

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. memo	Lewis Merletti to Michael Froman re: Pennsylvania Avenue Vehicular Access Issue (5 pages)	08/15/1997	b(7)(E)
001b. memo	Richard Griffin to Raymond Kelly re: Secret Service Position on the Proposed Partial Reopening of Pennsylvania Avenue (5 pages)	05/30/1997	b(7)(E)

COLLECTION:

Clinton Presidential Records
First Lady's Office
Melanne Verveer
OA/Box Number: 23253

FOLDER TITLE:

Pennsylvania Avenue

2013-0534-S

rc1515

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Pennsylvania Avenue

PHOTOCOPY
PRESERVATION

Withdrawal/Redaction Marker

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1997-SE-005642 (COPY)

**Congress of the United States
House of Representatives
Washington, DC 20515**

May 20, 1997

Honorable William Jefferson Clinton
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. President:

We are writing today, on the second anniversary of the closure of Pennsylvania Avenue in front of the White House, to ask for your help in seeking ways to mitigate some of the serious problems to the District and the region resulting from the closure. The solutions should be consistent with the concerns of the Secret Service regarding the safety of the White House complex. The closure of the Avenue reflected the view of the Secret Service that present conditions and technology did not assure the safety of the President and the White House. Therefore, we are suggesting a course of action that would seek solutions to at least some of the serious problems that have developed for the city and the region for residents, commuters, businesses and the environment.

We are asking that you request the Department of the Treasury, the Secret Service and the District of Columbia to develop a plan that would allow for vehicular traffic on Pennsylvania Avenue that does not pose danger to the safety of the White House complex. An example might include using perhaps one or two lanes for tour busses and handicap vehicles, which could be monitored in the same way that traffic that now comes into the complex for official business is now monitored. The city and regional economy is closely tied to tourism, now more than ever, considering the disproportionate downsizing of federal agencies absorbed by this region. Even small instances of accommodation could affect how long tourists remain in the region and thus could have an impact on the city and regional economy.

Traffic in the Metropolitan Washington region is in deplorable shape. This region ranks second in the nation in commuting time and number one in economic losses to commuters. At congressional hearings held in 1995 and again in 1996, residents, commuters and businesses reported particularly devastating damage to commuters and commerce caused by the bifurcation of downtown, which now prevents the flow of traffic from one side of downtown D.C. to the other.

Honorable William Jefferson Clinton

May 20, 1997

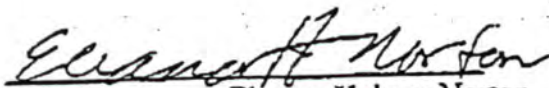
Page Two

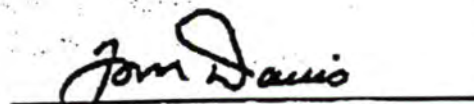
The decision two years ago to close the Avenue was not followed by any effort to limit the damage to the city and the region. We are sure that you would want such solutions to be found, particularly given your concern and actions to eliminate the financial crisis of the District and its effect on the region. We therefore request that you ask the Treasury Department and the Secret Service this month to begin the process of seeking alternatives and approaches to mitigate detrimental effects of the closure of Pennsylvania Avenue on residents, businesses, commuters, tourists and the environment.

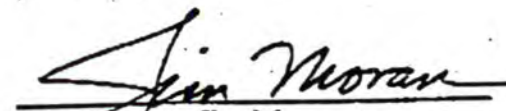
We respectfully await a response at your earliest possible convenience.

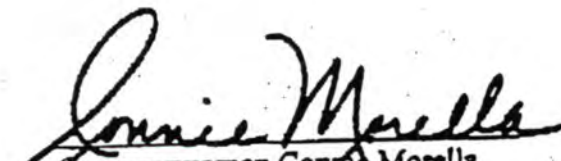
Sincerely,

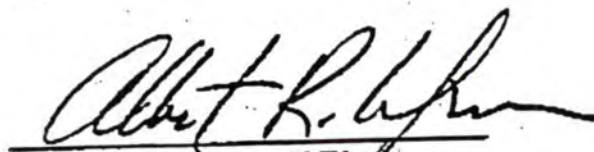
Regional Members of the House of Representatives


