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+ "Indigenous
Banking Regulation:
An Exercise in
Municipal Sovereignty"

Jay Ashton Stewart

6833 Piny Branch Road Northwest
Washington, DC 20012
(202) 829-6107

Archie

affie
273-0477

cc: Veronica Biggers
cc: Maggie Williams
Washington, DC

Education

Georgetown University Law Center
Juris Doctor, May 1994

Activities: Black Law Students Association
Chairman, 1992-93
First Year Representative, 1991-92
Compiled, wrote, and distributed Harambee, a newsletter to inform the nearly 300 black law students at Georgetown of significant events taking place within BLSA and in the larger black community.

The Forum on Fighting Poverty in America

Assistant Editor of new student-run law journal, 1992-93
Wrote student note which reviewed and critiqued the Oregon plan for health care rationing.

Center for Applied Legal Studies

Clinic Intern, Fall 1992
Reinstated government benefits for mentally ill homeless woman.
Obtained favorable settlement for car owner in small claims dispute with repair shop.

Howard University

Washington, DC

Master of Arts in U.S. and African History, May 1995 (anticipated)

Paper Topic: "The Emergence of a National Interest: The Relationship Between the NAACP and the Justice Department, 1954-1969."

Activities: Assessed annual reports and records of NAACP correspondence in the Justice Department library, Summer 1993.
Examined the NAACP files at FBI Headquarters, and the NAACP archives at the Library of Congress, Summer 1991.

Harvard College

Cambridge, MA

Bachelor of Arts, *cum laude* in Comparative Government, June 1990

Honors: Harvard College Scholarship Award
Honors Thesis on international intervention in the Angolan civil war.

Exchange: Study at Howard University, Washington, DC, Fall 1987
Study Abroad at the Universal Centro de Lengua, Mexico, Summer 1988

Activities: Keylatch Big Sibling Program; Model UN; Institute of Politics; Rugby Team

Experience

TransAfrica

Washington, DC

Summer Intern

July - August 1992

Assisted in the planning of a joint TransAfrica-NAACP demonstration in support of Haitian democracy.
Updated country files on Algeria, Liberia, and Angola.
Summarized and reported on public appearances made by visiting African dignitaries.

SMITH, WILLIAMS & LODGE

Chicago, IL

Summer Associate

June - July 1992

Briefed issues and drafted initial complaints in shareholder derivative suits.
Obtained government licenses for public events and quieted title in automobile possession cases.

HOGAN & HARTSON

Washington, DC

Document Analyst

August - December 1990

Researched school desegregation cases for the Education Practice Group.
Located witnesses and organized files.

INDIGENOUS BANKING REGULATION:
AN EXERCISE IN MUNICIPAL SOVEREIGNTY

SUBMITTED BY
JAY STEWART

10 MAY 1994

PROFESSOR EMMA JORDAN
FEDERAL REGULATION OF FINANCIAL INSTITUTIONS

INTRODUCTION

Every community in the United States today is vitally concerned with the preservation and enhancement of its infrastructural resources. The relative ability to provide adequate schools, roads, lighting, and other municipal services provides the measure of a community's continued viability and commitment to continued existence. The manifest failure to sustain this vital framework in many communities across the country has contributed fodder to the current media image of our national society as crime ridden, violent, and in decline.

Nowhere has this phenomenon asserted itself with greater vehemence than in Indian Country. Native American territories long have witnessed the general malaise attendant upon a serious breakdown of community institutions and structures. What evidence exists of indigenous survival and cultural resurgence in the face of conditions imposed on these communities has been overlooked or belittled in the media or in government publications. Interior Department statistics, for example, paint a grim picture of the situation faced by Native American communities today:

Indian reservations are among the poorest areas in the United States: 93,000 Indians are homeless or have inadequate housing, according to the Bureau of Indian Affairs. Of the 1.8 million Native Americans, 603,000 live below the poverty line. Unemployment on the reservations has always exceeded 50 percent nationally and sometimes reaches more than 80 percent. Indians have the highest rates of diabetes and tuberculosis and the lowest life expectancy.¹

Traditionally, public policy makers and other outside observers have relied heavily on racial stereotypes about the "lazy Indian" in order to justify the contemporary state of affairs. Persons in positions of authority over indigenous communities, in particular, have been guilty

until the recent past of attributing their failures to provide adequate health care, education, or housing on Native American territories to a caricatured reference to the "indolent nature" of the residents of these areas.² Even today, rhetoric couched in a different language -- that of bureaucratic expertise contrasted with indigenous political corruption³ -- sends the same message; namely, that indigenous peoples living in the country have only themselves to blame for the current deterioration and chaotic conditions present on indigenous territory.⁴

Many Native Americans themselves -- and persons sympathetic to their causes -- reject this "blame the victim" explanation for the shortcomings in the provision of municipal services in the respective indigenous communities.⁵ From their perspectives, far more mundane and approachable matters continue to hobble and to inhibit indigenous communal restoration and advancement. The primary concern has been to revive historic indigenous governance structures, so that Native Americans may assert control over their own communities, and work out their problems for themselves.⁶ A fundamental issue in the quest to achieve communal restoration is financial investment.

The achievement of a proper level and type of financial investment is key to any community's sustained viability and growth. This point has been recognized in a general sense in the Native American context:

Indians should be given this means to attract investment on reservations: tax incentive[s], enterprise zones and development banks. Indian gaming, only 3 percent of the gaming industry nationwide, is a \$6 billion industry in Indian America and has successfully reduced unemployment on many reservations and made some Tribes self-sufficient.⁷

What has not been addressed adequately up to this point is the manner in which the

deprivation of financial investment to certain communities can take place on a sustained and systematic basis.

At least one former indigenous court judge has noted the common practice of Anglo businesses located on or near indigenous territories of engaging in usurious "purchase for credit" schemes which permit the repossession of goods sold mainly to poor Native American customers.⁸ The experiences of other indigenous courts suggest that many local government housing agencies engage in similar patterns of conduct. Native American consumers are often forced into these credit traps due to a lack of access to adequate financing. In one case, an indigenous government was forced to pour its own limited resources into the one bank in the area in order to prevent it from closing, and cutting off all credit whatsoever to the surrounding community.⁹

This situation is mirrored by parallel conditions extant in a related municipal context. A public interest organization in Washington, D.C. recently found that many local residents suffered from a similar inability to attract and maintain the financing necessary to create and enhance their communal resources.¹⁰ As a result, their housing stock deteriorated, the tax base eroded, municipal services were reduced, and entire neighborhoods went into prolonged periods of decline. The organization made the further discovery that the lack of credit was not incidental, but rather stemmed from a systematic practice engaged in by local lenders of withholding access to financing from certain communities.

This policy, known as "redlining," is pervasive in the United States, and is found running rampant particularly in communities of color across the country. Its stain is not remedied through "marketplace efficiency," since housing and other infrastructural

improvements in these communities are often considered high risk investments anyway.

National government corrective measures -- similar to the publicly backed low interest loans which continue to permit the middle class to purchase homes in the suburbs -- have emerged in belated response to the problem,¹¹ but require a great deal more finetuning in order to work effectively.¹² The outcome of two recent court cases suggest that some aspects of the current national government constitute part of the problem themselves.¹³

The best solution to the problem of redlining and other forms of community credit deprivation is suggested by the manner in which other issues of concern have been addressed historically in the Native American context: through the use of institutions and structures inherent within the indigenous communities themselves. Only when Native American governments choose to exert their own sovereign authority in order to regulate the functioning of local financial institutions -- using rules relevant to indigenous deliberative processes -- will banks and other financial institutions begin to conform their behavior with the rights of the communities in which they do business. The drive to enhance community investment on the national level, while meritorious, may only serve to enhance and complement regulatory activity originating from the municipal level.

In this paper, I seek to reveal the inherent power of indigenous sovereigns to craft their own regulatory solutions to the problem of non-accountable local financial institutions. Part I outlines the combination of recent national legislation and court decisions which point to a greater recognition of Native American internal autonomy and sovereign authority. In Part II, I emphasize the potential of the most recent national effort -- the Self-Governance Demonstration Project -- to provide a window of opportunity for the explicit realization of

indigenous financial regulatory authority. I conclude in Part III with an overview of developments to date in the parallel urban context of Washington, D.C. I intend to show that the Office of Banking and Financial Institutions currently being constructed by the D.C. government furnishes a blueprint for the design and formation of a similar municipal regulatory executive office by recognized Native American communities.

THE HISTORY OF INDIGENOUS REGULATORY ACTIVITY

Native American regimes constituted the sole mode of governing authority on this continent for thousands of years. When European settlers arrived five hundred years ago, they found a system of trade regulation stretching in different forms from present day Canada to present day Argentina. Initially, the settlers sought to insinuate themselves into this network; they negotiated with indigenous leaders for permission to establish trading posts, rather than challenge the status quo.

By the time of the establishment of the American Republic, indigenous-settler relations had become articulated into a well understood series of mutually respected norms governing trade, settlement, and sovereign status. Native American governments regulated the acquisition of land, encouraged the development of manufacturing facilities in indigenous hands, and advised the fledgling settler government on basic organizing principles. Within two generations, when this new government -- aided by disease and advanced weaponry -- managed to subdue the neighboring indigenous communities, it was forced to accord them due recognition as "domestic dependent sovereigns." Native American governments henceforth would find themselves subject to a new national "trust" responsibility, which in no way inhibited their essential right to govern themselves. Contrary to popular belief, the indigenous communities did not surrender to the U.S. government the right to "grant" them sovereign powers; rather, the new relationship dictated that U.S. laws had the ability to mold, shape, and influence the way in which Native Americans ruled themselves.

