK is an American citizen, a former Co-chairperson of the National Mobilization Committee to End the War in Vietnam and the former National Coordinator of People's Coalition for Peace and Justice.

g. NANCYANN RAMSEY is an American citizen and a member of Women Strike for Peace.

h. DANIEL SCHECHTER is an American citizen formerly associated with Ramparts Magazine and the Africa Research Group, and a participant in various anti-war activities over the last decade.

i. ETHEL TAYLOR is an American citizen and the National Coordinator of Women Strike for Peace.

j. EDITH VILLASTRIGO is an American citizen, a member of Women Strike for Peace and a delegate to the 1973 World Congress of Peace Forces.

k. CORA WEISS is an American citizen, a leader of Women Strike for Peace, a former Co-chairperson of the New Mobilization Committee to End the War in Vietnam, a member of the Board of Directors of Clergy and Laity Concerned and a former Co-chairperson of the Committee of Liaison with Families of Servicemen Detained in Vietnam.

l. THE AMERICAN INDIAN MOVEMENT (AIM) is a nonprofit corporation dedicated to advancing the well being, self-determination and cultural preservation of the native peoples of the American continents.

m. The AMERICAN FRIENDS SERVICE COMMITTEE, INC. (AFSC) is a non-profit corporation dedicated to furthering the historic peace testimony and the social aims of the several branches of the Religious Society of Friends.

n. CLERGY AND LAITY CONCERNED (CALC) is a non-profit interfaith peace organization which protested U.S. involvement in the Indochina War beginning in 1965.

o. The COMMITTEE OF CONCERNED ASIAN SCHOLARS (CCAS) is a non-profit organization dedicated to opposing American intervention

in the internal affairs of countries in Southeast Asia.

p. The COMMITTEE OF LIAISON WITH FAMILIES OF SERVICEMEN DETAINED IN VIETNAM (COLIAFAM) is a non-profit organization which worked for an end to U.S. involvement in the War in Vietnam and the release of prisoners of war.

q. WOMEN STRIKE FOR PEACE is a non-profit organization dedicated to anti-war activities, including activities to end the war in Vietnam.

4. Defendants:

a. Defendant RICHARD HELMS is the United States Ambassador to Iran and was Director of the Central Intelligence Agency from 1966 to 1973.

b. Defendant JAMES R. SCHLESINGER is Secretary of Defense and was Director of the CIA from February to July 1973.

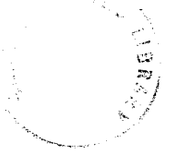
c. Defendant RUFUS N. TAYLOR is a Vice Admiral in the U.S. Navy and was Deputy Director of the CIA from 1966 to 1969.

d. Defendant ROBERT E. CUSHMAN, JR. is a General in the U.S. Marine Corps and a member of the Joint Chiefs of Staff, and was Deputy Director of the CIA from 1969 to 1971.

e. Defendant VERNON A. WALTERS is a Lieutenant General in the U.S. Army and was Deputy Director of the CIA in 1972.

f. Defendant WILLIAM E. COLBY is Director of Central Intelligence and of the CIA, and was Executive Director of the CIA from 1972 to 1973, and Deputy Director for Operation of the CIA in 1973.

g. Defendant CORD MEYER, JR. was, at times material to this complaint, Assistant Deputy Director for Plans of the CIA.



h. Defendant JAMES J. ANGLETON was, at times material to this complaint, Chief of the Counterintelligence Staff of the CIA.

i. Defendant WILLIAM HOOD was, at times material to this complaint, Deputy Chief of the Counterintelligence Staff of the CIA.

j. Defendant RAY ROCCA was, at times material to this complaint, Assistant to the Chief of the Counterintelligence Staff of the CIA.

k. Defendant RICHARD OBER was, at times material to this complaint, in charge of a domestic surveillance operation of the Counterintelligence Staff of the CIA designated as CHAOS.

l. Defendant HOWARD OSBORN was, at times material to this complaint, Director of Security of the CIA.

