



William H. Taft, IV, Legal Adviser to the Secretary of State

[4-26-04 Jesse Londin]

Quite unlike any other lawyer job in America, this one involves sitting in daily meetings with Secretary of State Colin Powell, participating in top-level discussions in the White House Situation Room, and briefing lawmakers on Capitol Hill. LawCrossing presents this week's well-forged Law Star to the great-grandson of President Taft, and talks with Mr. Taft IV about his critical, one-of-a-kind role as Legal Adviser to the diplomatic leader of the Free World. And yes, we did get clearance from the Department of State.

When the phone rings in a lawyer's office in America, the caller typically is not Colin Powell with a legal question concerning a pressing item of foreign policy or national security. That is, unless the lawyer taking the call is **William H. Taft, IV**, Legal Adviser to the Secretary of State. For this week's Law Star, advising the State Department and high-level government officials on sensitive legal issues of global import is all in a day's work. And if this Legal Adviser bears a famous name that makes him sound like he is the great grandson of a former president of the United States, that's because he is.

President Taft himself would be darn proud of our Law Star, but not surprised of his namesake's spectacularly successful and distinguished career. After all, law, government service and foreign affairs are Taft family traditions, handed down through the generations.

Having inherited a government service gene, Mr. Taft IV feels at home in the nation's capital. Mr. Taft took the reins of the office of the Legal Adviser to the Secretary of State in April 2001. Secretary Powell and his team consult with the Legal Adviser and his group on international legal matters daily. Through the Secretary of State, Mr. Taft's advice also travels directly to President Bush and the National Security Council.

His responsibilities at the State Department include acting as principal Adviser to the Foreign Service and all consular and diplomatic posts, and as top legal counsel on foreign relations matters to other federal agencies.

Our Law Star did not begin his years of top-shelf government service at the State Department. He brought along an eclectic range of governmental experience and first-class credentials earned serving in the Federal Trade Commission and the Office of Management and Budget. In addition, in 1976, President Ford appointed him General Counsel of the Department of Health, Education and Welfare (now named the Department of Health & Human Services).

And yes, Mr. Taft is also a seasoned veteran of the Department of Defense, having served there as General Counsel from 1981 to 1984, as well as Deputy and Acting Secretary of Defense until March 1989. Then, from 1989 to 1992, Mr. Taft distinguished himself as the U.S. Permanent Representative to NATO.

Anything else? Oh yes - along the way, Mr. Taft made his mark in private law practice in Washington, DC., where in 1992, he became a partner at Fried, Frank, Harris, Shriver & Jacobson, specializing in international trade and government contracts.

Mr. Taft received his B.A. from Yale University and his J.D. from Harvard Law School.

Luckily for us, between meeting with the Secretary of State and juggling a daunting array of international legal matters that make headlines any evening of the week, from his office in the nation's Capitol, Secretary Powell's Legal Adviser and confidante took a few moments to accept his Law Star and talk about the amazing

work and spectacular career of the leading American lawyer at the vortex of current international affairs.

Q: Mr. Taft, as the Legal Adviser to the State Department you are the nation's top counselor serving in the complex and sensitive foreign affairs arena during an amazing and challenging period in U.S. history. You advise the cabinet leader who is fourth in line of presidential succession and the President's main representative abroad. And as a Taft, a family in which Law Stars are born as well as made, you also carry on the tradition of your forefathers with a long list of distinguished professional achievements. We proudly induct you into our Hall of Fame.

Your days must be filled with a great range of pressing legal issues, many of which we read about in the news. How are you enjoying the work and variety at the State Department? In what ways is your office at the State Department like no other law office in the nation, or the world?

A: I enjoy my work very much. I work on interesting and important issues affecting the conduct of American foreign policy and our national security. I have a wonderful client in Secretary Colin Powell. And I am helped by a staff of the most able lawyers in the country who have many years of experience dealing with the issues we must give advice on.

The Office of the Legal Adviser is by far the largest law office in the country where



lawyers practice public international law. Moreover, as the lawyers for the Department of State, our views have special importance in the development and interpretation of customary international law, treaties and UN Security Council Resolutions.

Q: In this age of globalization, Secretary Powell has said, "... there is no country on earth that is not touched by America ...[a]nd there is no country in the world that does not touch us." With that in mind, can you give us an overview of the Office of the Legal Adviser at the Department of State - what types of matters do you and the 130 lawyers under you handle most, and what is involved in a typical day for you as the Adviser to the Secretary of State, and through him, the President? How often do you talk personally with Secretary Powell? And do you, for example, attend emergency sessions in the Situation Room at the White House?