In the years following initial European settlement, the Cherokee Nation, for example, continued to regulate its vast financial empire of trading posts, towns, factories, and farms

using a blend of indigenous and imported governing concepts including a written constitution, legal code, tiered judicial system, legislative council, and executive authority (including a mounted police force). Subsequent to removal west of the Mississippi -- a tragic act largely attributable to the designs of the Bureau of Indian Affairs -- the Nation continued to regulate the use of its financial resources in the form of land leasing, sheep herding, and cattle raising carried out largely on the territory assigned to it by the U.S. government.¹⁴

When oil was discovered in the area around the turn of the century, the Cherokee Nation developed a keen interest in that, as well.¹⁵ Of greater interest for the purpose of this paper, however, was another little noticed event which took place around the same time. The Cherokee Nation decided to establish a financial institution at the capital called the First National Bank of Tahlequa. Not much is known about the history of this short-lived institution -- or the degree to which the Nation could exert meaningful regulatory control over it during that time period -- but a precedent had been set.¹⁶ Native American governments could and did regulate not only far-flung traditional financial resources, but also discrete credit-generating institutions similar to the ones at issue today.

After a long hiatus,¹⁷ the general issue of the inherent right of indigenous self government captured the public imagination once again in the early 1970s. Renewed Native American consciousness -- aided by the impact of contemporary rights-based social movements -- led to a series of dramatic uprisings on different territories which drew attention to the terrible conditions generally extant in the indigenous communities. The amount of alcoholism, and the degree of despair and hopelessness prevalent within those communities galvanized an indignant response.

Further Congressional inquiry yielded a linkage between the deprivations wrought upon the indigenous peoples and the virtual extinction of their culture, religion, and political institutions. The primary source of this problem -- as Native Americans long had known -- was the very national bureaucratic agency established to administer them:

The growth of the administrative power of the Bureau of Indian Affairs, first under the Department of War and later under the Department of the Interior, on Indian reservations had effectively destroyed existing tribal forms of government. Officials of the BIA assumed the role of colonial administrators on the reservations and administered programs and services on the reservations under a policy which later became known as "paternalism."¹⁸

Several bills to address the "extra-legal" administrative actions historically taken by this representative organ of the national government were subsequently introduced by President Nixon in order to head off further criticism.¹⁹

At the Congressional hearings which ensued, Native American leaders presented a laundry list of complaints regarding their treatment to date in the hands of Interior Department bureaucrats.²⁰ The General Accounting Office offered perhaps the most impartial, yet still faintly damning assessment of past BIA conduct after a thorough review of its own weighty records:

In our audits of Indian affairs activities, we noted that the Federal Governments specific trust responsibilities were not defined clearly in legislation or in administrative regulations and that Bureau of Indian Affairs officials often had difficulty in determining where the trust responsibilities end and the concept of Indian self determination begins. This situation has led to disagreements between the Bureau and the tribes as to the duties and responsibilities of each party, and has resulted in charges that the Bureau has abrogated its trust responsibilities.

Even representatives from the Bureau of Indian Affairs itself confessed to past error and contritely sought the enactment of additional legislation designed to clarify the national executive agency's role in the regulation of Native American community affairs.²¹

On December 19, 1974, the Indian Self-Determination and Education Assistance Act passed in both the House and the Senate, and was soon thereafter signed into law.²² It incorporated as part of its purpose:

To promote maximum Indian participation in the government and education of the Indian people;
 [T]o provide for the full participation of Indian tribes in programs and services conducted by the Federal government for Indians[;] and [,]
 [T]o encourage the development of the human resources of the Indian people;...²³

The law would accomplish this purpose by ordering the Department of the Interior -- and the Department of Health, Education, and Welfare -- to contract out responsibility for as many as possible of the services that they extended to indigenous communities to the Native American governments themselves.²⁴

The result of this legislation was the creation of an Office of Self Determination within the Bureau of Indian Affairs. Native American governments which administered former BIA programs in their respective territories were required to seek the budgetary approval of their local BIA Agency and Area Administrator, whereupon the necessary funds would be wire transferred to their local bank accounts from the central BIA office in Albuquerque. The money was only disbursed in closely monitored installments over the course of a specific project's completion, and the Secretary of the Interior retained the discretion to decline to enter -- or to retrocede -- any contract which he or she found to be

mismanaged, potentially dangerous, or violative of anyone's rights.²⁵

Notwithstanding the glaring limitations on their autonomy inherent in the legislation, many Native American governments felt galvanized to seek to respond to the pressing needs of their constituencies. The very fact of the passage of an act aimed at the furtherance of "indian self-determination" in the national legislature itself acted as a spur to increased efforts at indigenous organizational revival. Under the direction of Tribal Chairman Ross Swimmer, the Cherokee Nation, for example, drafted a new constitution in 1975, superseding the document ratified back in 1839.²⁶ Other indigenous communities began to reestablish other aspects of self governance around 1979, particularly judicial institutions.²⁷

A top U.S. court soon played a role of its own in cementing this new national approach to relations with indigenous peoples. On October 22, 1970, the U.S. Congress had officially recognized the sovereign right of Native American communities to elect their own chief executives.²⁸ The new legislation terminated a practice indulged in by U.S. Presidents since the close of the nineteenth century: handpicking successor Executive Chiefs.²⁹

In solving one problem, the new stance that the U.S. government adapted towards the selection of these indigenous executive officers had generated another. The explicit extension of national recognition to one aspect of indigenous municipal authority -- its executive branch -- permitted certain self interested parties to treat Congressional silence with respect to the rest of the communal entities' sovereign authority as non recognition. The partial acceptance of the presence of Native American municipalities threatened to suborn the legitimacy of their full law making powers.³⁰

The U.S. District Court for the District of Columbia ultimately resolved the issue by

extending full recognition to Native American governments as law giving entities, not simply as law enforcement agencies. The Interior Department had perpetuated its policy and practice of strict adherence to the letter, rather than the spirit of law relating to indigenous communities; in this instance, it chose to deal with Creek Principal Chief Cox as "the sole embodiment of the Creek tribal government," and had refused to acknowledge or communicate with the duly elected Creek National Council.³¹

In Harjo v. Kleppe, the current Creek Nation Attorney General, Susan Harjo, secured the Court's acknowledgment that the Creek National Council was not only worthy of recognition at present, but also had maintained this legitimacy continuously throughout the entire history of U.S.-indigenous relations.³² This holding was regarded in indigenous circles as the belated ascension to full U.S. recognition of the legitimacy of Native American governments.³³ It also finally put to rest the myth that indigenous sovereignty had been extinguished at the turn of the century.³⁴

The Harjo case spurred other Native American governments to continue to improve upon their institutions. In its 1975 Constitution, the Cherokee Nation already had articulated its government structure into three main legislative, executive, and judicial branches. The Nation now embarked upon a new effort to develop an even more sophisticated version of its Constitution by 1986.

The Interior Department refused to concede the inevitable, or the obvious. Total recognition of indigenous sovereign authority would not be allowed to take place until the Department could challenge the Native American assertion of the validity of the third and final branch of government: the judiciary. The Muscogee (Creek) Nation continued to

reestablish its various forms of government. In 1979, it drafted a constitution providing for the three main branches of sovereign authority. In 1982, it passed an ordinance which defined the Muscogee (Creek) Nation court system's jurisdiction over both criminal and civil matters.³⁵

The Bureau of Indian Affairs -- seconded by the Interior Department -- refused to fund the newly expanded indigenous judicial system. The BIA opined that -- notwithstanding the D.C. District Court's earlier assessment that Native American legislatures had enjoyed a continuous existence since their founding -- indigenous courts nonetheless had been abolished by the Curtis Act of 1898. The subsequent Oklahoma Indian Welfare Act of 1936 had failed to restore them along with the other attributes of indigenous sovereignty.³⁶

In Muscogee (Creek) Nation v. Hodel, the U.S. Circuit Court of Appeals for the D.C. Circuit disagreed, holding that the Oklahoma Indian Welfare Act indeed had repealed the Curtis Act provision which abolished the Muscogee (Creek) Nation courts.³⁷ The D.C. Circuit cited a Tenth Circuit decision to note that the recent recognition of indigenous governments' inherent executive and legislative powers implied a Congressional mandate to restore judicial autonomy as well:

In Indian Country, USA v. Oklahoma Tax Commission, [citations omitted], the Court noted that Congress had enacted the OIWA to "restore" governmental powers to the Oklahoma tribes. Together with Harjo which held that the executive and legislative powers of the Creeks had never been lost, these cases support the conclusion that the OIWA "restored" the Creeks judicial powers.³⁸

The D.C. Circuit also found that the indigenous context of the dispute counselled resistance to the traditional deference given to U. S. executive branch interpretations of the law.³⁹

The Cherokee Nation Office of Justice observed that the Native American governments interned in Oklahoma now had the same rights granted to other indigenous entities by the Indian Reorganization Act of 1934.⁴⁰ Viewed with some ambivalence by some indigenous rights advocates, the IRA nevertheless provided for the incorporation and chartering of autonomous Native American government entities. More importantly, the statute recognized the right to establish indigenous court systems.

Many Native American governments used their new authority under the Hodel decision to rebuild their judiciaries. The BIA had to assume the responsibility of helping to fund the process. The Cherokee Nation also used the opening to strengthen and deepen its regulatory authority with the imposition of a new tribal tax ordinance in 1990.⁴¹

In recent years, the U.S. courts have played a fundamental role in the revitalization of the governance structures historically present within indigenous communities. The Tenth Circuit in particular has continued to encourage the Native American governments to assume more fully their regulatory responsibilities.

