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THE WHITE HOUSE

WASHINGTON

September 5, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Request for Presidential Letter to
be Used in Charitable Fundraising

The National Society for the Prevention of Cruelty to Children (NSPCC), a royally chartered British charity, has asked the President to submit a letter he wrote as a child or a letter to him from a child for inclusion in an anthology NSPCC plans to publish to raise funds. Katherine Shepherd of Presidential Correspondence has asked if we have any problems complying with the request.

Our standard practice is to deny such requests for Presidential items to be used in fundraising, and I see no reason to depart from that practice in this case. We deny such requests, even from the worthiest charitable organizations, because the White House is in no position to monitor the affairs of the charities, which would be necessary to some extent were the President to lend his name to them, and because granting some requests of this sort would inevitably generate a flood of similar, indistinguishable requests. Further, use of Presidential items for fundraising is really just selling the prestige of the office, and that is not for sale, not for any price, not for any cause. The Queen has submitted a letter for the anthology, but that is what royalty is for.

A draft reply to NSPCC is attached for your review and signature.

Attachment

THE WHITE HOUSE

WASHINGTON

September 5, 1984

Dear Ms. Poute:

Thank you for your letter to the President, requesting that he submit a letter he wrote as a child, or a letter to him from a child, for inclusion in an anthology to be published to raise funds for the National Society for the Prevention of Cruelty to Children. I must advise you that we cannot comply with your request.

The White House adheres to a policy of generally not approving the use of Presidential memorabilia in connection with fundraising efforts, however laudable those efforts might be. This policy is necessary for several reasons. The White House is not able to monitor the activities of particular charitable organizations, which would be necessary to some extent were the President to lend his name to an organization. In addition, acceding to some requests for Presidential participation in private charitable fundraising would inevitably generate countless similar requests. The President could not, of course, grant all such requests, and out of fairness he has been compelled to deny them all.

I hope you will understand the reasons we must take this position, and also understand that it in no sense constitutes an adverse reflection on your organization. Best of luck with your worthy efforts. I am sorry our response could not be more favorable.

Sincerely,

Fred F. Fielding
Counsel to the President

Ms. Jenny Poute
National Society for the
Prevention of Cruelty to Children
Ardeley Bury, Near Stevenage
Hertfordshire, Walkern 458

FFF:JGR:aea 9/5/84
bcc: FFFfielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

September 7, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Request for Presidential Message
to Wal-Mart Stores Commending Them
on Their Non-Partisan Voter
Registration Drive

Duncan Clark of Presidential Correspondence has asked us to approve a draft Presidential message to be sent to Wal-Mart Stores, commending them on their non-partisan voter registration drive. The Chairman and CEO of Wal-Mart, Sam Walton, requested such a message, and his request was conveyed by Representative John Paul Hammerschmidt (R-Ark.). The proposed message stresses the importance of exercising the right to vote.

Mrs. Cooksey advises that she disapproved this request when it came in through Reagan-Bush '84 channels on August 15, on the ground that an endorsement by a candidate would undermine the non-partisan character of the voter registration drive. The attached memorandum for Duncan confirms this earlier advice.

cc: Sherrie M. Cooksey

THE WHITE HOUSE

WASHINGTON

September 7, 1984

MEMORANDUM FOR DUNCAN CLARK
PRESIDENTIAL CORRESPONDENCE OFFICE

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Request for Presidential Message
to Wal-Mart Stores Commending Them
on Their Non-Partisan Voter
Registration Drive

You have asked for our views on a proposed message from the President, endorsing a non-partisan voter registration drive to be conducted by Wal-Mart Stores, Inc. The question of the propriety of such a message was presented to this office some time ago by Reagan-Bush '84, and this office advised that a message should not be sent. Sending a message would undermine the non-partisan character of the voter registration drive. Accordingly, I cannot approve the proposed message.

Thank you for raising this matter with us.

FFF:JGR:aea 9/7/84

cc: FFFielding/JGRoberts/Subj/Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1/1/1Name of Correspondent: Duncan Clark☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Request for a special message to
John Hammerschmidt with Wal-Mart for
the non-partisan voter registration drive

ROUTE TO:

ACTION

DISPOSITION

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CU Hall</u>		ORIGINATOR	<u>84 08 14</u>			
<u>CUAT 1P</u>		Referral Note: <u>D</u>	<u>84 08 14</u>		<u>5 84 10 P1</u>	
		Referral Note:				
		Referral Note:				
		Referral Note:				
		Referral Note:				

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:

A - Answered C - Completed
B - Non-Special Referral S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

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Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

THE WHITE HOUSE
WASHINGTON

8/14/84

Date

To: Fred Fielding/WH Counsel

Attached is a draft special message we would like to send to the President of Wal-Mart Stores, who is organizing a non-partisan voter registration drive. I would appreciate your review. If this message is approved, we would expect to use the same language on similar occasions.