A: The Office of the Legal Adviser advises the Secretary of State and other Department principals and policy officers on all domestic and international legal matters relating to the Department of State, the Foreign Service, and the diplomatic and consular posts abroad. Our lawyers draft, negotiate and interpret treaties, international agreements, domestic statutes, Departmental regulations, Executive orders and other legal documents; provide guidance on questions of international and domestic law; represent the United States in meetings of international organizations and in international negotiations regarding a wide range of subjects; work on domestic and foreign litigation affecting the Department's interests; and represent the United States before international tribunals, including the International Court of Justice.

I meet with the Secretary - or, in his absence, the Deputy Secretary - and the other members of his senior staff every morning

to discuss critical outstanding issues. I attend other meetings throughout the week, including meetings in the White House Situation Room to discuss highly sensitive matters and sessions on Capitol Hill where I am regularly called to testify about treaties and other subjects. As issues arise during the day, the Secretary will call me for counsel regarding the legal implications of U.S. policies or proposed actions. The Secretary looks to me to describe the proper legal framework of an issue to help him make foreign policy decisions that conform with domestic and international law, the various international obligations of the United States and the broad interests of the country. I have known Secretary Powell for over thirty years and benefit from a relationship of trust and confidence with him, which is essential to my role as his principal legal counsel.

Q: You've had an eclectic range of experiences in government, having served in Washington, D.C. in many federal departments and offices, including State, Defense, the FTC, Office of Management and Budget, and, as it was then known, the Department of Health, Education and Welfare. And of course, you served as U.S. Permanent Representative to NATO. Which of those offices has proven most interesting, so far, in terms of the unique challenges and responsibilities, and why?

A: As with my children, my jobs have each been different but each has been interesting and enjoyable. Most recently, the chance to work at the Department of Defense as Deputy Secretary to Secretaries Weinberger and Carlucci in the last years of the Cold War, serving as our Ambassador to NATO when the Berlin Wall fell, the Warsaw Pact and Soviet Union dissolved and the allies began to build relationships with former enemies, and having the opportunity to work in the State Department after 9-11 have each been enormously rewarding.

Q: How closely, if at all, do you coordinate and work with Attorney General John Ashcroft or Department of Justice lawyers as well as other lawyers and legal Advisers in departments and agencies across the federal government?

A: The Office of the Legal Adviser works with general counsels in other departments on a regular basis. Our lawyers work with lawyers in the Department of Justice on litigation before U.S. and foreign courts as well as cases before various international tribunals. We coordinate regularly with counsel at the White House, the National Security Council, the Department of Justice and the Department of Defense on important matters relating to the global war on terror. In recent years, as the extent of the United States' international engagements has increased in areas like trade, investment, environment, technology, health, law enforcement and so forth, the Office of the Legal Adviser has needed to work more closely with agencies like the SEC, USTR and the EPA to ensure that federal government policies and actions conform with international law and the United States' various international obligations.

Q: What do you miss about private practice at Fried Frank, and will you return to your firm at the conclusion of your tenure of public service at State?

A: Private practice differs from public service in that, while the issues you work on are typically of less general interest and significance, the consequences of your work for your specific client are often immediate, substantial and personal. How well you do your work matters a lot to people you actually know.

I have no plans about what I will do after this job.



Q: In its mission statement, the State Department cites as its “aims” the “three underlying and interdependent components” named in the President’s National Security Strategy: diplomacy, development, and defense. How do the lawyers in your office take into account this mission and work toward implementing and achieving stated policy goals?

A: The breadth of the State Department’s mission is huge. Secretary Powell has anchored the mission in foreign policy and development assistance priorities intended to advance President Bush’s National Security Strategy. Everyone working for the State Department, including the lawyers in the Office of the Legal Adviser, is focused ultimately on the diplomacy, development, and defense priorities set out by the Secretary.

Our attorneys are heavily involved in the diplomacy area. For example, we are actively engaged in drafting and negotiating various international and bilateral agreements with the aim of ending conflicts in war-torn countries and regions, including - pressingly - Sudan. The Office of the Legal Adviser also makes numerous contributions to the Department’s development goal, especially in the areas of trade and investment. Among other things, we negotiate bilateral debt and investment agreements, participate in WTO and NAFTA cases, and seek to resolve a variety of international claims and investment disputes. In terms of defense, we have been working on numerous international and bilateral agreements to stem the proliferation of weapons of mass destruction, and we have been providing ongoing advice regarding the numerous legal issues relating to the rebuilding of Afghanistan and Iraq, including transitioning from the Coalition Provisional Authority to a state successor in Iraq, and the global war on terror generally.