Congresswoman Eleanor Holmes Norton


Congressman Tom Davis


Congressman Jim Moran


Congresswoman Connie Morella


Congressman Al Wynn

Honorable William Jefferson Clinton
May 20, 1997
Page Three

Regional Members of the United States Senate

Barbara A. Mikulski

Senator Barbara Mikulski

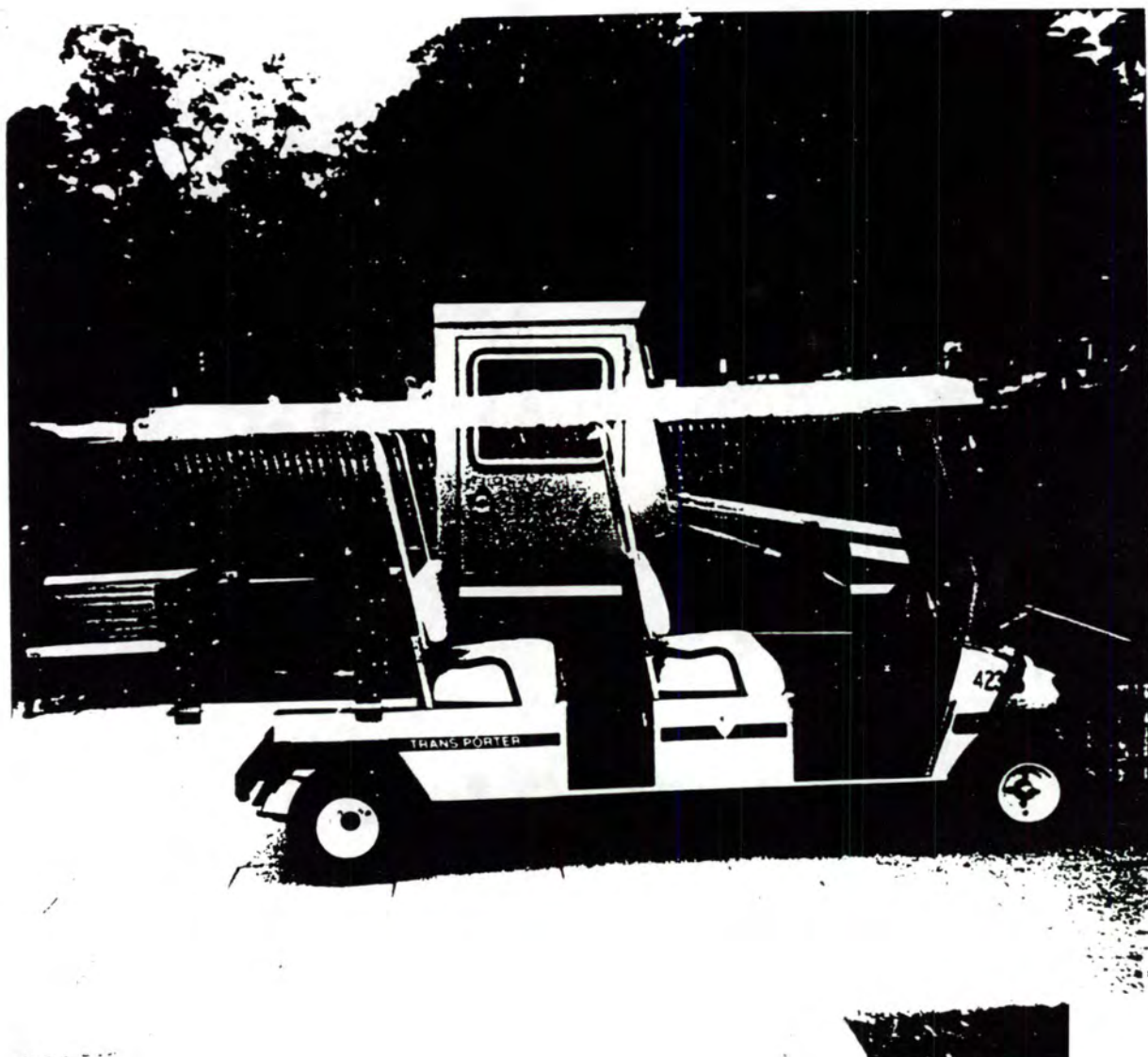
Charles Robb

Senator Charles Robb

John Warner

Senator John Warner

cc: Secretary Robert Rubin, Department of the Treasury
Director Franklin Raines, Office of Management and Budget
Director Eljay Bowron, United States Secret Service



LETTERS TO THE EDITOR

White House Documents: Nothing to Hide

Bob Novak complains that the White House—Bruce Lindsey and Cheryl Mills in particular—are unfairly withholding documents from Rep. Dan Burton, and he assumes that the White House lawyers must be doing this out of self-interest ["Bungling or Coverup?" op-ed, May 8]. He is wrong on both counts.