m. Defendant JAMES MURPHY was, at times material to this complaint, Director of the Office of Operations of the CIA.

n. Defendant MARSHALL CARTER, a retired Lieutenant-General in the U.S. Army, was Director of the National Security Agency from 1967 to 1969.

o. Defendant NOEL GAYLER, Vice Admiral in the U.S. Navy, was Director of the NSA from January 1969 to July 1972.

p. Defendant SAMUEL C. PHILLIPS, a Lieutenant-General in the U.S. Air Force, was Director of the NSA from August 1972 to July 1973.

q. Defendant LEW ALLEN, a Lieutenant-General in the U.S. Air Force, is Director of the NSA.

r. All the foregoing individual defendants are sued in their individual and official or former official capacities.

s. Defendant WESTERN UNION TELEGRAPH COMPANY, a communications common carrier, is incorporated in New York and provides overseas cable and telegraph service.

t. Defendant RCA GLOBAL COMMUNICATIONS, INC., a communications common carrier, is incorporated in Delaware and provides over-

seas cable and telegraph service.

u. Defendant AMERICAN CABLE AND RADIO CORPORATION, a communications common carrier, is incorporated in Delaware and provides overseas telegraph and cable service.

v. Defendant ITT WORLD COMMUNICATIONS, INC., a communications common carrier, is incorporated in Delaware and provides overseas telegraph and cable service.

CLASS ACTION ALLEGATIONS

5. This suit is brought as a class action pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, and is maintainable under Rule 23(b)(1)(A), 23(b)(2) and 23(b)(3).

6. Plaintiffs represent a class of all domestic United States organizations and United States citizens who, as a result of their activities in opposition to the War in Indochina and other lawful political activities, became the subject of "watch files" or organization "subject files" maintained by the CIA. An undetermined number of the members of this class were also placed on a "watch list" supplied by the CIA to the NSA, as a result of which the NSA intercepted their international wire or oral communications and supplied information derived therefrom to the CIA, in violation of the constitutional and statutory rights of the class.

7. The class is so numerous as to make joinder of all members impossible. The total number and identity of the class members is known only to the CIA and the NSA, but plaintiffs estimate, on information and belief, that the class numbers at least 7,200 persons and 1,000 organizations.

8. The common questions of law and fact affecting all members of the class predominate over any questions affecting only individual members to such a degree that a class action is the only method available for the fair and efficient adjudication of this controversy. The prosecution of separate claims by the members of the class would

constitute an undue burden on the vindication of their rights and create the risk of inconsistent or varying adjudications, and could establish incompatible standards for the defendants' conduct.

9. The claims of the representative parties have the same legal and factual bases as the claims of the members of the class, the defendants have acted on identical grounds with respect to all members of the class, common relief is sought, and plaintiffs will fairly and adequately protect the interests of the class.

FACTS

10. On information and belief, in and after August 1967 defendants HELMS, TAYLOR, COLBY, MEYER, ANGLETON, HOOD, ROCCA, OBER, OSBORN, SCHLESINGER, CUSHMAN, WALTERS and MURPHY [hereinafter sometimes "the CIA defendants"] established and administered a Special Operations Group, known as Operation CHAOS [hereinafter "CHAOS"], within the CIA's counterintelligence staff.

11. On information and belief, the purpose of the CIA defendants in establishing CHAOS was to collect, coordinate, evaluate, file and report information on "foreign contacts" of American citizens resident in the United States who expressed in various forms their political and moral opposition to the war in Indochina and other policies of the national government.

12. On information and belief, reports prepared by CHAOS and other units of the CIA between 1967 and 1974 concluded that the domestic opposition to the Indochina war had no significant foreign connection.

13. On information and belief, CHAOS gathered information from other units of the CIA and from other agencies, including the FBI, much of which related to the constitutionally protected associational and domestic political activities of the plaintiff class.

