

1976

## Berman, Ronald: Memoranda (1975-1984): Correspondence 20

Livingston Biddle

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TO: SENATOR

Jan. 7, '76

FROM: LB

Had lunch with Joe Hagan today at his request. We rehearsed the Berman situation for well over an hour and in detail. Joe is very candid on all this with me, and I think this time more than ever. I feel that Joe is now looking for a face-saving way out for Berman. He certainly has ~~not~~ no heart for a confrontation, or desire for it, and he told me he is being consulted by the White House closely (he was on his way there after the lunch) and that Berman is giving him somewhat of a freer rein than in the past... Joe, naturally, is still in the hopes that you will relent, or change views, and that Berman can reemerge into your full esteem...

Against this background, I said that you had not changed at all your general attitude -- Berman passable, but not exceptional, and thus not meeting your criteria for reappointment. This, as noted earlier, is the stone wall over which they cannot climb -- it is a valid position and I said it seemed highly unlikely that it would change, in any way.

Joe tells me that the renomination was given a green light by Robt. Goldwin, but that it snagged in the White House Congressional Liaison dept., where it now resides with the O'Donnell hold on it. I believe that Joe will recommend that the hold be extended on an indefinite basis. I said that if the nomination were transmitted to the ~~Senate~~ Senate, it seemed to me that you would reiterate your own feelings, or that they would be transmitted by me to any inquiring offices and/or press, etc., that ~~they~~ the Committee members had immense respect for you as a person, for your fairness and integrity, which

certainly<sup>is</sup> the case -- you would not evolve a position out of personal pique, or to promote another candidate, etc. As I mentioned in previous memos, I have found no argument whatever with your position when it is put forward as your personal view with regard to a reappointment of this nature. I feel that this view has carried weight at the White House.

I would foresee, therefore, a situation in which no action is taken; Berman's name is not submitted, the status quo continues, Berman remains as Chairman (legally he may do so until his successor is approved), and this lasts until the election next fall.

At the moment I would recommend that you not discourage such a set of circumstances. They seem the best to me for the short run. Most important factor perhaps is that this would allow Berman to clearly see the handwriting on the wall and give him time to find another job. I told Joe that I could see in confrontation (that is, if the nomination is transmitted to us) only damage to Berman. I did not know of any Committee member who would defend Berman on the barricades; this is a very honest assessment of the situation as I see it. Criticism of his performance, or controversy over it, would have more currency than at present -- when the situation is more or less in limbo. I think it would be harder for Berman to find a good substitute job -- and I don't think we should prevent him from this -- if he goes through an unsuccessful confirmation process, and I just don't<sup>see</sup> any happy ending for him under those circumstances.

I thought I could conclude this on the note that the situation seemed to have been resolved as best as could be under the circumstance. Joe just phoned to say that the White House had informed Berman during Joe's absence that his name was going forward.