When investigative agencies seek records, typically rules ensure that the materials are treated properly—e.g., that private information remains private, that personal information is treated with respect and that confidential information remains confidential. The congressional context has no universal rules in this regard, but committee chairmen generally are capable of get-

ting the information they need without unnecessarily compromising security.

Not so with Mr. Burton's operation. His staff already has amply demonstrated that it cannot be trusted to treat private information with respect. The Nov. 25 Roll Call reported: "Burton is under fire from fellow Republicans after one of his top aides improperly leaked confidential phone logs of former Commerce Department official John Huang."

No doubt, this is why the White House wants to establish procedures under which the Burton staff will handle sensitive information. The Senate already has done just that. And that is why the Senate already has the documents—fewer than 10—

that Mr. Burton wants everyone to believe are being denied to him.

At bottom, this is not about withholding documents or asserting privilege; it is about providing to a handful of documents the minimal level of confidential treatment they would receive in virtually every other investigatory context and, for that matter, will receive in the hearings that will be held in the Senate in the coming weeks.

As for Mr. Novak's worry that there might be something to hide in these documents, how can you "hide" from the House something that you already have given to the Senate?

JACK QUINN
Washington

The writer was formerly President Clinton's White House counsel.

Take Back America's Avenue!

For all those who have not been down to the White House recently for some coffee or a snooze, I have to tell you that things on our Pennsylvania Avenue could not look worse. Since it was closed some three years ago, this grand avenue, mandated by Thomas Jefferson, has been impressively trashed. Two of its three blocks have been converted into parking lots deco-

rated by a maze of concrete Petunia pots and Jersey bunkers.

Perhaps the alteration of a once proud avenue into free convenient parking for White House employees may have been chosen as an appropriate symbol of modern-day America, but I doubt it.

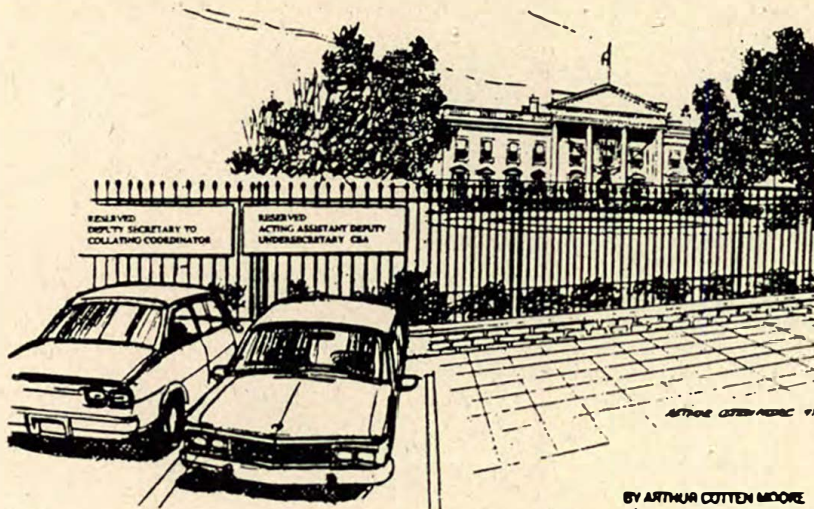
The lined asphalt parking lots now flank the empty center section, bordered by a proliferation of guard houses and mechanically op-

erated steel and concrete barriers that bear an uncanny resemblance to the old Checkpoint Charlie at the Berlin Wall. Many observers, foreign and domestic, have told me they get the same impression.

During the past three years of this "temporary" closing, the government has made no attempt to come up with a technological solution that would protect the White House so this nonsense could be removed and the avenue reopened, or to test proffered solutions, such as a blast-proof laminated glass layer behind the existing metal picket fence. All this is curious, because only two blocks away the General Services Administration has been holding seminars on the protection of government buildings from terrorist attacks, including the use of laminated glass.

Everyone should bring his skateboard or in-line roller skates so that we can make use of the empty street, admire the precious parking lots and celebrate the third anniversary of this Washington absurdity.

ARTHUR COTTEN MOORE
Washington



The Washington Post

TUESDAY, MAY 20, 1997

Unwarranted Criticism

I would like to respond to Sen. Robert Torricelli's criticism of me, which was reported in a Post article ["Probe of SBA Aide Sought in 'Right to Know' Dispute," news story, April 9]. Without attempting to verify any of the allegations with me or anyone in the U.S. Small Business Administration Office of Advocacy, the senator sent a letter to the SBA administrator that essentially accused me of a conflict of interest and requested an investigation by the SBA inspector general.