Thanks,

DUNCAN CLARK ^{RDC}
Presidential Correspondence
Office
Room 96, x7610

RR/Doc/1-1
THE HOUSE
W ON

August 14, 1984

RVOTE

The right to vote is the foundation of democracy, but large numbers of Americans are not even registered to make use of this precious liberty. In other nations, where the right to vote is being freely exercised for the first time, we have seen that people will dodge bullets and brave threats of retaliation to cast their ballots. They know that voting is the act which makes self-government possible.

Although our parties disagree on many issues during this election year, we strongly agree on the desirability of citizens' registering to vote and going to the polls on November 6. Your efforts to register new voters are an excellent demonstration of your civic responsibility. Regardless of who wins or loses on election day, our democracy will be stronger if Americans, by their active and enthusiastic participation, give the world an example of successful self-government in action.

I am pleased to congratulate you on the efforts you are making to register new voters, and I send you my best wishes for every future success.

S/RR

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: AUGUST 01, 1984

NAME OF CORRESPONDENT: THE HONORABLE JOHN PAUL HAMMERSCHMIDT

SUBJECT: FORWARDS LETTER TO THE PRESIDENT FROM SAM M.
WALTON, WAL-MART STORES, REQUESTING MESSAGE
FOR NON-PARTISAN VOTER REGISTRATION DRIVE

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION		DISPOSITION	
	ACT CODE	DATE YY/MM/DD	TYPE RESP	C COMPLETED D YY/MM/DD
M. B. OGLESBY	ORG	84/08/01	MDA	84/08/02
VPMM Kott REFERRAL NOTE:	A	84/08/04		1 1
CUTLER REFERRAL NOTE:	A	84/08/14		3 1 1
REFERRAL NOTE:		1 1		1 1
REFERRAL NOTE:		1 1		1 1
REFERRAL NOTE:		1 1		1 1

COMMENTS:

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: 1240

MAIL

USER CODES: (A) MESS (B) 840818 (C)

*ACTION CODES:	*DISPOSITION CODES:	*OUTGOING	*
*A-APPROPRIATE ACTION	*A-ANSWERED	*CORRESPONDENCE:	*
*C-COMMENT/RECOM	*B-NON-SPEC-REFERRAL	*TYPE RESP=INITIALS	*
*D-DRAFT RESPONSE	*C-COMPLETED	*OF SIGNER	*
*F-FURNISH FACT SHEET	*S-SUSPENDED	*CODE = A	*
I-INFO COPY/NO ACT NEC		*COMPLETED = DATE OF	*
*R-DIRECT REPLY W/COPY *		*OUTGOING	*
*S-FOR-SIGNATURE *			*
*X-INTERIM REPLY *			*

REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE
(ROOM 75,OEOb) EXT. 2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING
LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS
MANAGEMENT.

August 2, 1984

Dear John Paul:

Thank you for your July 30 letter asking that the President send a message to be used by Wal-Mart Stores, Inc. in its non-partisan voter registration drive.

Please know that I have brought this request to the attention of the appropriate White House office and have asked that it receive every consideration.

With best wishes,

Sincerely,

E. B. Oglesby, Jr.
Assistant to the President

The Honorable John Paul Hammerschmidt
House of Representatives
Washington, D.C. 20515

MBO:KRJ:JID:jid

cc: w/copy of inc to *Claudia Korte* - for further action

WH RECORDS MANAGEMENT HAS RETAINED ORIGINAL INCOMING

JOHN PAUL HAMMERSCHMIDT
THIRD DISTRICT, ARKANSAS

HOME ADDRESS:
HARRISON, ARKANSAS

WASHINGTON ADDRESS:
2207 RAYBURN BUILDING
WASHINGTON, D.C. 20515
PHONE: 226-4301

Congress of the United States
House of Representatives
Washington, D.C. 20515

July 30, 1984

COMMITTEES:
PUBLIC WORKS AND
TRANSPORTATION
SUBCOMMITTEES:
AVIATION—RANKING MEMBER
WATER RESOURCES
SURFACE TRANSPORTATION
VETERANS' AFFAIRS—
RANKING MEMBER
SUBCOMMITTEES:
HOSPITALS AND HEALTH CARE—
RANKING MEMBER
COMPENSATION, PENSION AND
INSURANCE
HOUSING AND MEMORIAL AFFAIRS
SELECT COMMITTEE ON AGING
SUBCOMMITTEE:
HOUSING AND CONSUMER
INTERESTS—RANKING MEMBER

The Honorable M.B. Oglesby
Assistant to the President for
Legislative Affairs
The White House
Washington, DC 20500

Dear B:

Enclosed is a letter from Sam Walton, CEO of Wal-Mart Stores, Inc., which is headquartered in my Congressional District.

The letter requested from the President would be used in association with the company's non-partisan voter registration drives at 700 store locations in 20 states.

To allow time for duplication and distribution for the kick-off publicity, the President's message should be received in Bentonville, Arkansas by August 18th.

I would urge very careful consideration of following through on this one, and would appreciate your directing the request to the appropriate office. A copy of President Reagan's greeting or response to Mr. Walton would be much appreciated.