On September 22, 1987, the Tenth Circuit stripped the State of Oklahoma of authority to tax or to regulate an indigenous-run gaming business situated on the Creek reservation.⁴² In its Hodel decision, the Court also noted the absence of direct U.S. court supervision over misdemeanors in "Indian Country."⁴³ The Tenth Circuit hinted that a failure to assume jurisdiction on the part of Native American courts would create a law enforcement "no man's land."⁴⁴

Into this vacuum stepped the county police. In an altercation at a Cherokee recreational park in 1989, an Adair County deputy sheriff sought to arrest an indigenous man

on drunk and disorderly charges. He shot the man, resulting in the amputation of his leg.⁴⁵ In response, the Tenth Circuit ordered in its decision in Ross v. Neff that, henceforth, no state or county police officer would have law enforcement authority in Indian Country:

...even if both the federal government and the Cherokee tribe abdicated responsibility for law enforcement at the Greasy Ballpark, this void does not empower Oklahoma or Adair County to assume general criminal jurisdiction simply because it is the nearest police authority.⁴⁶

The county was held responsible for damages.⁴⁷

Immediately thereafter, the state and local police refused to answer distress calls emanating from the Cherokee reservation. They refused to investigate crimes or to provide services even to non-reservation homes built by the Cherokee Nation Housing Authority.⁴⁸ The Tenth Circuit compounded the situation by relieving the state police officers of authority to investigate violations of U.S. criminal statutes on Native American allotments.⁴⁹

Confronted with this crisis, the Cherokee Nation Council drafted legislation to provide indigenous law enforcement on the reservation. The court system was augmented by installing a new trial level tier, judicial procedure was systematized, and the Principal Chief was authorized to cross deputize state and county sheriffs as "Cherokee marshals."⁵⁰ The Council based the new Cherokee Criminal Penal Code, Criminal Procedure Code, Motor Vehicle Code, and Controlled Dangerous Substance Drug Code on Oklahoma statutes in order to insure uniformity of enforcement.⁵¹

The advances made by indigenous governments in crafting and enforcing criminal codes were not always matched in the civil sphere. The Cherokee Nation assumed its civil

jurisdiction in an ad hoc manner, adopting selected causes of action such as landlord-tenant, name change, replevin, and marriage.⁵² These civil matters were addressed as the need arose; the Nation has not yet adopted a general civil code.⁵³

Finally, it came to pass that a bank fell within the authority of a Native American government entity, as it was drawn into a dispute that haled it into an indigenous court's jurisdiction. On April 4, 1989, Indian Country, USA -- the management company for the Creek Nation Bingo Operation in Tulsa -- entered into an agreement with another company without the knowledge or consent of the Muscogee government. The Muscogee (Creek) Nation District Court entered a temporary restraining order to block the further disbursement of funds from Indian Country, USA's bank accounts pending resolution of the suit.⁵⁴

The affected financial institution, the Bank of Oklahoma, brought an interpleader suit in the U.S. District Court for the Northern District of Oklahoma, denying that the Creek court had civil jurisdiction to hear the case.⁵⁵ On August 13, 1992, the Tenth Circuit -- upholding decisions made at each level of the national judicial process -- held that the doctrines of sovereign immunity and comity blocked an U.S. court interpleader action against the indigenous government.⁵⁶

In reference to the Muscogee (Creek) Nation District Court's TRO against the Bank, the U.S. magistrate had concluded that it accomplished little more than to provide information to the Bank regarding the existence of the suit:

[The TRO was] clearly a judicial act beyond that Court's limited jurisdiction, but nevertheless serv[ed] to place BOK on notice of MCH's claim.⁵⁷

The Tenth Circuit, however, determined that the Muscogee (Creek) Nation District Court

had the ability to regulate the bank's conduct in the absence of explicit language to the contrary:

The Bank ... speculate[s] that the Nation's TRO restraining the Bank from releasing funds to ICUSA was beyond the Nation's jurisdiction. However, the Bank has pointed to no "express jurisdictional prohibition" which the TRO patently violated.⁵⁸

In light of its prior decisions, the Tenth Circuit directed the bank to bring its challenge to Native American court jurisdiction at the appellate stage of the Muscogee (Creek) Nation court system.⁵⁹ The Court required the bank to exhaust its indigenous judicial remedies since a Native American court forum existed, and "speculative futility is not enough to justify federal jurisdiction."⁶⁰ The Muscogee (Creek) Nation Supreme Court remanded the case back to the Creek District Court, and the matter was settled out of court.⁶¹

The impact of the Bank of Oklahoma decision has yet to be felt. Although the case concerned a temporary measure adopted by a court to address a unique situation, its significance lies in its potential for deeper, wider ranging application. In light of the recent inauguration of the Cherokee Tax and Gaming Commissions, it is not difficult to imagine an indigenous government shouldering its community investment responsibilities through the creation of a mechanism to regulate banks and other financial institutions.

THE SELF-GOVERNANCE DEMONSTRATION PROJECT

In 1988, the U.S. Congress enacted further legislation in signal a new phase in the recognition of Native American sovereignty. The outcome of a bitterly contested indigenous communal election which had taken place in the preceding year provided the impetus for further change. The newly inaugurated Chairman of the Navajo Tribal Council, Peter McDonald, availed himself of the opportunity to fire one of his most bitter rivals: Mark Trahant, editor of the Navajo Times. Trahant moved over to the Arizona Republic in 1987, and published a multi-article expose charging that rampant graft and corruption existed in the joint tribal-BIA administration of goods and services on the largest Native American reservation.⁶²

In the ensuing Congressional hearings called by the House Appropriations Subcommittee for the Interior Department and Related Agencies, indigenous government witnesses confirmed allegations that the BIA had once again accepted only the letter -- and not the spirit -- of the new self determination paradigm, and had become in the intervening years a "contract monitoring bureaucracy," hindering the clear cut mandate to assist tribal self determination through:

the imposition of excessive reporting and approval requirements;
the failure to fund the indirect programmatic component in indigenous governmental projects; and,
the deduction of its own administrative costs for oversight from the funds allotted for the exclusive use of the Native American governments.⁶³

Congressman Bill Richardson, Chairman of the House Subcommittee on Native American affairs, later placed specific emphasis on the BIA's lack of financial accountability

to the indigenous communities:

Though it functions as a bank, the bureau has no regular audits and cannot say how much money is in the accounts. Revenue from oil and gas royalties on Indian lands, grazing fees and other income isn't directly distributed to the Tribes or individuals. Instead, it is deposited in a variety of bank accounts that the bureau has not been able to reconcile.⁶⁴

The Assistant Interior Secretary for Indian Affairs -- a former Cherokee Nation government official - confessed that the use of a contractual system forced indigenous governments to become de facto appendages of a national agency; he suggested that the tribes were better suited to addressing governmental responsibilities on their own.⁶⁵

By September 15, 1988, the U.S. Congress had passed amendments to the 1975 legislation aimed in part at:

- a) removing onerous U.S. rules and regulations;⁶⁶
- b) barring the BIA from the disbursement of lower funding for Native American government projects than the BIA would have received for the same projects; and,
- c) establishing mixed teams of indigenous and agency personnel to review BIA spending priorities at each Area Office.⁶⁷

The 1988 amendments required the Interior Department to supply insurance for indigenous government programs, and to offer technical assistance for the development of such projects. The law also added another title to the 1975 act which held even greater prospects for the achievement of indigenous autonomy.

The Tribal Self-Governance Demonstration Project was originally envisioned as an experiment in which twenty selected indigenous communities would assume control over

nearly all governmental functions for a five year period, rather than only individual programs subject to annual renewal. The newly opened Office of Self-Governance would consolidate the grant of the Interior Department funding into a lump figure, over which the indigenous governments could exercise wide discretion in order to determine the best way to meet their respective community responsibilities. The Native American municipalities also were given the authority to study ways to reconfigure the BIA -- and programs in other areas of the Interior Department -- in order better to serve indigenous interests.

Now extended until 1996 and encompassing some thirty tribal governments, the Self Governance Project has engendered a wave of mass participation and democratic interest in Council affairs in many Native American communities. The prospects for measuring full participation and for democratic involvement have spurred some of the wealthier tribes to participate, while the ability to adopt former BIA-led programs more flexibly to meet their needs has encouraged others. The BIA continues to resist, but most indigenous leaders have come to believe that the self governance "compact" method of assuming cumulative responsibility for a wide range of community services has provided for greater government-to-government respect with the United States than the individual self determination contracts.

To date, the Self-Governance Demonstration Project concept has not sparked the same breakthroughs in community investment as it has in other areas of municipal autonomy. One indigenous effort to pool financial resources resulted in the establishment of the American Indian National Bank in Washington, D.C. This institution sought to pool the collective revenues raised by several Native American nations. It failed to carry out its goals, however, and closed in the early 1990s.⁶⁸

The emerging trend today in the area of indigenous financial empowerment has been the private acquisition of local banks. Currently, there are at least five Native American-owned banks in the United States, some owned by individuals, and some by municipal governments.⁶⁹ Proponents say that an indigenous presence in the boardroom assures far greater accountability than the voice of a tribal court room or Council meeting.⁷⁰

Belying that idea are the numerous fair housing decision issuing with increasing frequency from the newly rehabilitated Native American judiciary systems. The community investment concept's first faint echoes may be heard in the background of cases such as Housing Authority v. McKosato,⁷¹ in which a low income housing resident delinquent in her payments to the creditor Indian Housing Authority was found to be entitled to the due process and equal protection of a full fledged property owner:

This court outlines to give a name to the creation by HUD and the Housing Authority but equity, by treating as done those things which should be done, looks upon the homebuyer as having equitable title to the premises even though the legal title remains in the vendor IHA. This way of looking at an equitable-legal relationship is familiar to Indians and has had a profound influence on the development of Indian law.