Sen. Torricelli asserted that my work as an advocate for small-business interests in the SBA conflicted with my previous representation of clients who were members of the Small Business Coalition formed in 1992 to address a toxics-release inventory (TRI) rule-making proceeding before the U.S. Environmental Protection Agency. This is untrue. None of the industry groups affected by the TRI rule-making was part of the TRI coalition. Furthermore, the inspector general has completed his investigation and reported to Sen. Torricelli that his charges of wrongdoing were unfounded.

Most important, the senator's letter appears to be premised on a double standard. Apparently, the Sen. Torricelli believes that former industry representatives should not work for small-business interests at the SBA, while it is appropriate for the EPA to hire senior environmental officials from the Sierra Club and the Natural Resources Defense Council. The SBA and EPA should and do hire persons with the best qualifications and experience, including those who have worked for advocacy groups.

Moreover, the timing of these charges is particularly troubling. On the same day that a news report appeared that the vice president declined to intervene upon behalf of the environmental groups, Sen. Torricelli appeared criticizing my actions on TRI. Objective observers have concluded that the opponents of the SBA policy, having lost the internal policy debate, chose to attack the messenger to deflect attention from the merits of the rule-making. Soon thereafter, EPA issued its final rule, generally rejecting SBA's position. As a result, thousands of small chemical users will be required to spend up to

50 percent of their annual profits to report *de minimis* releases to the environment. This action is not consistent with common sense, nor EPA's leadership role in reinventing government.

KEVIN BROMBERG
Chevy Chase

The writer is an attorney with the SBA's office of advocacy.

Community Facilities Are Better

Concerning The Post's excellent article on the closure of Great Oaks institution for the severely retarded and mentally ill [Metro, May 11], an additional factor on the need for future closings should be spelled out.

According to Maryland figures, it costs \$104,000 per year to institutionalize compared with \$70,000 for the average community program. If all four of our remaining institutions were closed, and the 650 residents placed in community programs, the potential savings would be \$22 million. This would be enough to provide housing for more than 300 of the 500 people now on "CRISIS" waiting lists.

I simply don't understand why Maryland isn't pursuing this course aggressively.

W. M. RYAN
Rockville

Doubts About Dousing

I was fascinated to see a photograph of a repair worker using divining rods to determine the extent of underground water from a main break [Metro, May 7].

Admittedly, I'm out of touch with currently accepted hydrologic practices, but I thought dousing an unscientific belief of the past.

Perhaps the late Carl Sagan's book "The Demon-Haunted World" should be made required reading. Otherwise, we may see—imagine!—a U.S. president relying on astrological forecasts to help him make decisions.

SAM LITZINGER
Alexandria

'Preposterous Logic'

A soldier is convicted of 18 counts of rape, and the solution from pundits across the political spectrum—e.g., Richard Cohen's "Duty, Gender, Country" [op-ed, April 24]—is to separate the sexes or, better yet, get women out of the military entirely so boys can be boys without fear of complications.

The logic is preposterous for many reasons, but I find most disturbing the assumptions that undergird it. I will not accept the belief that soldiers, or men generally, simply cannot be expected to control their sexual urges when women are present.

How utterly offensive it is to think

that men can be trained to subordinate almost every aspect of their behavior and personality to military code, except for their sex drives. Unfortunately, it is not only in the military that men are held to such ridiculously low standards on sexual matters.

I, for, one am tired of seeing men depicted with a wink and a nod as creatures of unrestrainable sexual appetite. Rape is unacceptable no matter where or how it occurs. It is about time someone stood up and said so.

We need to put the mythology of male compulsion to rest once and for all and start holding men to a higher standard of behavior. There are no legitimate excuses for sexual abuse—in the military or anywhere else.

JASON RYLANDER
Arlington

Home Energy Monitoring

The Feb. 17 news story "Interactive TV Dream Fades for Licensees" attributed a partial quote to me that made it sound as though my company, WINCOM, is building its interactive video and data services (IVDS) strategy around an interactive cable network. This is untrue. While such a network is a longer-term possibility, in the nearer term, WINCOM recognizes the potential for IVDS applications in home energy-use monitoring and other remote sensing markets related to the home. This is why we entered the IVDS market in the first place.

Far from being "mundane," as the story described it, home energy monitoring is potentially a multibillion-dollar market. Even more important, with the related infrastructure for a paid service already in place, energy monitoring—and not TV—may turn out to be the pathway of choice into the nation's more than 150 million homes and businesses for a variety of IVDS wireless communication applications. Also, while interactive TV is still a dream, the use of IVDS for energy-use monitoring and automation is a reality.

