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Mr. and Mrs. Malcolm S. Mason
4701 Willard Avenue, Suite 1734
Chevy Chase, Maryland, 20015

Re: TMT

Dear Irma and Mal:

Enclosed is a photocopy of the transcript of Irma's draft of the proposed response to the answer to the mandamus, that she gave us over the telephone yesterday. I started last night to make some corrections in it, of words that garbled in transmission, but I abandoned that enterprise as unproductive since you are doubtless going to make more substantial changes. As soon as I rescue my own files from storage, probably tomorrow (I have a hearing this afternoon to prepare for this morning) I will make a skeleton of a motion for leave to appeal, and send it to you.

We want to decide how to handle record citations in the response to the mandamus. I am pretty sure that we have to back up our statements with record citations. We can quote extensively, we can make an appendix of record excerpts, or we may be able to refer to the fact that the whole record is going to be sent up anyhow.

On second thought after dictating so far in this letter I telephoned Dick Windhorst this morning and asked him whether it would be permissible to send up the whole record anyhow in support of our response. He said he did not know, that technically the situation is probably under the rule that documents in support of the petition, or at least copies of them, should be filed with the petition

Since this is a response to a reply he did not think the court would get technical about it, but on the other hand, he said that it would be best to append a sampling of copies of documents on which we rely, in view of the fact that there are three judges, each of whom will get a copy of our response document and each of them should therefore have copies of the documents on which we propose to rely. The documents need not be certified. So I guess the answer is that we should quote extensively and/or copy verbatim, making reference to the fact that the original documents will be sent up in support of the appeal, assuming that leave is granted.

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Another matter of mechanics. Our motion for leave to appeal, has to be accompanied by a copy of the order appealed from FRAP §6. Since it is so expensive to get extra copies of that fat order, maybe we should get Lobell's copy. If he has annotated it, I can swap it for mine, which has not been mutilated except for some pencil marks in the margin which can be erased. Particularly if he is not going to appeal, all he needs is the couple of pages turning him down, for preservation among his professional mementos.

Sincerely yours,



Irwin L. Langbein

IL/js

enc.

P. S. You will be pleased to know that Dick told me that Thornberry has recovered his health, and that all three members of our panel are working hard.

I.L.

P.P.S. I spoke to Alex today. He said the U.S. Attorney is Ashkenazi. I knew him slightly when he was U.S. Commissioner. He is a democrat, and a competent lawyer.

I.L.