14. On information and belief, CHAOS recruited and trained approximately 40 undercover agents who infiltrated domestic organizations, and reported on their constitutionally protected associational and domestic political activities, which reports, or informa-

tion derived from them, were filed with CHAOS and disseminated to other units of the CIA and to other agencies.

14a. On information and belief, the CIA defendants authorized and directed their CHAOS agents and employees to discredit and disrupt the constitutionally protected associational and domestic political activities of the plaintiffs and their class through the actions of undercover agents who infiltrated the plaintiff organizations and through other counterintelligence actions.

15. On information and belief, between 1967 and 1974 CHAOS opened and maintained "201" or "personality" files on approximately 7,200 individual United States citizens engaged in constitutionally protected associational and domestic political activities, including each of the named individual plaintiffs.

16. On information and belief, between 1967 and 1974 CHAOS opened and maintained approximately 1000 separate subject files on domestic organizations, including each of the named plaintiff organizations.

17. On information and belief, the information in the personality and organization files related to constitutionally protected associational and domestic political activities of the plaintiffs and their class.

18. On information and belief, information on the plaintiffs and their class which was gathered by CHAOS was conveyed by the CIA defendants to the White House, the FBI, and to other government agencies.

19. On information and belief, sometime after September 1969 CHAOS supplied a "watchlist" of United States citizens, including plaintiffs and their class, to another unit of the CIA, as a result of which first class mail from and to individuals on the watchlist was opened without any warrant or other form of judicial authorization, and copies of the opened letters or information derived from them were

supplied to CHAOS, made a part of the CHAOS files and used by the CIA defendants.

20. On information and belief, sometime after September 1969 CHAOS also supplied a "watchlist" to agents and employees of the NSA, which included the names of all the named plaintiffs.

21. On information and belief, for a period of time not known to plaintiffs, defendants, CARTER, GAYLER, PHILLIPS, TORDELLA and ALLEN [hereinafter sometimes "the NSA defendants"], have authorized and directed the monitoring or interception, by their agents and employees, of international communications, including cable channels between the United States and foreign countries, selected telephone channels between the United States and foreign countries, and selected telephone channels between foreign countries, all without warrants or any other form of judicial authorization.

22. On information and belief, at various times after September 1969, the NSA defendants, without any warrant or other form of judicial authorization, authorized and directed their agents and employees to intercept or procure the interception of wire or oral communications of, or relating to, individuals and organizations on the CHAOS "watchlist" provided to NSA by the CIA.

23. On information and belief, agents and employees of the NSA defendants procured the assistance and cooperation of defendants WESTERN UNION TELEGRAPH COMPANY, RCA GLOBAL COMMUNICATIONS INC., AMERICAN CABLE AND RADIO CORPORATION and ITT WORLD COMMUNICATIONS, INC. [hereinafter sometimes "the company defendants"] in intercepting, using and disclosing, without warrants or any other forms of judicial authorization, the wire or oral communications of, or relating to, individuals and organizations on the CHAOS "watchlist", including the plaintiffs.

24. On information and belief, as a result of the warrantless and judicially unauthorized interception, use and disclosure of the wire or oral communications of plaintiffs and their class by the NSA

and company defendants, at the request of the CIA defendants, NSA supplied CHAOS and the CIA defendants with approximately 1100 pages of summarized communications [hereinafter "the NSA materials"], which related for the most part to anti-war activities, travel abroad and other constitutionally protected movements and activities of various members of the plaintiff class between 1967 and 1974.

25. On information and belief, information derived from the NSA materials was made a part of the Operation CHAOS files.

26. On information and belief, in November 1974 the NSA materials were returned by the CIA defendants to NSA.

27. On information and belief, the CIA defendants caused the NSA materials to be returned to NSA because they knew the materials were the products of illegal and unconstitutional interceptions of the plaintiffs' wire or oral communications.

28. On information and belief, the NSA materials are intact in the possession of NSA, and all other CHAOS materials are intact in the possession of CIA.