SEAN P. O'KEEFE
President
WINCOM Corp.
Los Angeles

Infelicitous Art

A few thoughts about the suffragette statue saga: I moved to Washington in 1940 at age 8. Then, as now, Washington was a Mecca for visitors, and even as a preteen I frequently escorted visitors to the sights, the paramount always being the Capitol.

I reluctantly confess that in the 1940s I was rather a brat—always leading guests down to the Capitol's "dungeon" to view the scary "three witches," accompanied by giggles and guffaws. Never did it occur to anyone that the "witches" would ever see the light of day.

If memory serves, 50 years ago, plans were made to pitch the statue out. Artistically, it was considered as laughable as the toga-garbed George Washington. Although Congress mercifully threw that George Washington out of the Capitol, it remained on the grounds for some years and finally ended up in the Smithsonian, where it still draws laughs. I wonder if Congress considers possible liability if the "three ladies" frighten visiting kids.

JOHN CONRAD SWARTZ
Washington

The Washington Post

EUGENE MEYER, 1875-1969
PHILIP L. GRAHAM, 1915-1983

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The Washington Post

TUESDAY MAY 20, 1997

Arthur Cotton Moore is a well known architect in the DC area. He resides in Georgetown. Some of his more famous projects include:

- The renovation of the Jefferson Building of the Library of Congress
- Designed and Constructed the Washington Harbor Area and the Riverfront area
- Rockville Civic Center
- Pavilion at the Post office
- Renovated the Car Barn

Moore has been known in the early nineties for his flamboyant style that took great risks. Often many people criticized the modern look of his that was not aesthetically pleasing. However, he was never timid with his designs,

Recently it seems that Moore's style has changed a bit. With the renovation of the Jefferson building, Moore showed his renewed respect for the past and historic integrity. Moore when renovating the Jefferson building tried to modernize its functions and bring it into the nineties without hurting its historical integrity.

These views of Moores seem to match up with his opinions expressed in the editorial he wrote. He has no problem with bring Pennsylvania Avenue into the future security wise as long as it does not ruin the historical integrity of the area.

Also, in the past Moore has been an artist as well as a furniture designer.

On a personal note through his quotes in many articles he seemed like a real "character"

LETTERS TO THE EDITOR

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ARTHUR COTTEN MOORE
Washington



The Washington Post

TUESDAY, MAY 20, 1997

bring up for next
P.A. the meeting.

MEMORANDUM

TO: SYLVIA MATHEWS, ELLEN LOVELL, MICHAEL DEICH
FROM: CHARLES F.C. RUFF
COUNSEL TO THE PRESIDENT
SUBJECT: PENNSYLVANIA AVENUE
DATE: AUGUST 1, 1997

In anticipation of Monday's meeting, attached is a memo from Lisa Hertzner of my Office summarizing the state of the law governing use of the Lafayette Park/Pennsylvania Avenue area.

— What about NSP-sponsored "special events," related to WH celebrations, commemorations or NSP mission?

MEMORANDUM

To: Charles F.C. Ruff
Counsel to the President

From: Lisa A. Hertzler *LH*

Re: Regulation of Special Events in Lafayette Park

Date: July 29, 1997

This memorandum summarizes the research I have conducted concerning the regulations that currently govern the use of Lafayette Park as a site for special events, such as concerts and festivals. In brief, regulations promulgated by the National Park Service ("NPS") in 1976 prohibit "special events" in Lafayette Park, with the exception of annual wreath-laying ceremonies conducted in connection with the historical statues in the park. The regulations distinguish "special events" (defined to include "non-speech" activities such as celebrations and entertainment) from "demonstrations" (defined as speech-related activities). Demonstrations may be conducted in Lafayette Park, subject to a permit requirement and attendance limits.

I. Jurisdiction Over Lafayette Park

The area known today as Lafayette Park has been federal property since the late 18th century when it was acquired, with other land surrounding the present-day White House, as a site for the President's home and grounds. The NPS has had jurisdiction over Lafayette Park and the other federal areas surrounding the White House since 1933, when the Office of Public Buildings and Public Parks of the National Capital was dissolved in President Franklin Roosevelt's reorganization of the Executive Branch.

