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Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
House of Representatives
Washington, D.C. 20510

*To Durham
5/23/74*

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice on H.J. Res. 931, a joint resolution, "to restore citizenship posthumously to General R.E. Lee."

As the result of President Andrew Johnson's December 25, 1868 proclamation of general amnesty, General Lee died with no disability which is subject to the power of the President to pardon. However, it appears to be quite clear that this proclamation could have no effect on section 3 of the Fourteenth Amendment, ratified on July 9, 1868, which would have operated to prevent General Lee from holding any state or federal office unless such disability were removed by a two-thirds vote of each House of Congress. H.J. Res. 931 appears to be a vehicle for that two-thirds vote in the House.

Passage of H.J. Res. 931 involves policy considerations concerning which the Department of Justice makes no recommendation.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. Vincent Rakestraw
Assistant Attorney General

J.J.

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Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
House of Representatives
Washington, D.C.

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Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice on H.J. Res. 258, "To restore posthumously full rights of citizenship to Jefferson E. Davis."

As a result of President Andrew Johnson's December 25, 1868 proclamation of general amnesty, Mr. Davis died with no disability which is subject to the President's power to pardon. It is quite clear, however, that this pardon did not affect Section 3 of the Fourteenth Amendment, adopted July 21, 1868, which would have prohibited Mr. Davis from holding any state or federal office until the disabilities were removed by a vote of two-thirds of each House. Mr. Davis predeceased the general removal of these disabilities by the Act of June 30, 1898, 30 Stat. 432, which applied only to individuals still living.

H.J. Res. 258 appears to be the vehicle for the necessary two-thirds vote in the House. Its passage involves policy considerations on which the Department of Justice has no opinion.

Sincerely,

Patricia M. Wald
Assistant Attorney General
Office of Legislative Affairs

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