With thanks for your continuing good help,

Sincerely,

JOHN PAUL HAMMERSCHMIDT
Member of Congress

JPH:wew
enclosure

Wal-Mart Stores, Inc.

Sam M. Walton
Chairman and Chief Executive Officer

July 26, 1984

The President
The White House
Washington, D.C.

Dear President Reagan:

Wal-Mart Stores, Inc. is preparing to conduct a Voter Registration Drive at our more than 700 store locations. We feel that if our democracy is to function at its best, each eligible American citizen should vote. Our goal is to register 25,000 new voters in the 20 midwestern and southern states we are located in. This will be a grass roots program involving most of our 70,000 Wal-Mart associates.

To aid us in our efforts, we would appreciate a letter from you addressed to "Wal-Mart Associates" commenting on the importance of voter registration and voting. We would then duplicate your letter and distribute it so that each Wal-Mart associate may be more inspired in their efforts.

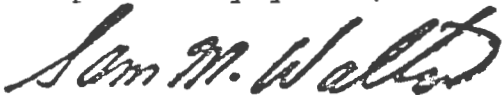
Your letter should be sent to the attention of:

Jim von Grep, Director
Corporate & Public Affairs
Wal-Mart Stores, Inc.
P.O. Box 116
Bentonville, AR 72716

I would also like to thank you again for the gracious telephone call you made to Helen and I during our day of honor in Bentonville last November. It was the highlight of a glorious day for both of us.

Thanks again and keep up the good work.

Respectfully yours,



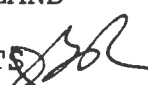
Sam M. Walton
Chairman and Chief Executive
Officer
Wal-Mart Stores, Inc.

THE WHITE HOUSE

WASHINGTON

September 13, 1984

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS 

SUBJECT: Request to Publish Article
by the President Regarding
U.S. Scientific Leadership

No response is necessary on this. The questionnaire has been completed and submitted, after review by all appropriate offices, including the Counsel's Office.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1-21Name of Correspondent: Mildred Dresselhaus☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Would like to publish article by
President re: U.S. Scientific Leadership**ROUTE TO:****ACTION****DISPOSITION**

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>W Holland</u>		ORIGINATOR	<u>84108101</u>			<u>1 1</u>
<u>WAT18</u>		Referral Note: <u>D</u>	<u>84108101</u>		<u>S 84108101</u>	
		Referral Note: _____	<u>1 1</u>			<u>1 1</u>
		Referral Note: _____	<u>1 1</u>			<u>1 1</u>
		Referral Note: _____	<u>1 1</u>			<u>1 1</u>
		Referral Note: _____	<u>1 1</u>			<u>1 1</u>

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C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

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R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:

A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
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ID # 244070

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

PP001

☐ O - OUTGOING☐ H - INTERNAL☒ I - INCOMING

Date Correspondence Received (YY/MM/DD) 84 10 28

Name of Correspondent: ☐ Mr. ☐ Mrs. ☐ Miss

Mildred Dresselhaus

☐ MI Mail Report

User Codes: (A) (B) (C)

Subject: Would like to publish article by President
Re: U.S. Scientific Leadership

ROUTE TO:

ACTION

DISPOSITION

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
	Dono Coker	ORIGINATOR	84 10 21 30			84 10 1
99 VOSTP		Referral Note:	84 10 10 1			84 10 1
V OPO II SUAHN		Referral Note: See Comments	84 10 7 30			1 1
V Press office speaks		Referral Note: A	84 10 7 50			1 1
V CUFIEL		Referral Note: A	84 10 7 30			1 1
		Referral Note:				

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
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DISPOSITION CODES:

A - Answered
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C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments:

Need by August 15. Should
reach magazine by August 21st.

Keep this worksheet attached to the original incoming letter.

Send all routing updates to Central Reference (Room 75, OEOb).

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THE WHITE HOUSE
WASHINGTON

TO: Anne Higgins

FROM: MICHAEL K. DEEVER
Assistant to the President
Deputy Chief of Staff

☐ Information
☒ Action

Would you pls. see that
this letter is acknowledged.

THANKS....

Sally-

Would you kindly track
this to G. Keyworth/OSTP
with a copy to OPD/
FFF. Mark into En C &
D/--- drafts if an arti-
cle as recommended request
is recommended.

cc: Press Office as well.

the American Physical
Associate knowing
interest to the

challenged by other countries
research at the frontiers of

How would your administration
its scientific leadership
national scientific work
any single nation to

2) Each year may be
or deferred for
representative
for some
provisional

3) The committee
is composed of
is an official
evolutionary
then that
lead.

The American Physical Society

335 EAST 45 STREET, NEW YORK, NEW YORK 10017 • (212) 682-7341

244070

PRESIDENT

MILDRED S. DRESSELHAUS
MASSACHUSETTS INSTITUTE OF TECHNOLOGY

PRESIDENT ELECT

ROBERT R. WILSON
COLUMBIA UNIVERSITY

VICE PRESIDENT

SIDNEY D. DRELL
SLAC, STANFORD UNIVERSITY

EXECUTIVE SECRETARY

W. W. HAVENS, JR.
COLUMBIA UNIVERSITY

TREASURER

JOSEPH A. BURTON
BELL LABORATORIES (RETIRED)

EDITOR-IN-CHIEF

DAVID LAZARUS
UNIVERSITY OF ILLINOIS

July 27, 1984

The President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

I am writing on behalf of The American Physical Society, whose members would greatly appreciate knowing your views on the following issues of particular interest to them:

- 1) The scientific leadership of the United States is being challenged by other countries. Moreover, the cost of research at the frontiers of science is rising steeply.

