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THE WHITE HOUSE  
WASHINGTON  
March 5, 1985



**TO:** John Roberts

**FROM:** FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

**~~FOR YOUR INFORMATION:~~**

Please review the check-marked  
publications.

---

Note, "Federal Habeas Corpus for State Prisoners: The Isolation Principle," 39 N.Y.U.L. Rev. 78 (1964).

With Hon. J. Skelly Wright, "Federal Habeas Corpus for State Prisoners: The Allocation of Fact-Finding Responsibility," 75 Yale L.J. 894 (1966).

"The Change-of-Status Adjudication: A Case Study of the Informal Agency Process." 1 J. of Legal Studies 349 (1972).

"Judicial Control of Informal Discretionary Adjudication and Enforcement," 72 Colum. L. Rev. 1293 (1972).

"Financing Public Education in New York State: An Analysis of the Fleischmann Commission Report," 48 N.Y.U.L. Rev. 1 (1973).

✓ Book Review, "R. Berger, Executive Privilege: A Constitutional Myth," 88 Harv. L. Rev. 281 (1974).

With Joann Engelke Macbeth, "Recent Developments in Local Government," The Urban Lawyer 1 (1975).

✓ "Executive Privilege: An Historical Note," 75 Colum. L. Rev. 1318 (1975).

✓ War, Foreign Affairs and Constitutional Power: The Origins (1976).

✓ "The Presidency, War and Foreign Affairs: Practice Under the Framers," 1976 Law and Contemp. Prob. 12.

✓ "Executive Power and the Control of Information: Practice Under the Framers," 1976 Duke L.J. 1. Brainerd Currie Lecture, Duke University School of Law.

Book Review, "Henry J. Bourguignon. The First Federal Court: The Federal Appellate Prize Court of the American Revolution, 1775-1787," Am. Hist. Rev., Dec. 1978, pp. 1339-40.

"The Science Court: Unscientific and Unsound," 9 Env. Law 1(1979).

"Emergency Power and the Hero of New Orleans," 2 Cardozo L. Rev. 233 (1981).

"Sanctioning Attorneys for Discovery Abuse," 57 St. John's L. Rev. 680 (1983).

"Crime and Punishment — Lessons from the Bible," N.Y.L. Journal, May 15, 1984, p. 1, col 3.

file:

Abraham Sofaer



United States Department of State

The Legal Adviser

Washington, D.C. 20520

August 8, 1985

The Honorable Alan F. Holmer  
General Counsel  
U.S. Trade Representative  
Washington, D.C. 20506

*file -  
Sofaer*

Dear Alan:

As a result of the requests made by Attorney General Meese and Acting Secretary of State Kenneth Dam in April, the American Law Institute (ALI) has delayed final promulgation of the Restatement (Revised): The Foreign Relations Law of the United States until May 1986 and has just distributed a comprehensive draft. As the enclosed table of contents indicates, the Restatement touches on matters of concern to the Government generally, such as trade and jurisdiction to enforce our laws regarding persons or conduct abroad. Therefore, I would like to invite the U.S. Trade Representative to join with us and other federal agencies in developing a set of final suggestions for modifications in the Restatement, to reduce any potential difficulties for the government and improve this potentially influential publication.

The ALI deadline for filing comments on the draft is December, 1985. I plan to have the State Department's review of it completed in early September, in order to maximize the opportunity to work with the Restatement Reporters and the ALI Council this fall on any specific changes called for. We are focussing on precise suggested drafting changes for the black letter and commentary, with supporting legal argument and authority. Suggestions to correct or improve the Reporters' Notes are of secondary importance, since these are not voted on or adopted by the ALI.

I would welcome the views of the U.S. Trade Representative and its assistance in a coordinated effort to seek any modifications which are called for. David Small, Assistant Legal Adviser for Economics, Business and Communications Affairs (632-0242) is coordinating this effort for my office.

Sincerely,

Abraham D. Sofaer



United States Department of State

*The Legal Adviser*

Washington, D.C. 20520

August 8, 1985

The Honorable Jim J. Marquez  
General Counsel  
Department of Transportation  
Washington, D.C. 20590

Dear Mr. Marquez:

As a result of the requests made by Attorney General Meese and Acting Secretary of State Kenneth Dam in April, the American Law Institute (ALI) has delayed final promulgation of the Restatement (Revised): The Foreign Relations Law of the United States until May 1986 and has just distributed a comprehensive draft. As the enclosed table of contents indicates, the Restatement touches on matters of concern to the Government generally, such as jurisdiction to enforce our laws regarding persons or conduct abroad. Therefore, I would like to invite the Department of Transportation to join with us and other federal agencies in developing a set of final suggestions for modifications in the Restatement, to reduce any potential difficulties for the government and improve this potentially influential publication.