29. On information and belief, the individual and company defendants have engaged in an extended conspiracy unlawfully to conceal the acts complained of in paragraphs 10-28, supra, from the named plaintiffs and members of their class, from Congress, and from the public.

30. On information and belief, each of the individual defendants knew of and participated in, and/or concealed the illegal and unconstitutional activities described in paragraphs 10-28, supra.

31. On information and belief, the CIA continues to maintain and disseminate files containing information about the plaintiffs' constitutionally protected associational and domestic political activities, including information illegally and unconstitutionally obtained from plaintiffs' private mail and wire or oral communications.

32. On information and belief, each of the individual defendants knew that the CIA and NSA actions described above were taken in violation of the agencies' charters, and none of the individual de-

fendants who participated in these actions had a good faith belief that his conduct was lawful.

FIRST CAUSE OF ACTION

33. The defendants' procurement of interception, disclosure and use, and their interception, disclosure and use of the plaintiffs' wire or oral communications originating or terminating in the United States were unreasonable and illegal, and were not made in good faith reliance on any judicial, legislative or other valid authorization, or other reasonable belief in their legality.

34. The defendants' procurement of interception, disclosure and use, and their interception, disclosure and use of the plaintiffs' wire or oral communications violated Title 18, United States Code, Sections 2511 and 2520.

35. The defendants' procurement of interception, disclosure and use, and their interception, disclosure and use of plaintiffs' wire or oral communications deprived plaintiffs of their rights of free speech and association under the First Amendment, and their right to privacy and security against unreasonable searches and seizures guaranteed by the Fourth Amendment.

SECOND CAUSE OF ACTION

36. Plaintiffs repeat and reallege each allegation in paragraphs 1-35, supra.

37. The defendants' maintenance and dissemination of files on the plaintiffs' constitionally protected associational and domestic political activities deprived plaintiffs of their rights of free speech and association under the First Amendment.

38. Defendants' infiltration of the plaintiff organizations and members of their class by the use of undercover agents with false or concealed identities who disrupted, discredited and reported on the plaintiffs' constitutionally protected associational and domestic political activities deprived plaintiffs of their freedom of speech

and association protected by the First Amendment.

39. The activities of the defendants set forth above continue to interfere with, discourage and deter the plaintiffs in the exercise of their rights of free speech, assembly and association, and their right to petition the government for redress of grievances, guaranteed by the First Amendment.

THIRD CAUSE OF ACTION

40. Plaintiffs repeat and reallege each allegation in paragraphs 1-35, supra.

41. Defendants' actions described above are in violation of Title 50, United States Code, Section 403(d)(3).

WHEREFORE, plaintiffs request that the Court grant the following relief:

A. A declaratory judgment that the course of conduct and activities of the defendants set forth above are illegal and unconstitutional;

B. Preliminary and permanent injunctions enjoining the defendants from engaging in the activities declared to be illegal and unconstitutional;

C. A mandatory injunction or writ of mandamus ordering the defendants to produce before the Court, for delivery to the plaintiffs and members of their class for destruction, all files, reports, records, photographs, data computer tapes and cards, and all other materials derived from defendants' illegal and unconstitutional activities relating to plaintiffs and all other persons similarly situated;

D. Each named plaintiff and member of the plaintiff class have judgment against each defendant in the sum of $100.00 per day of procurement of, interception, disclosure and use, and interception, disclosure and use of the plaintiffs' wire or oral communications, as liquidated damages pursuant to Title 18, United States Code Section §2520.

E. Each named plaintiff and member of the plaintiff class have judgment against each defendant in a sum to be determined by the Court for violation of plaintiffs' First, Fourth, Fifth and Ninth Amendment rights.

F. Recovery in the amount of $50,000 punitive damages for the willful violation of constitutional rights for each plaintiff and each member of the plaintiff class.

G. The reasonable costs of this action and attorneys' fees of plaintiffs.

H. Such other and further relief as the Court shall deem just and proper.

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