How would your administration ensure that the U.S. retain its scientific leadership? How would you develop international scientific cooperation on projects too large for any single nation to undertake?

- 2) Each year many worthy scientific projects are abandoned or deferred for lack of funds. Each such instance represents a technological risk for the United States. Yet some projects continue to be funded by direct congressional action, avoiding the process of peer review.

How can the federal government ensure that the advice of our leading experts is considered in establishing priorities for the most essential and promising scientific projects?

- 3) The economic and military security of the United States is dependent on our continued technological superiority. In an effort to deny U.S. advances to our adversaries, restrictions have been imposed on scientific communication that threaten the very system that has given us our lead.

What actions would your administration take to ensure a proper balance between the need for secrecy and the openness essential to the health of science?

- 4) More than a year ago the National Commission on Excellence in Education issued its sober report, "A Nation at Risk: The Imperative for Educational Reform." The report places particular stress on the urgent need for reform in math and science education.

What should be the role of the federal government in ensuring that the vital needs of the nation for scientific and technical manpower are met?

The Society would like permission to publish your reply, along with that of Mr. Mondale, in the October issue of Physics Today. This magazine, with a circulation of 75,000, is read by the majority of American physicists as well as by a large segment of the public which is interested in scientific matters. We therefore ask that your response, which should reach us by 21 August, be limited to 1500 words and be in a format suitable for publication.

Sincerely yours,

Mildred S. Dresselhaus

Mildred S. Dresselhaus

*file:
Pres. Librarian*

THE WHITE HOUSE

WASHINGTON

October 3, 1984

MEMORANDUM FOR JOHN G. ROBERTS

FROM: RICHARD K. BRIDGFORD

SUBJECT: Use of Life-Size Presidential Photo
for Commercial Profit

I. Facts

Two young men, Kevin Darley and Joseph Nelson, have had blown up and mounted to a plywood backing a life-size photograph of the President. Without President Reagan's consent, they obtained vendor's licenses and now charge a small sum to photograph anyone with this likeness of President Reagan. Among those photographed with the President are persons who, according to The Washington Post's July 19, 1984 issue, attempt a physical or verbal attack, slap the Presidential likeness, or attempt to choke it.

II. Issue

Is an actionable invasion of privacy created when one uses a photograph of the President for commercial profit, without the President's consent, and in a manner that often demeans the President and misrepresents the manner in which he would allow himself to be treated?

III. Answer

Yes, there is a well established right against one invading another's privacy by reproducing for commercial profit a photograph of that individual. Although this right is more narrowly construed for public personalities like the President, there is a boundary beyond which even reproduction of a photograph of a public personage, without his consent, is an invasion of privacy. In the instant case, where the reproduction is solely for profit and not newsworthy or educational for the public, and where the reproduction is harmful to the President's reputation and not flattering, the photographic reproduction constitutes an actionable invasion of President Reagan's privacy.

IV. Discussion

A. Constitutionality of the Right Against Invasion of Privacy by Another's Use of A Person's Photograph, Without Consent, for Commercial Profit

In Sperry & Hutchinson Co. v. Rhodes, 31 S. Ct. 490, 220 U.S. 502, 55 L. Ed. 561, the Court upheld Chapter 132 of the New York Statutes of 1903 which made it a crime to use a photograph of another, without consent, for trade or advertising purposes. There was some debate as to whether the statute applied to photos taken prior to the statutes' enactment, but the right against invasion of one's privacy was undisputedly upheld in an opinion by Justice Holmes. Id. at 505.

B. The District of Columbia Authority Supporting the Right Against Invasion of Privacy and the Public Personage Exception

The District of Columbia authorities strongly support one's right to not have a photo of oneself used, without consent, for another's commercial profit. This right, however, is generally more narrowly circumscribed for a public personage who has placed himself in the public eye and is of newsworthy value.

The right against invasion of privacy was first discussed by the D.C. Courts in Elmhurst v. Pearson, 153 F. 2d 467 (1946). In Elmhurst, the plaintiff was a waiter accused of conspiracy to overthrow the U.S. Government. Plaintiff sued a radio announcer for invasion of privacy when the announcer disclosed the location of plaintiff's work place over the air. The Court first acknowledged that "invasion of privacy is of recent origin and is unknown to the common law." Id. at 468. Then the panel went on to state:

Whether such an action can be maintained in the District of Columbia need not be decided here, for it seems to be well settled in the jurisdictions which entertain such actions that one who becomes an actor in an occurrence of public or general interest must pay the price of publicity through news reports concerning his private life, unless those reports are defamatory.