The outcome of this case and others indicates that at the judicial level at least, indigenous governments have shown a marked willingness -- and ability -- to influence the manner of financial investment in order to preserve and protect their Native American concept of community.

In 1992, the assets at all privately owned Native American banks combined totalled 89.2 million dollars. At nearly the same time, the total assets of the BIA Central Office alone stood at \$112 million.⁷² If indigenous governments were to avail themselves of the

opportunity offered by the self governance ideal to extend public regulatory control over former BIA programs and funding, then community investment also could take place in a systematic, rather than piecemeal fashion.

The extension of a Native American regulatory framework over financial institutions doing business on reservations appears to some to be a weak alternative.⁷³ In certain locales, tribal governments were forced almost out of desperation to purchase failing local banks in order to preserve a source of credit for their constituents.⁷⁴ Presumably, the precedent of care and concern set by Native American courts in Bank of Oklahoma and McKosato indicates that in the future, indigenous communities would seek to regulate banks not only to secure community investment, but also to insure the long term stability of the institutions themselves.

THE OFFICE OF BANKING AND FINANCIAL INSTITUTIONS

In Washington, D.C., there exists a financial institution called the Industrial Bank of Washington, which in 1992 had an asset base of 186 million dollars. A depositor of U.S. government and union funds, it lent 72 million dollars in that year, primarily for real estate development; nine million dollars alone went to churches.⁷⁵ A black owned bank, the IBW has shown its dedication to supporting the infrastructure of the community in which it is located.

Presently, the bank is regulated by the U.S. Office of the Comptroller of the Currency. The OCC has a long history of administering a special category of "non-national banks" in D.C.⁷⁶ The Industrial Bank of Washington -- founded in the 1930s model of employee supported lending institutions -- fell within this rubric.

Within the next two years, the IBW will come under the regulatory authority of the municipal government of the District of Columbia. Like the Native American communities scattered across the country, the D.C. residents suffered from a lack of control over their own affairs until quite recently. This situation began to be addressed in earnest only in the 1970s, when widespread protest led to the passage of the District of Columbia Self-Government and Governmental Reorganization Act of 1973.⁷⁷ Unlike most Native American governments to date, the newly recognized D.C. community chose to exercise its sovereign authority in order to regulate the conduct of financial institutions doing business in its territory.⁷⁸ In 1985, the D.C. City Council formed an Office of Banking and Financial Institutions.

The D.C. Office of Banking and Financial Institutions has been granted the authority

to enter into regional compact agreements with the surrounding states regarding banking activity. It soon will have the ability to grant municipal charters to financial institutions which operate largely within the District.⁷⁹ Most importantly, the OBFI has begun to use the sovereign authority with which it has been vested in order to prepare extensive guidelines for community investment as a requirement for permission to operate within the autonomous municipal jurisdiction.⁸⁰

In conversations with virtually everyone connected or concerned with the situation faced today by indigenous communities, it becomes immediately clear that there is a pressing need for greater investment in Native American infrastructural services. At the same time, ironically, nearly two billion dollars in funds belonging to these communities are still controlled by the discretion of BIA "experts."⁸¹ National lending laws can help to spread greater awareness and vigilance against discriminatory lending practices, but true community investment will come about only when indigenous municipal governments choose to articulate an interest in chartering and regulating local financial institutions on their own.

Indigenous peoples today have a right to establish Native American offices of banking and financial institutions to promote more effective investment in their communities. The Self-Governance Demonstration Project, the wisdom of the Tenth and D.C. Circuits, and their own historic sovereignty grants them the ability to do this. All that is necessary is one example to show the way.

1. Bill Richardson, "More Power to the Tribes," New York Times, reprinted in Tribal Self-Governance Demonstration Project, Sovereign Nations, Vol. 2, No. 7 (July 1993) at 6 and 8.

2. For an historical perspective on national and state governmental attitudes towards sovereign indigenous communities, see generally William G. McLoughlin, Cherokee Renaissance in the New Republic (Princeton: Princeton University Press, 1986).

3. Felix S. Cohen, "Indian Self Government," The Legal Conscience: Selected papers of Felix S. Cohen (New York: 1970), reprinted in TSDJ, Sovereign Nations, Vol. 2, No. 4 (April 1993) at 4.

4. See generally, Thomas Ross, The Rhetorical Tapestry of Race: White Innocence and Black Abstraction, 32 WM. & MARY L. REV. 1 (1990).

5. Native American governments have been defined as "municipalities" in certain contexts. The following quote from Kevin J. Worthen's article is instructive:

...Although there are significant differences between the two forms of government, enough similarities exist to make useful comparisons. See 42 U.S.C. Section 6903(13)(A) (1988) (including "Indian tribe or authorized tribal organization" within the definition of "municipality" under the Resource Conservation and Recovery Act of 1976); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 148 (1982) (suggesting that differences between Indian sovereignty and local governments do not preclude comparison between waiver of tribal taxing authority and waiver of city taxing authority); Cohen, The Spanish Origin of Indian Rights in the Law of the United States, 31 GEO. L.J. 1, 3 (1942) (stating that "tribes ... largely take the place that states and municipalities occupy towards other citizens of the United States");....

Two Sides of the Same Coin: The Potential Normative Power of American Cities and Indian Tribes, 44 Vanderbilt L.R. 1273, 1274 n3.

6. See generally, The Tribal Self-Governance Demonstration Project Workshop, Shaping Our Own Future: The Next Step Towards a True Government-To-Government Relationship (Bellingham, WA: Lummi Indian Business Council, 1991).

7. Richardson at 8.

8. Telephone Interview with _____, Tribal Services Coordinator, BIA (April 1994).

9. Telephone Interview with Dan Press, Attorney for the Blackfeet Nation, which recently purchased the only bank in Browning, Montana (April 1994).
10. Jane McGrew & Thomas C. Collier, "Fair Housing: An Agenda for the Washington Lawyers' Committee on Civil Rights," 27 Howard L.J. 1291 (1984).
11. See e.g., The Community Reinvestment Act, found at 12. U.S.C. Sections 2901-2905 (1982) (cited in McGrew at 1308 n83).
12. See e.g., Adelina Reyes Gavilan, "The CRA and Women-Owned Businesses" (May 1994) (unpublished paper on file with Prof. Emma Jordan, Georgetown University Law Center).
13. See Spallone [cite unavailable] (Yonkers case in which local HUD office was implicated in ongoing housing discrimination through "steering").
14. See generally, material prepared in "commemoration" of the 100th anniversary of the "sale" of the Cherokee Outlet -- a massive stretch of formerly indigenous land in Arkansas -- by the Cherokee Nation Office of Justice (Chadwick Smith, Director) (on file with author).
15. See Groundhog v. Keeler [citation unavailable].
16. Interview with Chadwick Smith, Director, Cherokee Nation Justice Office at American University Conference on Native American Issues.
17. The U.S. Supreme Court did make what some have regarded as a landmark decision in the recognition of indigenous sovereignty as early as 1959 in Williams v. Lee, 358 U.S. 217 (barring a state's jurisdiction over Native American territory), but did little to follow up on it until the indigenous communities themselves began to bring lawsuits in earnest in the late 1970s.
18. Legislative History at 7781.
19. Id. at 7784.
20. See, e.g., April 1, 1974, Congressional Record, Pages S.4818 and S.4819, cited in Id. at 7786.
21. Id. at 7794.
22. Id. at 7775.
23. Id. at 7775-6.
24. Id. at 7776.

25. Interview with Mary Carter, Office of Self Determinatio, BIA, April ___, 1994; P.L. 93-638 at 7779.

26. A copy of the 1839 Constitution of the Cherokee Nation is on file with the author.

27. Up until that point, most reservations contained "BIA courts" staffed by administrative law judges. In many instances, the indigenous court systems which began to emerge after 1979 drew legal expertise from the ranks of the former BIA court personnel in order to insure a smooth transition of power, and to guarantee sufficient familiarity with the workings of a court. Telephone interview with Professor Dennis Arrow, Oklahoma City University School of Law, October 1993.

28. P.L. 91-495, 84 Stat. 1091 (cited in Chadwick Smith and Stephanie Birdwell, "The Cherokee Nation Courts -- 1993" at 20)(paper on file with author).

29. Some chiefs remained in office for less than one day. Id.

30. The Congressional recognition of indigenous Chief Executives also focused heightened community scrutiny on whether their links to the community were authentic. This led to bitter succession struggles, both in and out of court. See, e.g., Groundhog v. Keeler [cite].

31. Harjo v. Kleppe, 420 F.Supp. 1110 (D.D.C. 1976) (Bryant, J.).

32. Harjo at ___, cited in ___ at 1135.

33. Smith and Birdwell at 22.

34. Id.

35. Muscogee (Creek) Nation v. Hodel, 851 F.2d at 1442 (1988).

36. Id.

37. Id. at 1447 n11.

38. Id. at 1444 n6.

39. Id. at 1445 n8.

40. Smith and Birdwell at 23, citing U.S. v. Wheeler, 435 U.S. at 332, 98 S.Ct. at 1090.

41. Telephone interview with Cherokee Nation Tax Attorney Sharon Wright, October 1993, with reference to the Tax Code of 1990.