The ALI deadline for filing comments on the draft is December, 1985. I plan to have the State Department's review of it completed in early September, in order to maximize the opportunity to work with the Restatement Reporters and the ALI Council this fall on any specific changes called for. We are focussing on precise suggested drafting changes for the black letter and commentary, with supporting legal argument and authority. Suggestions to correct or improve the Reporters' Notes are of secondary importance, since these are not voted on or adopted by the ALI.

I would welcome the views of the Department of Transportation and its assistance in a coordinated effort to seek any modifications which are called for. David Small, Assistant Legal Adviser for Economics, Business and Communications Affairs (632-0242) is coordinating this effort for my office.

Sincerely,

Abraham D. Sofaer



United States Department of State

*The Legal Adviser*

Washington, D.C. 20520

August 8, 1985

The Honorable J. Michael Farrell  
General Counsel  
Department of Energy  
Washington, D.C. 20585

Dear Mr. Farrell:

As a result of the requests made by Attorney General Meese and Acting Secretary of State Kenneth Dam in April, the American Law Institute (ALI) has delayed final promulgation of the Restatement (Revised): The Foreign Relations Law of the United States until May 1986 and has just distributed a comprehensive draft. As the enclosed table of contents indicates, the Restatement touches on matters of concern to the Government generally, such as jurisdiction to enforce our laws regarding persons or conduct abroad. Therefore, I would like to invite the Department of Energy to join with us and other federal agencies in developing a set of final suggestions for modifications in the Restatement, to reduce any potential difficulties for the government and improve this potentially influential publication.

The ALI deadline for filing comments on the draft is December, 1985. I plan to have the State Department's review of it completed in early September, in order to maximize the opportunity to work with the Restatement Reporters and the ALI Council this fall on any specific changes called for. We are focussing on precise suggested drafting changes for the black letter and commentary, with supporting legal argument and authority. Suggestions to correct or improve the Reporters' Notes are of secondary importance, since these are not voted on or adopted by the ALI.

I would welcome the views of the Department of Energy and its assistance in a coordinated effort to seek any modifications which are called for. David Small, Assistant Legal Adviser for Economics, Business and Communications Affairs (632-0242) is coordinating this effort for my office.

Sincerely,

Abraham D. Sofaer



United States Department of State

*The Legal Adviser*

Washington, D.C. 20520

August 8, 1985

The Honorable Chapman B. Cox  
General Counsel  
Department of Defense  
Washington, D.C. 20301

Dear Mr. Cox:

As a result of the requests made by Attorney General Meese and Acting Secretary of State Kenneth Dam in April, the American Law Institute (ALI) has delayed final promulgation of the Restatement (Revised): The Foreign Relations Law of the United States until May 1986 and has just distributed a comprehensive draft. As the enclosed table of contents indicates, the Restatement touches on matters of concern to the Government generally, such as jurisdiction to enforce our laws regarding persons or conduct abroad. Therefore, I would like to invite the Department of Defense to join with us and other federal agencies in developing a set of final suggestions for modifications in the Restatement, to reduce any potential difficulties for the government and improve this potentially influential publication.

The ALI deadline for filing comments on the draft is December, 1985. I plan to have the State Department's review of it completed in early September, in order to maximize the opportunity to work with the Restatement Reporters and the ALI Council this fall on any specific changes called for. We are focussing on precise suggested drafting changes for the black letter and commentary, with supporting legal argument and authority. Suggestions to correct or improve the Reporters' Notes are of secondary importance, since these are not voted on or adopted by the ALI.

I would welcome the views of the Department of Defense and its assistance in a coordinated effort to seek any modifications which are called for. David Small, Assistant Legal Adviser for Economics, Business and Communications Affairs (632-0242) is coordinating this effort for my office.

Sincerely,

Abraham D. Sofaer

United States Department of State

*The Legal Adviser*

*Washington, D.C. 20520*

August 8, 1985

The Honorable Robert M. Kimmitt  
General Counsel  
Department of The Treasury  
Washington, D.C. 20220

Dear Mr. Kimmitt:

As a result of the requests made by Attorney General Meese and Acting Secretary of State Kenneth Dam in April, the American Law Institute (ALI) has delayed final promulgation of the Restatement (Revised): The Foreign Relations Law of the United States until May 1986 and has just distributed a comprehensive draft. As the enclosed table of contents indicates, the Restatement touches on matters of concern to the Government generally, such as trade and jurisdiction to enforce our laws regarding persons or conduct abroad. Therefore, I would like to invite the Department of the Treasury to join with us and other federal agencies in developing a set of final suggestions for modifications in the Restatement, to reduce any potential difficulties for the government and improve this potentially influential publication.

The ALI deadline for filing comments on the draft is December, 1985. I plan to have the State Department's review of it completed in early September, in order to maximize the opportunity to work with the Restatement Reporters and the ALI Council this fall on any specific changes called for. We are focussing on precise suggested drafting changes for the black letter and commentary, with supporting legal argument and authority. Suggestions to correct or improve the Reporters' Notes are of secondary importance, since these are not voted on or adopted by the ALI.