Id. at 468.

Thus, the right against invasion of privacy, which was later acknowledged by the D.C. Courts, was from the beginning bridled by the public personage exception.

Peay v. Curtis Publishing Co., 78 F. Supp. 305 (1948), followed Elmhurst and upheld for D.C. the right of privacy recognized by Elmhurst as existing in other jurisdictions. In Peay, the Court held that publication of a private person's photograph in The Saturday Evening Post, without his consent, violated the right to privacy. The Court said:

The law has recognized the right of privacy. The publication of a photograph of a private person without his sanction is a violation of this right.

Id. at 309.

Unfortunately, however, in dicta the Court said:

An exception necessarily exists in respect to individuals who by reason of their position or achievements have become public characters. Elmhurst v. Pearson, 80 U.S. App. D.C. 372, 153 F. 2d 467.

Id. at 309.

Klein v. McGraw-Hill, 263 F. Supp. 919 (D.C. App. 1966), followed Peay's lead both in affirming the basic right against an invasion of privacy, and in noting a public personage exception. In Klein, a high school student who made important advances in radio was pictured on the cover of a high school science book without his consent. As in Peay, the Court began by acknowledging the basic right to privacy. It ended, however, by qualifying the right when applied to public personages. In holding that plaintiff's privacy was not invaded the Court stated:

The law of privacy is recognized in the District of Columbia, but again it is subject to the exception that a person whose activities have become part of the public domain is not entitled to the same degree of privacy as an ordinary, average individual who has received no public attention whatsoever and as to whom there is no legitimate reason for any public interest. Peay v. Curtis Publishing Co., 78 F. Supp. 305.

Id. at 921.

Once again, the critical distinction is between private and public figures. In short, Elmhurst, Peay, and Klein all acknowledge the existence of a right to privacy, but qualify the right for public persons. What the present analysis leaves unanswered, however, is whether a public person's right to privacy is forfeited where, without consent, another uses that public person's photograph for commercial profit.

C. Use of a Public Person's Photo Without Consent to Make a Commercial Profit is an Actionable Offense in the D.C. Courts

Unfortunately, in none of the three cases cited above did the court specifically find a right of privacy to exist for a public person whose photo was reproduced for commercial profit. Nevertheless, neither did these cases provide the public a carte blanche in using a public person's photograph for profit, without his consent. To the contrary, their language indicates otherwise.

In Klein, the court permitted the use of plaintiff's photograph on the cover of a high school science book. In doing so, however, the court observed:

In this case the events referred to in the book are matters of public interest and the narrative was not carried beyond proper bounds. The fact that it was illustrated by the plaintiff's photograph is not an invasion of any of his rights. It may not be amiss to add that both the photograph and the short description of the plaintiff's activities are highly flattering to him.

Klein, 263 F. Supp. 919, 921 (emphasis added).

Therefore, the fact that the defendant's use of the photo and story were "not carried beyond proper bounds," and that their use was "highly flattering" to plaintiff, explains Klein's holding. In the present case, however, the reproduction of a Presidential photo and the mounting of it on plywood for passersby to slap, verbally abuse, or choke, is hardly flattering to the President. Nor, one must argue, is such a use of the President's photo within the "proper bounds" envisioned by the Klein Court. As such, and by negative implication, we may adopt the reasoning of Klein to argue that the President has an actionable claim for invasion of privacy.

In addition, Klein may be distinguished by a second argument. In Klein, defendant's purpose in using plaintiff's picture on the cover of a high school text was not solely to profit.

No doubt the publisher sought a profit in printing the book, but the text also served the useful function of educating students. Use of plaintiff's picture in Klein was certainly not indispensable in selling the textbooks. If they were good texts, they would sell with or without the picture of plaintiff. The Court recognized this fact and stated:

So, too, it is a far fetched contention that it (photo) is used for purposes of trade merely because it is employed to illustrate a book dealing with the subject to which the plaintiff had made important contributions.

Klein, 263 F. Supp. 919, 921.

Once again, by negative implication, the reasoning of Klein may be adopted to argue for the desired outcome in our case: Had the use of the public figure plaintiff's photo in Klein been for trade purposes, the argument runs, then such use would have given rise to an invasion of privacy action. In the instant case, the use of President Reagan's likeness is 100 percent for trade purposes and there is no educational value at all. Consequently, the logic of Klein again favors the President's claim for invasion of privacy.

Moreover, closer analysis of Elmhurst v. Pearson, 153 F. 2d 467 (1946), reveals that the D.C. Courts have from the beginning envisioned a point beyond which even a public figure's right to privacy is violated. Though the Elmhurst Court acknowledged the narrower scope of the right as applied to public figures, it too permitted the public figure a right of action where "those reports are defamatory." Id. at 468.

Finally, Johnson v. Evening Star Newspaper, 344 F. 2d 507 (1965 D.C.), also argues in favor of granting President Reagan an action for invasion of privacy in the present case. In Johnson, plaintiff was mistakenly identified and arrested in connection with two crimes in the District. Subsequently, the newspaper published articles clearing plaintiff and providing background information on his family and his life. Plaintiff's suit for invasion of privacy by the newspaper was defeated as the Court adopted at least two rationales pertinent to our case.