II. The Current National Park Service Regulation: 36 C.F.R. §7.96

The NPS has promulgated special regulations governing activities in the "National Capital Area," which encompasses park areas in the District of Columbia as well as in portions of Virginia and Maryland. With limited exceptions, these regulations require a permit in order to conduct a "demonstration" or a "special event" anywhere in the National Capital Area.¹ "Demonstrations" are

¹ In five listed park areas, demonstrations are permitted without a permit, provided that specified attendance limits are observed and the demonstration is conducted in a manner "reasonably consistent with the protection and use of the indicated park area and the other requirements" of the regulation. 36 C.F.R. §7.96(g)(2)(ii). For instance, in McPherson Square (at 15th Street between I and K Streets, N.W.), a demonstration involving no more than 500 persons may be conducted without a permit. *Id.* In addition, demonstrations in the National Capital Area involving fewer than (continued...)

defined to include “demonstrations, picketing, speechmaking, marching, holding vigils or religious services and all other like forms of conduct which involve the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers.” 36 C.F.R. § 7.96(g)(1)(I). The definition of “special events” explicitly excludes activities that qualify as “demonstrations” and includes “sports events, pageants, celebrations, historical reenactments, regattas, entertainments, exhibitions, parades, fairs, festivals and similar events . . . which are engaged in by one or more persons, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers.” 36 C.F.R. § 7.96(g)(1)(ii). Demonstrations and special events throughout the National Capital Area are subject to additional regulations governing (1) the duration and hours of events, 36 C.F.R. §§ 7.96(g)(5)(iv), (v); (2) the use of temporary structures, 36 C.F.R. §§ 7.96(g)(5)(vii), (x)(A); (3) specifications for signs displayed on the White House sidewalk and in Lafayette Park, 36 C.F.R. §§ 7.96(g)(5)(viii), (x)(B); and (4) the use of sound amplification equipment, 36 C.F.R. §§ 7.96(g)(5)(xi), (xii).

Special regulations govern demonstrations and special events on park land within the delineated “White House area,” which includes Lafayette Park, the north White House sidewalk (on Pennsylvania Avenue), and the Ellipse, as well as the White House itself and its immediate grounds.²

A. *Special Events in the White House Area*

Special events are prohibited in the White House area, with the exception of (1) events on the Ellipse and (2) “annual commemorative wreath-laying ceremonies relating to the statues in Lafayette Park.” 36 C.F.R. § 7.96(g)(3)(I). Proposed special events on the Ellipse must be approved in advance by the NPS. In evaluating applications for special events in the Ellipse and elsewhere, the NPS must consider: (1) whether the “objectives and purposes” of the event “relate to and are within the basic mission and responsibilities of” the National Capital Area; (2) whether “the park area requested is reasonably suited in terms of accessibility, size, and nature of the proposed special event;” (3) whether the event can be permitted within a “reasonable budgetary allocation” of NPS funds considering the event’s public appeal and the anticipated participation by the public; (4) whether the event is duplicative of other events offered in the area; and (5) whether the activities planned in the event comply with laws and regulations. 36 C.F.R. § 7.96(g)(5)(vi).

(...continued)

25 persons may be conducted without a permit if the requirements for issuance of a permit are met.

² The “White House area” is specifically defined as “all park areas, including sidewalks adjacent thereto, within these bounds; on the south, Constitution Avenue, N.W.; on the north, H Street, N.W.; on the east, 15th Street, N.W.; and on the west, 17th Street, N.W.” 36 C.F.R. § 7.96(g)(1)(iv).

B. *Demonstrations in the White House Area*

Demonstrations are permitted in the White House area, but they can occur only in Lafayette Park, on the White House sidewalk, or in the Ellipse. 36 C.F.R. § 7.96(g)(3)(I). Demonstrations within these three portions of the White House area must be authorized by permit and are subject to attendance limits. In Lafayette Park, the attendance limit for a demonstration is 3,000 persons; on the White House sidewalk, the limit is 750 persons. 36 C.F.R. § 7.96(g)(5). The NPS may waive the attendance limit if the applicant shows that “good faith efforts will be made to plan and marshal the demonstration in such a fashion so as to render unlikely any substantial risk of unreasonable disruption or violence.” 36 C.F.R. § 7.96(g)(5)(ii)(A). This showing must include a description of “the functions the marshals will perform, the means by which they will be identified, and their method of communication with each other and the crowd.” 36 C.F.R. § 7.96(g)(5)(ii)(B).

III. History of the Current National Park Service Regulation

A. *Pre-1967 Regulations*

Lafayette Park has not always been off-limits to special events. Prior to 1967, NPS regulations required permits for “public gatherings” in the National Capital Area, but this requirement was unenforced and did not limit the size of the group. “Public gatherings” under this former regulation included all forms of public assembly. Thus, there was no distinction in the prior regulation between “expressive” conduct, such as demonstrations, and “non-speech” events, such as concerts and entertainment.