Q: Decisions regarding which multilateral treaties to reject or ratify are critical and often controversial. Weighing a range of issues of international cooperation versus the protection of U.S. sovereignty, this administration has rejected certain international instruments including the Rome Statute of the International Criminal Court, the Comprehensive Test Ban Treaty, the Treaty Banning Antipersonnel Mines, a protocol to create a compliance regime for the Biological Weapons Convention, the Anti-Ballistic Missile Treaty and the Kyoto Protocol on global warming. What is the Legal Adviser’s role generally in making these treaty-related decisions?

A: Treaty-related decisions are inherently complex. The United States recognizes that it is not entirely exempt from - and is certainly not indifferent to - outside influences, but it must in every case ensure that the treaties it signs are consistent with the country’s values and interests and that no treaty endangers its national security or sovereignty. Moreover, treaties must become part of our domestic law through a deliberate constitutional process and taking into account our federal system, which limits importantly the extent to which the federal government can legislate to ensure that treaty obligations are carried out in domestic law. The constitutional process is time consuming and complicated but it assures a thorough examination of the national interest before any treaty becomes part of our domestic law. My role is to provide clear advice on treaty law and procedures and to answer constitutional and international law questions to help the Secretary of State weigh these complex issues and determine whether a particular treaty merits his support.

Q: Everyone knows your famous great-grandfather was the 27th president of the U.S. But a lot of folks, lawyers included, do

not realize that President Taft also served as Chief Justice of the Supreme Court, a position he wished for and the role of which he was most proud, having later written, “I don’t remember that I ever was President.” Of what parts of President and Chief Justice Taft’s legacy are you most proud?

A: My great-grandfather certainly enjoyed his time on the Court more than his time in the White House, and two of his most lasting achievements were accomplished as Chief Justice - the Judiciary Act of 1925, which, among other things, gave the Supreme Court control of its own docket and the construction of the Supreme Court building. The Court’s role and image in the country were significantly enhanced by both these achievements.

Q: People across the political spectrum agree that going forward as a nation in the post September 11 world calls for substantial change in U.S. foreign as well as domestic policy. Anti-American sentiment abroad and public debate at home reflect a divergence of views regarding exactly how we should proceed in the aftermath of the attacks on our soil. What do you see as the greatest legal and policy challenges facing the country in connection with the global war on terror? To what extent does legal advice you give to the Secretary take into account political ramifications in the global arena? Do you take into account public opinion at home?

A: As Legal Adviser, I have been closely involved with a wide range of issues related to the global war on terror. From my perspective, the greatest legal challenges in the war on terror are (1) to establish international norms for dealing with terrorism and the proliferation of weapons of mass destruction, including through UN Security Council resolutions and bilateral and international conventions; (2) to identify and publicly designate terrorist groups and



the individuals involved with them; (3) to define and implement legal mechanisms for effectively cutting off financing to individuals and organizations involved in planning acts of terrorism; (4) to exclude and remove from the United States individuals associated with terrorist organizations, and (5) to seize terrorists and bring them to justice.

When I advise the Secretary on issues relating to the global war on terror and other matters, the law does not change because of the domestic or international political context or public opinion. However, I have to understand the political context if my advice to the Secretary is to be useful, because the domestic and international political ramifications of my legal advice are important factors in the Secretary's decision making process. Moreover, there are often multiple legal options for the Secretary - for example, in responding to a treaty violation by another country or in countering a security threat to the United States - and I serve the Secretary best by helping him understand the political ramifications of the various options so he can effectively formulate and implement the country's foreign policies.

Q: As soldiers continue to fight and die in Iraq, do you have a position on how Saddam Hussein should be tried? If by an appropriate tribunal the former dictator is convicted of war crimes or crimes against humanity - and the hope certainly is that he is - does the U.S. officially support the death penalty for him?

A: President Bush has said that the United States will work with the people of Iraq to ensure that Saddam Hussein receives a fair and open trial, subject to international scrutiny. President Bush has also indicated that it is for the Iraqi people to decide whether Saddam Hussein should face the death penalty. Thus, until a post Coalition Provisional Authority government is in place in Iraq, it is too soon for me to say exactly how the trial of Saddam Hussein will develop and what punishment he might face.

Q: Tell us something about how you spend your leisure time. What are some of your personal interests, hobbies, favorite things?

A: I like to read books - particularly history, biographies and novels. For many years I

have been an opera fan. For exercise, I like to take walks and split wood.

Q: Lastly, in addition to the statesmen and forefathers named Taft, in whose footsteps you so successfully follow, who are your Law Stars and most admired figures?

A: I worked for many years with Secretary Casper Weinberger, whose career is a splendid example of how to combine private law practice and public service. Among historical figures, my Law Stars would include James Madison, John Marshall and Abraham Lincoln. For their books, I admire 20th century novelists Joseph Conrad, Edith Wharton and Willa Cather.