First, the Jackson Court stated:

The publication contained no criticism whatsoever of the appellant. There was not the slightest adverse reflection upon him or suggestion of

defamation or ridicule of him...[the articles were] not an enlargement which carried the publications beyond legitimate bounds.

Id. at 508 (brackets added).

Like the Klein case, the fact that the publications do not reflect poorly on the plaintiff is essential to the Court's holding. In Jackson, the articles were not "carried beyond legitimate bounds." In fact, they cleared plaintiff of the crime. However, the use of the President's likeness in the present case does adversely reflect on the President. Passersby are permitted to choke, slap, and otherwise abuse a figure that is stunningly representative of the real man in a two dimensional photograph. This abuse in mind, the logic of Jackson argues for granting the President relief for invasion of privacy.

Furthermore, the logic of the Jackson Court favors our desired outcome here on a second basis. In denying plaintiff's recovery for invasion of privacy in Jackson the Court stated:

The principal events were already in the public domain and were of news interest.

Id. at 508 (emphasis added).

Significantly, the Jackson Court found that the newsworthy value of plaintiff's story was the motive for publishing it. The public's interest in acquiring information, in other words, outweighed the plaintiff's privacy right when combined with the fact that the article was not defamatory. In the present case, however, the President's photograph is not used for news purposes at all. The public derives no educational value. What is involved here, as The Washington Post acknowledged in its July 19, 1984 article, is "the hawking of the President, vendor style." The scheme was concocted solely for commercial profit, or trade purposes. As such, and once again by negative implication, the Jackson case supports granting the President relief for a non-newsworthy invasion of his privacy.

In sum then, no D.C. Court decision specifically upholds, upon facts identical to ours, a public person's right against invasion of privacy through reproduction of his photograph by another for commercial profit; nevertheless, the implication of each D.C. authority cited is that the present use of the President's photo for commercial profit, not news or education, and the damaging effects of that use, constitute an actionable invasion of privacy. Analysis of the decisions in other jurisdictions, where the law on

invasion of privacy is basically the same as in D.C., perhaps supports this position even more.

D. The Right Against Invasion of Privacy Outside the District of Columbia

Significant authority exists outside the D.C. Courts to support a public figure's action for invasion of his right to privacy where another uses his photograph, without consent, to earn a commercial profit. Such authority, while not dispositive in D.C., is relevant here because the law of those jurisdictions concerning invasion of privacy is similar to D.C.'s.

In Foster-Milburn Co. v. Chinn, 120 S.W. 364 (1909), a drug company used a Senator's picture to endorse its product in an advertisement. The company's purpose, obviously, was to promote sales and profits by using this public figure's likeness. In viewing this use of the Senator's picture, the Foster-Milburn Court held:

While there is some conflict in the authorities, we concur with those holding that a person is entitled to the right of privacy as to his picture, and that the publication of the picture of a person without his consent, as a part of an advertisement for the purpose of exploiting the publisher's business is a violation of the right of privacy, and entitles him to recover without proof of special damages. See Pavesich v. New England Life Insurance Company, 122 GA. 190, 50 S. E. 68, 69 L. R. A. 101, 106 Am. St. Rep. 104, 2 Am. & Eng. Ann. Cas. 561, and notes.

Id. at 366.

Especially important about Foster-Milburn, is that recovery for invasion of privacy was granted on facts practically identical to our case. Plaintiff was a public figure whose picture was used for advertisement or trade purposes without his consent.

Augmenting the holding of Foster-Milburn, is a decision cited there, Pavesich v. New England Life Insurance Co., 50 S.E. 68 (Ga. 1905). In Pavesich, the Court again upheld an individual's claim for violation of his right to privacy where his photo was used, without his consent, and for the profit of another. The Pavesich Court first acknowledged the distinction between a public and a private figure. It went on to hold, however, that this distinction does not completely abrogate a public figure's right to prevent

another from using his picture for commercial profit. Its language perfectly anticipates the facts of our case and is worthy of adoption here:

It may be that the aspirant for public office, or one in official position, impliedly consents that the public may gaze not only upon him, but upon his picture, but we are not prepared now to hold that even this is true. It would seem to us that even the President of the United States, in the lofty position which he occupies, has some rights in reference to matters of this kind which he does not forfeit by aspiring to or accepting the highest office within the gift of the people of the several states. While no person who has ever held this position, and probably no person who has ever held public office, has even objected or ever will object to the reproduction of his picture in reputable newspapers, magazines, and periodicals, still it cannot be that the mere fact that a man aspires to public office or holds public office subjects him to the humiliation and mortification of having his picture displayed in places where he would never go to be gazed upon, at times when and under circumstances where if he were personally present the sensibilities of his nature would be severely shocked.

Id. at 80.

In light of the facts of the present case, the situation envisioned by the Pavesich Court is truly remarkable. It asserts that where the reproduction of a photo, even of one as public as the President, both humiliates that public person and profits another without informing the public, a clear action for invasion of privacy should exist.