42. Indian Country, USA and Muscogee (Creek) Nation v. Oklahoma ex rel. The Oklahoma Tax Commission and The District Attorney of Tulsa County, 829 F.3d 967 (Seymour, J.).
43. 851 F.2d at 1446 (citing U.S. v. Welch, 822 F.2d 460, 464 (4th Cir. 1987)).
44. Id.
45. This account is drawn from memory. I have read the case, but do not have it in front of me.
46. 905 F.2d at 1353 (10th Cir. 1990).
47. Smith and Birdwell at 23.
48. Id. at 23-4.
49. Id. at 24 (citing U.S. v. Sands, 968 F.3d 1058 (10th Cir. 1992)).
50. Id. at 35-6. Telephone interview with Stephanie Birdwell, October 1993.
51. Id. at 37.
52. Id. at 40-1.
53. Id. at 41.
54. Muscogee (Creek) Nation Case NO. 89-10C (July 10, 1989).
55. Bank of Oklahoma, Nat. Ass'n. v. Muscogee (Creek) Nation, 1991 WL 417524 (N.D.Okla., Jan. 02, 1991) (No. 89-C-571-C).
56. Bank of Oklahoma v. Muscogee (Creek) Nation, 972 F.2d 1166 (Nos. 91-5017, 91-5018).
57. Report and Recommendation of U.S. Magistrate, March 5, 1990, Bank of Oklahoma (N.D.Okla.) at 2 n1 (on file with author).
58. Bank of Oklahoma, 972 F.2d at 1170 (citing language from National Farmers Union Ins. Co. v. Crow Tribe, 471 U.S. 845, 856 n21, 105 S.Ct. 2447, 2454 n21. (1985)).
59. Bank of Oklahoma, 972 F.2d at 1169 (citing Tillet v. Lujan, 931 F.2d 636, 640-41 (10th Cir. 1991) and Superior Oil Co. v. U.S., 798 F.2d 1324, 1328-9 (10th Cir. 1986)).
60. Id. at 1170 (citing Dry Creek Lodge, Inc. v. Arapahoe and Shoshone Tribes, 623 F.2d 682, 685 (10th Cir. 1988), cert. denied, 449 U.S. 1118, 101 S.Ct. 1931, 66 L.Ed.2d 847 (1981) and

White v. Pueblo of San Juan, 728 F.2d 1307, 1313 (10th Cir. 1984)). In the absence of a tribal court forum, a federal court could have heard the case. See e.g., Richardson v. Malone, 762 F.Supp. 1463 (N.D.Okl. April 8, 1991).

61. Telephone interview with Nancy Jukich, Muscogee (Creek) Nation District Court Assistant Clerk, December 1993.

62. Interview with Verner Duus, Director of the Self-Governance Self Determination Project of the Interior Department, 26 April 1994.

63. Legislative History, S.Rept. No. 100-27-4 at 2626.

64. Richardson at 6.

65. Legislative History at 2662; Duus Interview.

66. 25 USC 450j

67. Section 205(i).

68. Interview with Jerry Cordova, Tribal Services, BIA (26 April 1994).

69. Minority-Owned Banks Investment Profile, prepared by William Cunningham (on file with author).

70. Telephone Interview with Dan Press, attorney for the Blackfeet Nation in Browning, MT (April 30, 1994).

71. ___ Okla. Trib. ___ (Sac & Fox D.Ct. 1990) aff'd. ___ Okla. Trib. ___ (Sac & Fox 1991), Tribal Court Reporter (advance copy, 1994) (compiled by Prof. Arrow, OCU School of Law) (on file with author).

72. The Tribal Self-Government Demonstration Project Workshop at 7.

73. Dan Press Interview.

74. This happened with the Blackfeet Nation in Browning, MT. Id.

75. The 1992 Annual Report of the Industrial Bank of Washington.

76. Telephone Interviews with Ellen Stockdale, FOIA Officer, OCC, March 1994.

77. Report by the Committee on the District of Columbia, together with dissenting views, H. Rep. No. 93-482 (September 11, 1973).

78. A partial list of relevant legislation includes:

D.C. Law 6-63 entitled the "District of Columbia Regional Interstate Banking Act of 1985;"

D.C. Law 6-107 entitled the "District of Columbia Regional Interstate Banking Act of 1985 Amendments Act of 1985;"

D.C. Law 9-42 entitled the "District of Columbia Interstate Banking Act of 1985 Amendment Act of 1991;"

the proposed Holding Company and Interstate Activities Act of 1994; and,

the proposed Financial Institutions Act of 1994.

The legislative history and further information are available at the Legislative Services Division and the Committee on Housing and Economic Development, D.C. Building, and at the Office of Banking and Financial Institutions. Contact persons are Kendra Moore at the Committee, and Linda Fleming at the OBFI.

79. In addition to the recent D.C. chartering of the IBW, two other nascent banks stand next in line for review by the OBFI. Telephone Interview with Sylvia Hammond, Office of the Supervisor, OBFI (March 1994).

80. See generally Title 26, D.C. Code (1991).

81. Richardson at 6.

File Archive

Maggie Williams

ARCHIVAL ISSUES ON THE TRIP TO JAPAN

Due to the reduced numbers of staff available and stress of travel schedules, Presidential trips offer prime opportunities for the loss of Presidential documentary materials and misplacement of key information. A few precautionary measures taken before such a trip can significantly reduce these problems.

o Appoint a trip records manager

The appointed records manager should have a contact in each of the major White House offices represented on the trip to Japan and be responsible for assuring that records are being maintained appropriately and eventually turned over the White House Office of Records Management. Each office should maintain a trip file with one copy of every document created or received.

* Key documents might include the text used by the President and First Lady in speeches, briefing materials used by the President and First Lady (retain staff briefing materials also if they contain significant annotations reflecting action taken, meetings, or policy developments), one copy of all press releases or other public documents, one copy of all materials relating to ceremonial occasions (menus, seating plans, photographs, etc.), and copies of any joint communiques or other agreements. Because electronic documents may also be Presidential records, preserve valuable electronic files through making back-up copies or printing out paper copies, whichever is most appropriate.

* When traveling in Japan, it is also important to retain copies of the business cards provided by Japanese officials with annotations indicating date and type of interaction with the official party. These business cards are routinely used by Japanese businessmen and officials to compensate for the difficulties Americans experience in spelling or pronouncing their language and can be invaluable for cataloging gifts or identifying photographs.

In addition to assuring the maintenance of official files, the records manager could also

o Maintain a register of gifts received

One of the most sensitive topics about foreign trips has been the management of gifts received from foreign officials. The President, First Lady, Chelsea Clinton and all members of the President's official party are prohibited from receiving and treating as personal any gifts or decorations from foreign officials which are more than minimal value (currently defined as \$200 in U.S. currency). It is the responsibility of White House staffers to maintain good records about the receipt of these gifts (name and position of the recipient, name and position of the gift giver, description of gift, and date of acceptance), and arrange for transferral to the White House Gift Unit on their return.

National Archives



Washington, DC 20408

Date : 6/30/93
Reply to :
Attn of : NL, Nancy Kegan Smith
Subject : What to save on a Presidential trip
To : Marianne Smith

Files documenting a Presidential trip are very valuable to researchers using a Presidential Library. Trip files also prove extremely useful to the incumbent President and First Lady in planning future trips. Once the President leaves office, trip files will prove invaluable in writing a book on their Presidential experiences.

The types of trip material that has been saved in the past and that would be good to save on the Japan trip include the following:

1. Copies of State Department briefing,
 2. Copies of any released statements made by the President, First Lady or any other official emissary on the trip. Draft of speeches should also be saved if they document a substantive change in the speech.
 3. Copies of all trip itineraries,
 4. Social schedules,
 5. List of people going on the trip,
 6. Photographs of people they are meeting on the trip,
 7. Any background on gifts received on the trip,
 8. And of course, the normal Presidential documentation from the Office of White House Television and the Photo Office.
 9. Potential museum items.
- The above categories should just serve as a general guide. The more that can be included in these files the richer the historical record will be for the trip.

Nancy Kegan Smith

Nancy Kegan Smith
Supervisory Archivist
Office of Presidential Libraries

*Marianne:**Her description of the Johnson Diary Backup File gives some helpful ideas.*

G. A few subjects are carded, for example, Cabinet Meetings, Church Attendance, Civil Rights Leaders, Bi-Partisan Groups, Legislative Breakfasts, Ambassadors, Press, and LBJ Ranch. Countries are carded; for example, a visit from the Canadian Ambassador would be included under Canada, the subject Ambassadors, and the man's name.

H. The Diary cards are color coded by year:

1963-1964 off-white

1965 green

1966 orange

1967 blue

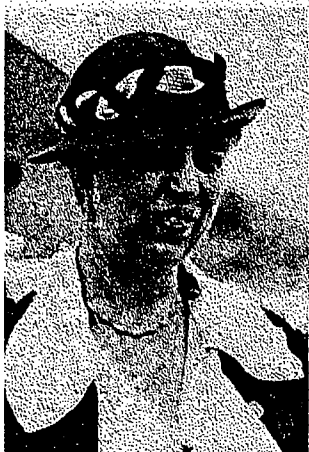
1968-1969 yellow

III. APPOINTMENT FILE (DIARY BACKUP)

A. As Juanita Roberts described it, the purpose of the Diary Backup was to "flesh out the diary". Her office put all sorts of material dealing with the President's schedule, his doodles for the day, notes they picked up off of the floor after meetings, clippings, and other items in a large brown envelope and sent it to Dorothy Territo. Sometimes things were put in the envelope because it was a convenient place to file them.

1. Mrs. Territo separated these items. (Doodles were placed in the handwriting file.) She put items dealing with one day together with a binder clip and filed them chronologically in gray cardboard folders. During processing at the Library, the staff refoldered the material. There is a separate folder for each day, and frequently there are separate folders for Head of State visits and for meetings or interviews with the President.
2. The file includes agenda, schedules, notes, briefing papers, memoranda, guest lists, correspondence about appointments, many White House press releases, and other materials. Although some of the items are duplicated in other files, such as White House Central Files, Diary Backup contains many very substantive documents which are not duplicated elsewhere.
3. Many of the items that went into the Diary Backup file had been a part of night reading and were intended to brief the President on his appointments.