I would welcome the views of the Department of the Treasury and its assistance in a coordinated effort to seek any modifications which are called for. David Small, Assistant Legal Adviser for Economics, Business and Communications Affairs (632-0242) is coordinating this effort for my office.

Sincerely,

Abraham D. Sofaer





United States Department of State

*The Legal Adviser*

*Washington, D.C. 20520*

August 8, 1985

The Honorable Daniel L. Goelzer  
General Counsel  
Securities and Exchange Commission  
Washington, D.C. 20549

Dear Mr. Goelzer:

As a result of the requests made by Attorney General Meese and Acting Secretary of State Kenneth Dam in April, the American Law Institute (ALI) has delayed final promulgation of the Restatement (Revised): The Foreign Relations Law of the United States until May 1986 and has just distributed a comprehensive draft. As the enclosed table of contents indicates, the Restatement touches on matters of concern to the Government generally, such as trade and jurisdiction to enforce our laws regarding persons or conduct abroad. Therefore, I would like to invite the Commission to join with us and other federal agencies in developing a set of final suggestions for modifications in the Restatement, to reduce any potential difficulties for the government and improve this potentially influential publication.

The ALI deadline for filing comments on the draft is December, 1985. I plan to have the State Department's review of it completed in early September, in order to maximize the opportunity to work with the Restatement Reporters and the ALI Council this fall on any specific changes called for. We are focussing on precise suggested drafting changes for the black letter and commentary, with supporting legal argument and authority. Suggestions to correct or improve the Reporters' Notes are of secondary importance, since these are not voted on or adopted by the ALI.

I would welcome the views of the Commission and its assistance in a coordinated effort to seek any modifications which are called for. David Small, Assistant Legal Adviser for Economics, Business and Communications Affairs (632-0242) is coordinating this effort for my office.

Sincerely,

Abraham D. Sofaer

cc: Mr. Gary Lynch



United States Department of State

*The Legal Adviser*

Washington, D.C. 20520

August 8, 1985

The Honorable Douglass Riggs  
General Counsel  
Department of Commerce  
Washington, D.C. 20230

Dear Mr. Riggs:

As a result of the requests made by Attorney General Meese and Acting Secretary of State Kenneth Dam in April, the American Law Institute (ALI) has delayed final promulgation of the Restatement (Revised): The Foreign Relations Law of the United States until May 1986 and has just distributed a comprehensive draft. As the enclosed table of contents indicates, the Restatement touches on matters of concern to the Government generally, such as trade and jurisdiction to enforce our laws regarding persons or conduct abroad. Therefore, I would like to invite the Department of Commerce to join with us and other federal agencies in developing a set of final suggestions for modifications in the Restatement, to reduce any potential difficulties for the government and improve this potentially influential publication.

The ALI deadline for filing comments on the draft is December, 1985. I plan to have the State Department's review of it completed in early September, in order to maximize the opportunity to work with the Restatement Reporters and the ALI Council this fall on any specific changes called for. We are focussing on precise suggested drafting changes for the black letter and commentary, with supporting legal argument and authority. Suggestions to correct or improve the Reporters' Notes are of secondary importance, since these are not voted on or adopted by the ALI.

I would welcome the views of the Department of Commerce and its assistance in a coordinated effort to seek any modifications which are called for. David Small, Assistant Legal Adviser for Economics, Business and Communications Affairs (632-0242) is coordinating this effort for my office.

Sincerely,

Abraham D. Sofaer



United States Department of State

*The Legal Adviser*

*Washington, D.C. 20520*

August 8, 1985

The Honorable D. Lowell Jensen  
Deputy Attorney General  
Department of Justice  
Washington, D.C. 20530

Dear Lowell:

As a result of the requests made by Attorney General Meese and Acting Secretary of State Kenneth Dam in April, the American Law Institute (ALI) has delayed final promulgation of the Restatement (Revised): The Foreign Relations Law of the United States until May 1986 and has just distributed a comprehensive draft.

The ALI deadline for filing comments on the draft is December, 1985. I plan to have the State Department's review of it completed in early September, in order to maximize the opportunity to work with the Restatement Reporters and the ALI Council this fall on any specific changes called for. We are focussing on precise suggested drafting changes for the black letter and commentary, with supporting legal argument and authority. Suggestions to correct or improve the Reporters' Notes are of secondary importance, since these are not voted on or adopted by the ALI.

I would welcome the views of the Department of Justice and its assistance in a coordinated effort to seek any modifications which are called for. David Small, Assistant Legal Adviser for Economics, Business and Communications Affairs (632-0242) is coordinating this effort for my office.

Sincerely,

Abraham D. Sofaer

Cleared: L - EVerville

Drafted: L/EBC:DS<sup>DS</sup>Small  
8/6/85 632-0242  
0350Q

**RESTATEMENT OF FOREIGN RELATIONS LAW  
(REVISED)  
COMPREHENSIVE  
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