V. Conclusion

Therefore, invasion of privacy is an actionable claim in both the D.C. Courts and other jurisdictions as well. Peay v. Curtis Publishing Co., 78 F. Supp. 305 (D.C. 1948); Klein v. McGraw-Hill, 263 F. Supp. 919 (D.C. 1966); Johnson v. Evening Star Newspaper, 344 F. 2d 507 (D.C. 1965); Foster-Milburn Co. v. Chinn, 120 S.W. 364 (Ky. 1909); Pavesich v. New England Life Ins., 50 S.E. 68 (Ga. 1905). Though the right is more narrowly construed for public persons. Id. This more narrow construction, however, does not mean that one can use a photo of a public person, without consent, to earn profit in a manner that fails to educate the public, is of no newsworthy value, and holds up that public person for

ridicule or humiliation. Quite to the contrary, the implications of the D.C. decisions and the explicit holdings of other jurisdictions' courts, are that use of a public person's photograph, without his consent and for commercial profit, is an actionable tort. Elmhurst v. Pearson, 153 F. 2d 467 (D.C. 1946); Peay v. Curtis Publishing Co., supra.; Klein v. McGraw-Hill, supra.; Johnson v. Evening Star Newspaper, supra.; Foster-Milburn v. Chinn, supra.; Pavesich v. New England Life Ins., supra.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1/1Name of Correspondent: John Rogers☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Use of life-size Presidential photo
for commercial profit

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>Cutler</u>	<u>DDI</u> ORIGINATOR	<u>84107120</u>			<u>1/1</u>
<u>WAT18</u>	<u>D</u> Referral Note:	<u>84107123</u>		<u>S</u>	<u>84108103</u>
	<u>DDI</u> Referral Note:				
		<u>1/1</u>			<u>1/1</u>
	Referral Note:				
		<u>1/1</u>			<u>1/1</u>
	Referral Note:				
		<u>1/1</u>			<u>1/1</u>
	Referral Note:				

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:

A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

RECORDS MANAGEMENT ONLY

CLASSIFICATION SECTION

No. of Additional Correspondents: _____ Media: 1 Individual Codes: 1110

Prime Subject Code: 1201401 Secondary Subject Codes: PR 001
PR 116
PR

PRESIDENTIAL REPLY

Code	Date	Comment	Form
C		Time: _____	P- _____
DSP		Time: _____	Media: _____

SIGNATURE CODES:

CPn - Presidential Correspondence
 n - 0 - Unknown
 n - 1 - Ronald Wilson Reagan
 n - 2 - Ronald Reagan
 n - 3 - Ron
 n - 4 - Dutch
 n - 5 - Ron Reagan
 n - 6 - Ronald
 n - 7 - Ronnie

CLn - First Lady's Correspondence
 n - 0 - Unknown
 n - 1 - Nancy Reagan
 n - 2 - Nancy
 n - 3 - Mrs. Ronald Reagan

CBn - Presidential & First Lady's Correspondence
 n - 1 - Ronald Reagan - Nancy Reagan
 n - 2 - Ron - Nancy

MEDIA CODES:

B - Box/package
 C - Copy
 D - Official document
 G - Message
 H - Handcarried
 L - Letter
 M - Mailgram
 O - Memo
 P - Photo
 R - Report
 S - Sealed
 T - Telegram
 V - Telephone
 X - Miscellaneous
 Y - Study

THE WHITE HOUSE
WASHINGTON

242947

Date: July 20, 1984

TO: Fred Fielding

FROM: **JOHN F. W. ROGERS**
*Assistant to the President for
Management and Administration*

FYI: ☐

LET'S DISCUSS: ☐

COMMENT:

Fred,

Is there anything we can do
about this?

11-33



Joseph Nelson, left, and Kevin Darcey, right, set up Beth Dehn's pose with the mounted photograph of President Reagan.

By Kitty Dumas
Washington Post Staff Writer

The Hawking Of the President, Vendor-Style

President Reagan, with a little help from some fans, seems to be turning up in the strangest places during this election season—like the Pavilion at the Old Post Office and along sidewalks in the Connecticut Avenue shopping area.

Even among the downtown throngs, the presidential form looms a little larger than life and picture perfect.

No wonder. These "Ronald Reagans" are photographs, mounted on plywood,

and one of the hottest gimmicks of the summer.

More than 3,000 tourists and local residents have paid a total of \$15,000 to be photographed alongside the country's most recognizable figure, according to Joseph Nelson, 20, and Kevin Darcey, 23, who came up with the idea about six weeks ago.

"We had no idea it was going to do this well," said Nelson, a University of Maryland senior from Columbia.

A lot of people want to know if he

See FAKE, C4, Col. 1

2 Vendors With a Presidential Plan

FAKE From C1

[Reagan] gets a cut," said Darcey, a recent Maryland graduate from Silver Spring.

As they spoke, people wearing surprised expressions stopped by to gape at the figure, attempt a physical or verbal attack or just say hello.