In August of 1967, the NPS announced in an internal memorandum that it would begin enforcing the permit requirement for public gatherings, and also announced that permits would not be issued (1) for the White House sidewalk to groups exceeding 100 people or (2) for Lafayette Park to groups exceeding 500 people. The internal memorandum did not explain why these numerical restrictions were imposed. In an August 1967 letter to a civil liberties organization, the NPS justified the attendance limits on the grounds that larger groups in Lafayette Park led to costly damage to the plants and shrubs in the area and larger groups on the White House sidewalk distracted motorists on Pennsylvania Avenue and forced some pedestrians into the street. *See A Quaker Action Group v. Hickel*, 421 F.2d 1111, 1114 (D.C. Cir. 1969). In the course of the *Quaker Action Group Litigation* (discussed below), however, testimony showed that security concerns contributed to the NPS decision to enforce its permit requirement. Specifically, demonstrations in the White House area during the spring and summer of 1967 had raised concerns in the Secret Service and among other local police agencies about the security dangers created by large assemblies in the White House area. *A Quaker Action Group v. Morton*, 362 F. Supp. 1161, 1163 (D.C. D.C. 1973). Meetings among law enforcement representatives resulted in recommendations to the NPS in July of 1967 that major demonstrations be prohibited in the White House area and that other demonstrations be more closely regulated. *Id.* at 1163-1165. Those recommendations appear to have been focused on concerns about large demonstrations and picketing rather than on social events. *Id.*

B. *The Quaker Action Group Litigation*

In March of 1969, five organizations that had been denied permits for demonstrations in Lafayette Park and/or on the White House sidewalk based on the 500/100 person limits imposed by the NPS filed a lawsuit in the U. S. District Court for the District of Columbia seeking a declaratory judgment that the NPS policy violated the First Amendment of the United States Constitution. Based on a finding that the plaintiffs were likely to prevail on the merits of the case, the District Court granted a preliminary injunction preventing enforcement of the 500/100 regulation pending the outcome of the litigation. The preliminary injunction was upheld by the U.S. Court of Appeals for the District of Columbia Circuit. In upholding the injunction, the D.C. Circuit acknowledged the importance of Presidential safety but found that the affidavit from the director of the U.S. Secret Service submitted by the government provided no specific evidence that large demonstrations in the White House area compromised the President's security. As the court wrote, "Demonstrations do sometimes lead to excesses; but there is a wide gulf between disorderliness on Pennsylvania Avenue and a storming of the White House over a tall, pointed steel fence and across 230 feet of lawn." *A Quaker Action Group v. Hickel*, 421 F.2d 1111, 1118 (D.C. Cir. 1969).

In July of 1970, while the Quaker Action Group litigation was ongoing, the NPS issued a Notice of Proposed Rulemaking to promulgate the 500/100 restriction in formal regulatory form. The NPRM set forth the substance of affidavits that had been prepared by the Director of the Secret Service in the course of the litigation. In those affidavits, the Secret Service Director asserted that limiting the size of demonstrations near the White House was necessary "to reduce the danger that such violence would imperil the safety of the Executive Residence, its occupants, including the President, and its contents." 35 Fed. Reg. 11485, 11487 (July 17, 1970). The Director's view was that while with sufficient armed forces the White House could be protected during demonstrations, the proximity of the White House to the street area made it likely that lethal force would have to be used in the event of a "mass assault from the sidewalk" or a "large mob." *Id.* The NPS also included the text of a letter to it from the Secret Service Director dated June 25, 1970. The letter supported the 500/100 regulation and referred to "the dangerous potential which exists today for violent outbreaks in the course of confrontations sought with constituted authority in demonstration activities focusing upon the Presidency, and the equally dangerous potential threat posed by violence-prone individuals and groups who may seek to utilize the screen which the bodies of peaceable demonstrators can provide for them" *Id.* at 11491. In support of the 500/100 regulation, the NPS also cited its priority of preserving natural park areas "in as unspoiled a state as possible." *Id.* at 11490. The 500/100 rule proposed by the NPS was scheduled to become final in November of 1970; however, the D.C. Circuit reaffirmed its injunction against enforcement of the rule until the Quaker Action Group litigation was resolved.³ *A Quaker Action Group v. Morton*, 460 F.2d 854 (D.C. Cir. 1971).

³ The NPS rule also would have excepted "NPS events" from the permit requirement. NPS events would have been permitted in any park area and could preempt other public gatherings in those areas. 35 Fed. Reg. 11485, 11492 (July 17, 1970).