- B. Many days are not included in Diary Backup. In 1964, very little was put in this file; many early days lack backup folders. Frequently Saturdays and Sundays and days when the President was at the Ranch have no folders.
- C. Many documents in Diary Backup contain notations.
1. A number or letter frequently appears in the top center of the page, although it is occasionally in the upper left or right corner of the page. It is usually circled or in parenthesis. These items were part of the President's night reading. Juanita Roberts' office prepared a list of the President's night reading and numbered the items. Numbers on the documents correspond to numbers on the night reading list. Marvin Watson's office prepared separate night reading, listing their documents with letters.
 2. Many items are marked with an "L" or "ps". These notations were added in Juanita Roberts' office and indicate that the "President saw" the item. It appears that they used the "L" until sometime in 1967; after that, the secretaries marked items with "ps".
- D. Diary Backup for the Vice Presidential years measures approximately one and a half linear inches. This file consists mainly of notes and telephone messages given to Vice President Johnson. There is no Diary Backup for the Senate years.



*"I believe that all that you go through here must have some value. . .
You have to accept whatever comes and the only important thing is
that you meet it with courage and with the best you have to give."*

Eleanor Roosevelt

*The Franklin D. Roosevelt Library, the Franklin and Eleanor Roosevelt Institute,
and the Eleanor Roosevelt Center at Val Kill invite you to join family and friends for*

Her Star Still Shines ★

A celebration of the life and legacy of Eleanor Roosevelt

featuring

*Preview of the new Eleanor Roosevelt Gallery in the FDR Library
Champagne Reception*

Dinner in the Great Hall at the Culinary Institute of America

Saturday, October 2, 1993

6:00 PM – At the Library

8:00 PM – Dinner at the Culinary Institute of America

Black tie optional

Marianne Smith
(202) 501-5130

**PHOTOCOPY
PRESERVATION**

Office of the Federal Register
National Archives and Records Administration
Washington, DC 20408

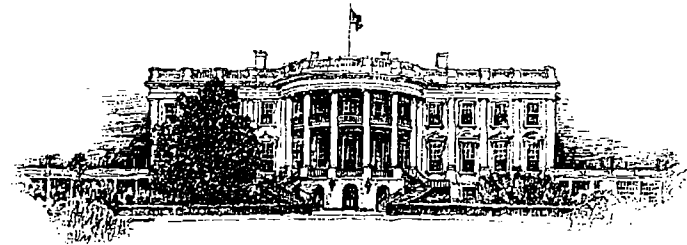
Note: Names contained in this special supplement to the U.S. Government Manual replace corresponding names appearing in the 1992-93 edition of the Manual.

Principal Officials of the Executive Branch

of the Administration of

WILLIAM J. CLINTON

January 20-May 1, 1993



ISBN 0-16-041802-X



90000

Supplement
The United States Government Manual
1992/93

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NATIONAL ARCHIVES

OF THE UNITED STATES

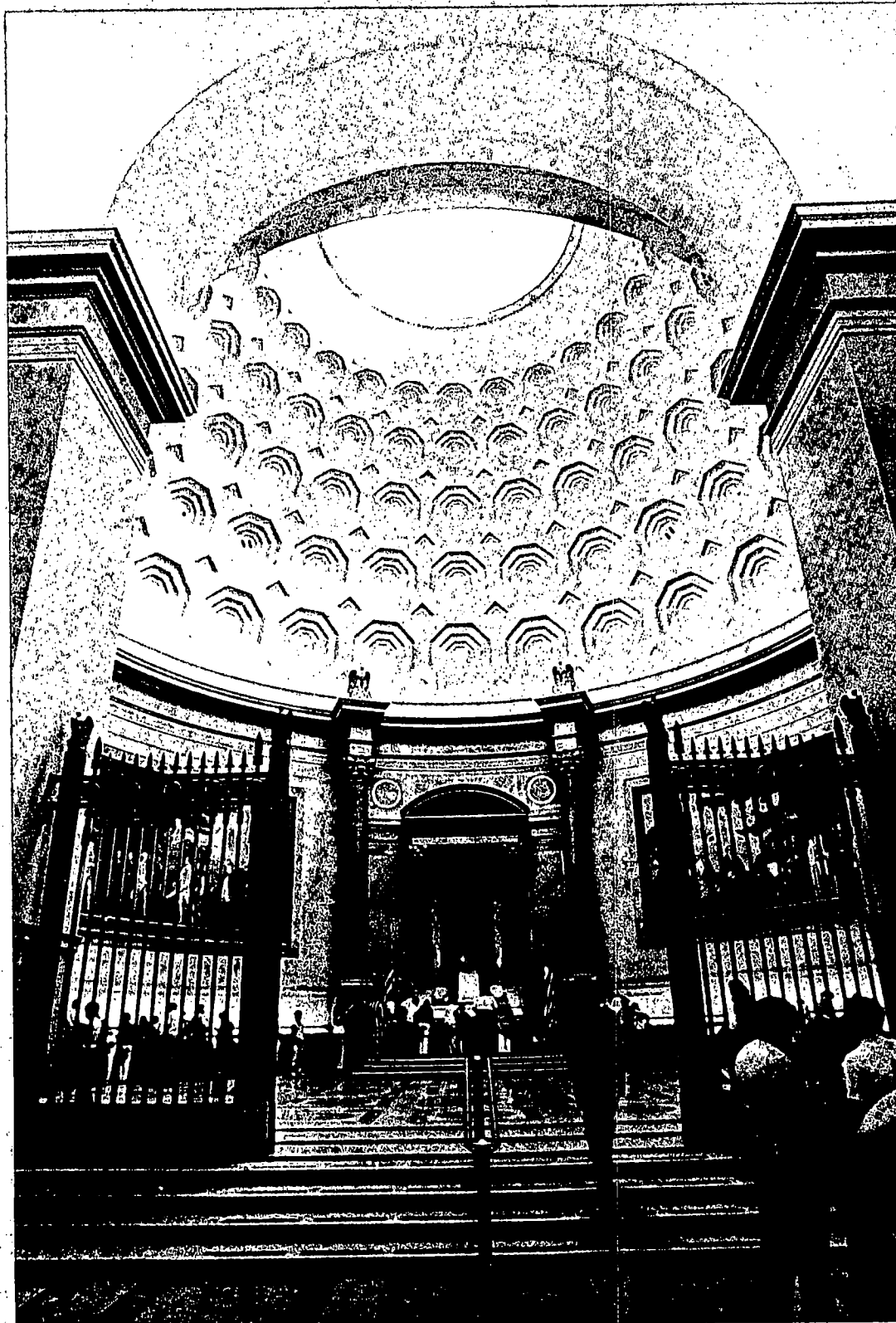
Hours of Visiting
and Studying

The National Archives and Records Administration is open to the public during the following hours: Monday through Friday, 9:00 a.m. to 5:00 p.m. When the National Archives is closed, the following information is provided: On Christmas Day, the Pennsylvania Avenue entrance provides access to the central Research and Reference Research Rooms, which are open Monday through Friday, 9:00 a.m. to 5:00 p.m. On Saturdays, the rooms are closed on federal holidays.

National Archives and
Records Administration
General Information Leaflet
Number 1
Revised 1986



WASHINGTON, DC



Anyone who has cleaned out a family attic knows the difficulty of deciding what is worth keeping and what can be discarded.

Imagine the task of sifting through the accumulated papers of a nation's official life — growing by billions of pieces a year — and determining what to retain and what to destroy.

This function is performed by the National Archives, a federal institution that holds the power of life or death over the wide-ranging records of the United States government.

Although the National Archives was not established until 1934, its major holdings date back to 1775. They capture the sweep of the past: slave ship manifests and the Emancipation Proclamation; captured German records and the Japanese surrender document from World War II; jour-



The great documents of America's past — the Declaration of Independence, Constitution, and Bill of Rights — are the focus of visitor attention in the exhibition area on the Constitution Avenue side of the building. The monumental Rotunda, which also houses other documents central to the formation of the Union, has a 75-foot high ceiling.

nals of polar expeditions and photographs of Dust Bowl farmers; Indian treaties making transitory promises; and a richly bound document bearing the bold signature "Bonaparte" — the Louisiana Purchase Treaty that doubled the territory of the young republic. In short, the National Archives preserves the record of the nation's civil, military, and diplomatic activities. On permanent display are the Great Charters: the Declaration of Independence, the Constitution of the United States, and the Bill of Rights.



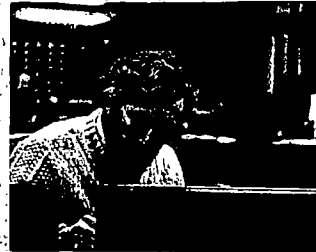
The National Archives keeps only those federal records that are judged to have enduring value — about 2 to 3 percent of those generated in any given year. By now, they add up to a formidable number, diverse in form as well as in content. There are about 3 billion pages of textual material; 5 million still pictures, including Civil War photographs by Mathew Brady; 91 million feet of motion picture film reaching back to the

inauguration of President William McKinley in 1897 and including documentaries, combat footage, and newsreels; 70,000 sound recordings including congressional hearings, news broadcasts, Supreme Court arguments, Tokyo Rose's radio propaganda from World War II, and the Nuremberg trials; 2 million cartographic items; and 9 million aerial photographs. All of these materials are preserved because they are important to the workings of government, or have long-term research worth, or provide information of value to ordinary citizens — for example, military service and pension records, federal census schedules, and ship passenger lists recording the arrival of immigrants.

Although the National Archives was created primarily for use by the government, its rich stores of material are available to all: historians interpreting the past, journalists researching stories, students preparing term papers, Indian tribes pressing claims, and persons tracing their ancestry or satisfying their curiosity about particular historical events. The National Archives serves as the nation's memory for a multitude of purposes.