"It's good to see Reagan walking down 17th Street. I just thought I'd stop by and tell him hello," said John Garst, vice chairman of the D.C. Republican Party, who stopped by to greet the "president" and to have his picture taken.

A few minutes later, a boy wearing sneakers, a soiled T-shirt and short pants and carrying a much used basketball, walked up to "the president," declared, "I hate Reagan," and began slapping the rigid figure that could not defend itself.

Darcey rushed over to rescue the figure from further abuse.

Nelson said they got the idea for

the business from a display they saw last Christmas where people were photographed with a cutout of Santa Claus.

They decided that the president would be the best person to do business with.

With a \$2,500 loan from Nelson's father the duo obtained vendors' licenses, at a cost of almost \$1,200, and paid \$1,000 in taxes, which are collected in advance from vendors.

Then they spent \$500 to get a color negative of the president, smiling and with his arm outstretched, blown up to one inch taller than lifesize.

To have a black and white picture taken and returned in 15 seconds costs \$4; \$5 with a brown cardboard frame included, and \$2 if a person uses his own camera.

Although they expected most of their customers to be tourists, Nelson said, the color cutout has been photographed with a number of business executives, including the president of American Express, lo-

cal families, and a large number of congressmen, many of them Democrats.

White House Secret Service agents and other White House staff members have been photographed with the figure, Darcey said, and they have reported that the president thinks it's a great idea.

Nelson and Darcey have hired seven persons to manage the cutouts—now there are three—and are making plans to take their Reagan show on the road.

The Republican National Convention in Dallas is their first planned stop.

They have also begun to rent "Reagans" out for parties and other enterprises, including a news conference for Ralph Nader's Congress Watch.

Darcey and Nelson, who are Reagan supporters, said many people who aren't fans of the president enjoy having themselves photographed choking the figure or shaking a finger in its face.



THE WHITE HOUSE

WASHINGTON

November 10, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Use of the President's Name in
Invitation to a Birthday Party
for Donald Erion

Judy Enright conceived, produced and distributed the attached invitations to her father's seventieth birthday party. The front of the invitation was intended to and does in fact appear to be an invitation from the President and Mrs. Reagan, complete with Presidential Seal. Only upon opening the invitation does the recipient discover that this was merely a "joke" and that the invitation is actually to the birthday party in New Hampshire, not to the White House. (Invitees may have been tipped off that the front page was a hoax, since the invitations arrived in envelopes with a New Hampshire return address.)

Mrs. Enright herself sent the President a copy of the invitation, along with a letter asking the President to acknowledge her father's birthday. That request is OBE, since the birthday was November 4. Enright's letter was not sent until October 31. In her letter Enright writes: "I do hope you won't be offended at the liberties that we've taken with your name and Mrs. Reagan's."

Mrs. Enright's use of the Presidential Seal (complete except for the banner describing it as such) is in technical violation of 18 U.S.C. § 713(b), and of course we would never have approved her use of the President's and First Lady's names had we known about it in advance. On the other hand, as Secretary Watt once put it, "if they can't take a joke..." The invitation strikes me as fairly clever and, on the whole, harmless. None of the invitees were deceived into thinking that it was actually from the White House for more than a heartbeat, and Mrs. Enright hardly undertook the project with mens rea. Accordingly, while a letter to Mrs. Enright is necessary, in my view, as a matter of principle and consistency and to ensure she does not do it again, the attached draft is less stern than might otherwise be expected.

Attachment

THE WHITE HOUSE

WASHINGTON

November 10, 1983

Dear Mrs. Enright:

Thank you for your letter of October 31 to the President. Along with that letter you sent one of the invitations to the party you arranged to celebrate your father's seventieth birthday.

In your letter you requested that the President acknowledge your father's birthday. As you feared might happen, we did not receive your letter until after November 4. We were, accordingly, not able to comply with your request.

Although we are certain you did not intend to do anything improper, we must point out that the President's name, the First Lady's name, and the Seal of the President should not be used, even in jest, except as authorized in connection with official activities. The permitted uses of the Seal of the President are in fact regulated by statute and executive order, copies of which are enclosed for your information. It is unfortunate, but a surprising number of individuals misuse the Seal of the President and the President's name for commercial or other objectionable purposes. This recurring problem compels us to be scrupulous in objecting to any unauthorized use of the Seal, the President's name, or the First Lady's name, even when, as in your case, the unauthorized use proceeded from the best of motives, with no invidious purpose.

I trust you will understand our concerns and avoid any imitations of White House invitations in the future. We appreciate the kind and supportive sentiments expressed in your letter, and trust that the birthday party was a great success. Please convey our belated congratulations to your father on his seventieth birthday, or, in the alternative phrasing the President often employs, the thirty-first anniversary of his thirty-ninth birthday.

Sincerely,

Fred F. Fielding
Counsel to the President

Mrs. Judy Enright
20 Forest Street
Norwell, Massachusetts 02061
Enclosure
FFF:JGR:aea 11/10/83
bcc: FFFielding/JGRoberts/Subj/Chron