A trial on the merits was conducted in the Quaker Action Group litigation in April and May of 1973. On the subject of White House security, the government presented testimony from the U.S. Secret Service Director and Deputy Director, the U.S. Secret Service Agent in charge of White House security, the Chief of the Metropolitan Police Department, and the Deputy Chief of the U.S. Park Police. *A Quaker Action Group v. Morton*, 516 F.2d 717, 723 (D.C. Cir. 1975). Law enforcement witnesses in the proceeding expressed the view that security around the White House should be “low-key,” because high-profile, heavily-armed and visible security forces “have a tendency to provoke lawless acts and violence which can erupt into mob action or panic.” *A Quaker Action Group v. Morton*, 362 F. Supp. 1161, 1169-1170 (D.C. D.C. 1973). The Secret Service also considered the 230 feet that separates the White House from its north fence “an insufficient buffer zone within which to contain a large crowd, should the fence or a gate be breached, without serious danger of death and injury to numerous persons.” *Id.* At 1171. The plaintiff organizations presented testimony concerning the lack of disruptions that had occurred at past demonstrations in the White House area⁴ and expert testimony on crowd behavior to the effect that larger crowds become less prone to violence. *A Quaker Action Group v. Morton*, 516 F.2d 717, 723 (D.C. Cir. 1975).

Based on the totality of the testimony, the district court rejected the 500/100 rule as unduly restrictive of First Amendment rights in light of the security, safety, and ecology goals that had been relied upon by the NPS. The district court ruled that any limitation of fewer than 3,000 people in Lafayette Park and 750 people on the White House sidewalk would be “more restrictive than is essential” for furtherance of the government interests at stake. *A Quaker Action Group v. Morton*, 362 F. Supp. 1161, 1172 (D.C. D.C. 1973). This conclusion was affirmed by the D.C. Circuit; however, the Circuit added its view that the record did not justify an absolute 3,000/750 limitation in any event, and that those caps could be upheld only if they were subject to waiver. *A Quaker Action Group v. Morton*, 516 F.2d 717, 732-733 (D.C. Cir. 1975). According to the D.C. Circuit, “Considerations like physical space or protection of shrubs would permit [some numerical limit for Lafayette Park demonstrations], but the figures based on such grounds, according to the record, would run in the neighborhood of 40,000 to 50,000 . . .” *Id.* at 733.

C. Adoption of the Current Regulation

In December of 1975, to comply with the court orders issued in the Quaker Action Group litigation, the NPS proposed a new rule governing “public gatherings” in the White House area. Although the litigation had focused on the security concerns particularly associated with demonstrations in the White House area, the new regulation introduced the ban on “special events”

⁴ Trial testimony from the Secret Service showed that 77 of the previous 383 demonstrations on the White House sidewalk and in Lafayette Park exceed the 500/100 restriction. The district court opinion listed 30 large demonstrations on the White House sidewalk or in Lafayette Park, some with attendance counts as large as 25,000 people. Of those 30 demonstrations, 23 involved “no incidents” of any sort. *A Quaker Action Group v. Morton*, 362 F. Supp. 1161, 1168-1169 (D.C. D.C. 1973).

in Lafayette Park that remains in effect today. In support of the differentiation between demonstrations and other events, the NPS wrote that it sought "to achieve a better accommodation of speech-related (and connected associational) activities than is considered desirable for other associational activities." 40 Fed. Reg. 58651, 58652 (December 18, 1975). The published regulation articulated no other rationale for the ban on special events in Lafayette Park.

IV. Conversations With Agencies

I informally contacted attorneys in the NPS and the U.S. Secret Service in an effort to understand why, when it was required for constitutional reasons to expand opportunities for demonstrations in Lafayette Park, the NPS simultaneously elected to eliminate opportunities for other events in that area.

A. *Richard Robbins, Department of Interior*

Richard Robbins is in charge of National Capital Parks in the Solicitor's Office of the Department of Interior. Mr. Robbins' understanding of the basis for the special-events ban is that the attendance at these events cannot be reliably predicted or controlled. According to Mr. Robbins' information, concerts were, in fact, conducted in Lafayette Park in the late 1960's and early 1970's and drew large crowds. The NPS believed that it would be difficult to enforce the Secret Service's security-driven 500/100 rule for special events. Mr. Robbins also noted the NPS's independent interest in maintaining the tranquility and landscape condition of Lafayette Park.

B. *John Kelleher, Chief Counsel, U.S. Secret Service*

Mr. Kelleher was not with the Secret Service when the special-events ban was imposed for Lafayette Park. His understanding was that the ban was adopted because of the danger that a large group could overwhelm the White House quickly, particularly given the modest size of the surrounding fence and the relatively short distance between the north fence and the White House itself. Mr. Kelleher also commented that the Ellipse is a nearby alternative site for special events.

Ellen -

For you to read - FYI

Here it is.

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