Concern for the preservation of the records of the nation was expressed early. "Time and accident," Thomas Jefferson had warned, "are committing daily havoc on the originals deposited in our public offices." A century of such admonition went unheeded,

however. Tentative plans for an archives were developed before World War I following a number of damaging fires in government buildings, but the outbreak of the war de-



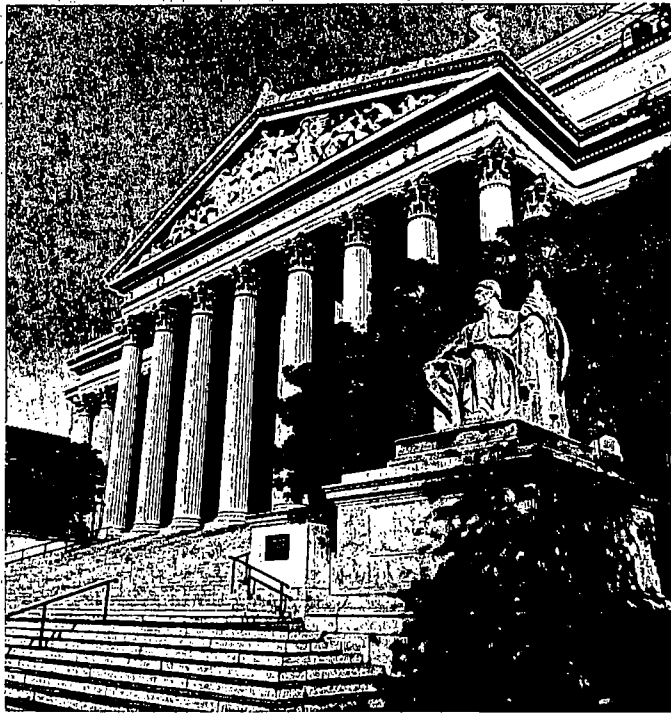
layed the project. It was not until the Great Depression that historians and others concerned with the preservation of the nation's records saw their hopes realized.

The task of designing an archives building was given to the distinguished architect John Russell Pope. He set out to create a structure that would be in harmony with other great Washington landmarks — the White House, Capitol, Treasury Building, and Lincoln Memorial — and at the same time express the significance, safety, and permanence of the records to be deposited inside. One has only to look at the great Corinthian columns (72 of them weighing 95 tons apiece) and at the classic facade, pierced by bronze doors a foot thick and 40 feet tall, to know that Pope succeeded.

Ground for the building was broken in 1931, the cornerstone was laid by President Herbert Hoover in 1933, and the staff moved in to work in 1935. The building was equipped with 21 levels of steel and concrete stack areas, windowless and temperature-controlled for document preservation purposes, and protected with fire safety devices. Provided also were technical facilities in which deteriorating documents could be restored and frequently needed records reproduced.

Most important to the new agency was the professional staff. Carefully recruited and trained, it faced in those early years the mammoth task of devising policies and operating procedures for the new institution and of collecting and inventorying a 160-year backlog of records, many of them packed helter-skelter into scattered attics and basements. Yet in less than a generation, the Na-





tional Archives became a model for preserving the permanently valuable records of the nation. This achievement is the more remarkable given the undreamed-of growth of the federal government and the proliferation of paperwork during this period.

There were added responsibilities: publishing the *Federal Register*, a daily record of Government proclamations, orders, and regulations; operating the Presidential library system for the papers of the Presidents beginning with Hoover; running a Government-wide program to ensure adequate documentation and appropriate disposition of government records; reproducing selected records on microfilm to make them more readily available to the public; and administering a nation-

wide network of 14 records centers, in which records are often held temporarily pending a decision to keep or destroy.

Two of the centers are national in scope: the Washington National Records Center at Suitland, MD, a suburb of Washington, and the National Personnel Records Center of St. Louis. The others are regional in character and are part of a National Archives centers system. These centers also house field archives branches. The holdings of these archives are chiefly of regional interest but also include microfilm copies of many of the most important records in the National Archives.

Under the dome on the Constitution Avenue

side of the National Archives is the Rotunda, where the great documents of America's formation, written in flowing script on sheets of parchment, are permanently displayed. The pages of the Declaration of Independence, Constitution, and Bill of Rights are sealed into individual bronze and glass cases in which air has been replaced by protective helium.

Light filters prevent fading. At closing time, the documents are lowered from their marble setting into a vault below the floor. On the side walls of the Rotunda are two murals: Thomas Jefferson presenting the Declaration of Independence to John Hancock, President of the Continental Congress, and James Madison presenting the Constitution to George Washington, President of the Constitutional Convention. Other exhibits in the Rotunda and the Circular Gallery highlight major events in the nation's history.

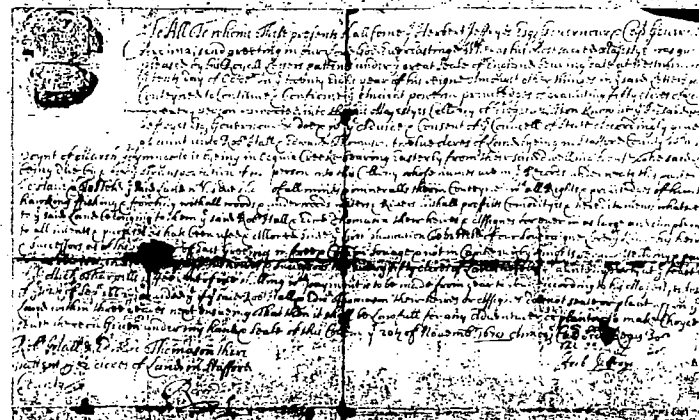


he National Archives Building has numerous sculptural decorations and inscriptions, but the words on the base of one statue have become identified with the institution itself. Cut into the stone are these words from Shakespeare's *The Tempest*: "What is past is prologue." There is no better reason for preserving the documentary materials of the American experience.

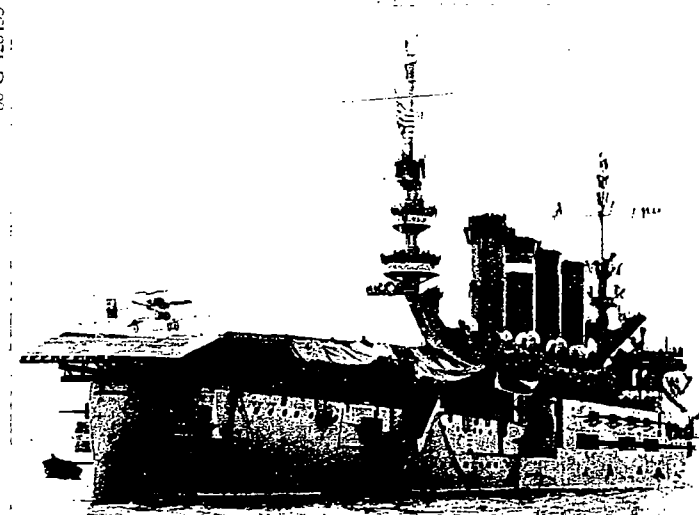


NATIONAL ARCHIVES OF THE UNITED STATES

The banding together of seaboard colonies into one nation, exploration, the land "vaguely realizing westward" (in Robert Frost's phrase), slavery, emancipation, civil war, homesteading, commerce, politics, immigration, labor and industry, doughboys and G.I.s, booms and busts, international treaties, civil rights marches . . . it's all there, woven through the records in the National Archives, its field branches and the Presidential libraries, caught in photos, maps, recordings, movie film, and documents — documents upon documents.



This 1678 land grant for 12 acres in Virginia, signed by Royal Governor Herbert Jeffreys, is among the oldest records in the National Archives.



Sailor spectators took as many chances as Commander Eugene B. Ely when he landed his plane on the deck of the U.S.S. Pennsylvania in 1911.

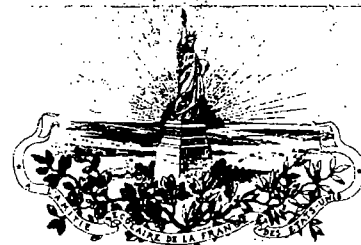


Thomas Jefferson hands the Declaration of Independence to John Hancock, President of the Continental Congress, in one of Barry Faulkner's two 14-by-35-foot murals in the Rotunda.

We the People

of the United States

The parchment copy of the U.S. Constitution on display in the National Archives is the one signed by the delegates to the Constitutional Convention in Philadelphia on September 17, 1787.



The design on the 1884 deed of gift whereby France gave the Statue of Liberty to the United States.

passed in any form of emergency, shall be held invalid, the provisions of this Act, or the application of such provisions to persons or circumstances other than those as in which it is held invalid, shall not be affected thereby.

16. This Act may be cited as the "National Labor Relations Act."

Approved July 17, 1935
Franklin D. Roosevelt
President of the United States

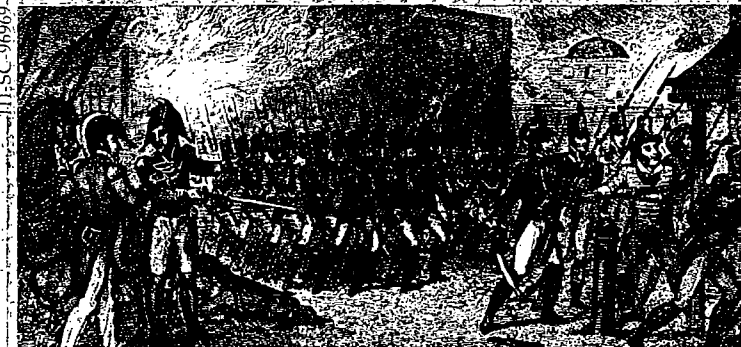
Landmark legislation in labor relations was the Wagner Act of 1935, formally known as the National Labor Relations Act.



Papers of Robert E. Peary are part of the National Archives Gift Collection of Materials Relating to Polar Regions.



Her concern for people caught in wars and disasters led Clara Barton to found the American Red Cross.



An engraver recorded the burning of Washington by the British in 1814.

Passenger Lists of Ships Entering U.S. Ports									
CUSTOMS LIST OF PASSENGERS									
NAME	AGE	SEX	COLORED	RELATION	PLACE OF BIRTH	PLACE OF RESIDENCE	DATE OF ARRIVAL	DATE OF DEPARTURE	NAME OF SHIP
John Doe	35	M		Husband	New York	New York	Jan 1, 1911	Jan 5, 1911	SS. America
Jane Doe	32	F		Wife	New York	New York	Jan 1, 1911	Jan 5, 1911	SS. America
John Smith	25	M		Son	New York	New York	Jan 1, 1911	Jan 5, 1911	SS. America
Jane Smith	22	F		Daughter	New York	New York	Jan 1, 1911	Jan 5, 1911	SS. America
John Brown	45	M		Father	New York	New York	Jan 1, 1911	Jan 5, 1911	SS. America
Jane Brown	42	F		Mother	New York	New York	Jan 1, 1911	Jan 5, 1911	SS. America
John Black	30	M		Brother	New York	New York	Jan 1, 1911	Jan 5, 1911	SS. America
Jane Black	28	F		Sister	New York	New York	Jan 1, 1911	Jan 5, 1911	SS. America
John White	20	M		Nephew	New York	New York	Jan 1, 1911	Jan 5, 1911	SS. America
Jane White	18	F		Niece	New York	New York	Jan 1, 1911	Jan 5, 1911	SS. America

Passenger lists of ships entering U.S. ports are valuable sources for tracing family histories.



Wagons were rolling west in large numbers in 1886 when this family paused in Loup Valley, NE.



Back from Cuba and the Spanish-American War, Col. Teddy Roosevelt was ready to begin his successful campaign for the New York governorship.



A former slave who had escaped to freedom, Frederick Douglass became a leader of the abolitionist movement.



Women suffragists picket in front of the White House in 1917.



In the 1930's, the Empire State Building rose above the Chrysler Building which lost its status as New York City's tallest structure.

The replacement of modern SLBMs on any submarine, regardless of type, will be counted against the total of SLBMs permitted for the U. S. and the U. S. S. R.

Agreement,

FOR THE UNITED STATES
OF AMERICA

[Signature]

President of the United States

FOR THE UNION OF SOVIET
SOCIALIST REPUBLICS

[Signature]

General Secretary of the
Central Committee of the CPSU

FOR THE LACK OF SOVIET
KNOCKOUT REPERCUSS

Among the documents in the treaty room at the National Archives is the agreement signed at Moscow in 1972 following Strategic Arms Limitation Talks (SALT).

The world was slipping toward total war when Hitler addressed the Reichstag in 1938.



A landing craft filled with U.S. troops near a New Guinea beach in the Pacific during World War II.



The unemployed queued up at a Chicago soup kitchen during the Depression.



The Big Three - Stalin, FDR, and Churchill - at Teheran in 1943.



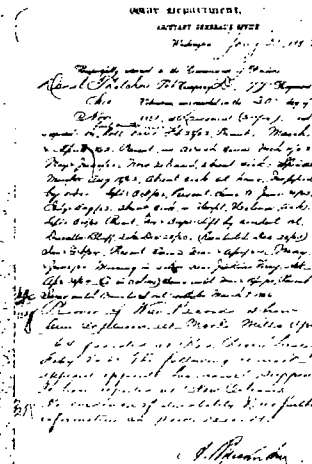
Evidence that propaganda films were coming into their own in World War I is provided by this scene from "The Road Through the Dark."

[illegible]

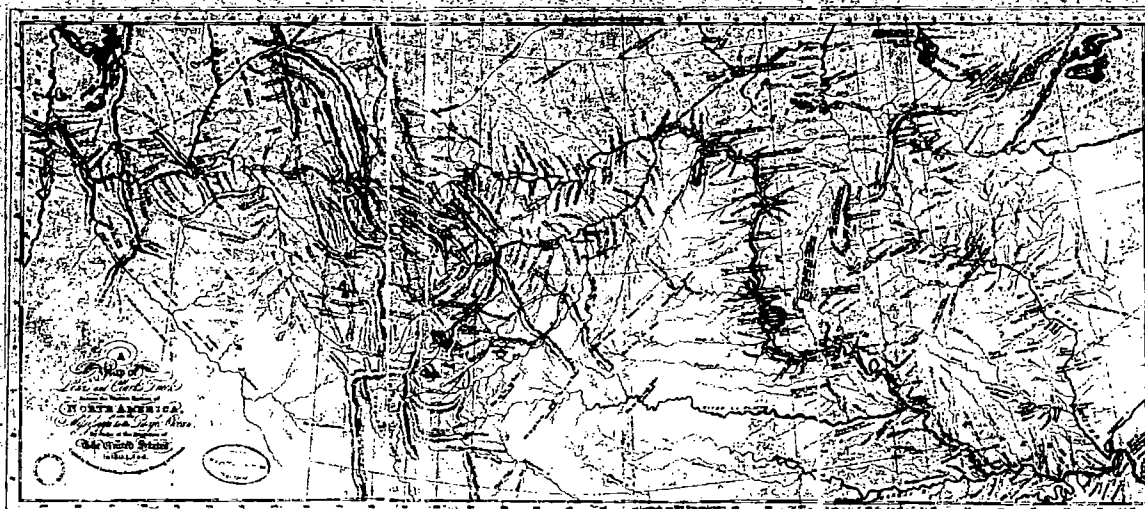
The Japanese surrender document was signed aboard the U.S.S. Missouri in Tokyo Bay on September 2, 1945.



A Ute warrior and his bride in northwest Utah in 1874.



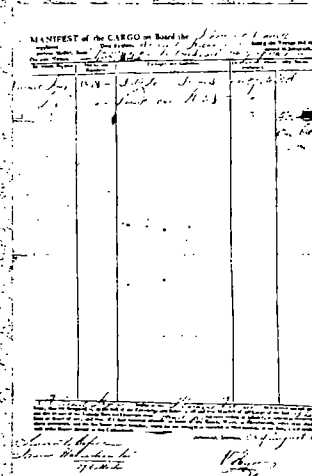
The wars of yesteryear are recalled by files upon files of service records.



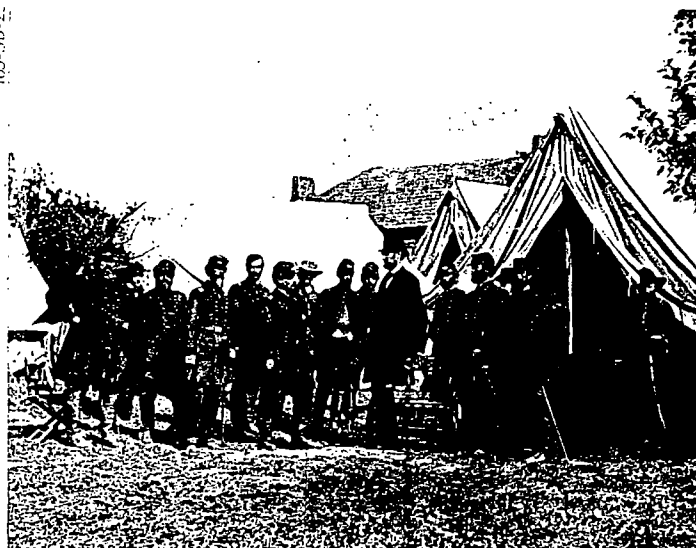
A map from William Clark's original drawings of the Lewis and Clark exploratory expedition from the Mississippi to the Pacific



Civil rights advocates marched on Washington in 1963



Sixty-four slaves and twenty-one hides were listed as commodities on the manifest of the ship *Nancy* arriving at Savannah, Georgia, in 1795.



Union hopes were on the rise when President Lincoln called on General McClellan after Antietam in 1862.

Grace Scott Plaintiff
 vs
 John F. Dunlap Defendant
 The day comes again the
 trial attorney and the said attorney
 meet the term that the commission
 is a statement of defendant
 by the term that a show place
 defendant and those assigned
 up by them and I have being alle-
 ged in accordance with the order

A court record in the Dred Scott case in which sectional animosities were fanned by the U.S. Supreme Court's refusal to uphold freedom for a slave who had lived with his owner in free territory.



Brig. Gen. Douglas MacArthur in a French village in 1916

There was no doubt who signed for France on the Louisiana Purchase Treaty of 1803.



The San Francisco wharves in 1900.

National Archives' White House Liaison Office Programs During Carter Administration

Assisted White House staff with records management

- o drafted written procedures (usually at request of Counsel)**
- o surveyed records retained in staff offices
(jointly done with White House Office of Records Management)**
- o answered staffers' questions concerning records management**
- o provided courtesy archival storage and retrieval for personal,
political and other pre-Presidential documentary materials**
- o evaluated and recommended changes in recordkeeping practices**

o identified and/or created documentation for electronic records systems

Planned and implemented oral history programs

- o conducted recorded interviews and secured legal instruments for deposit of
tapes in the Carter Library for over 150 staff members including Jody Powell,
Robert Lipshutz, Lloyd Cutler, Zbigniew Brzezinski, Ann Wexler, Tim Kraft,
Stuart Eizenstat, Gerald Rafshoon, Alfred Kahn, Kit Dobelle, Mary Finch Hoyt**
- o conducted several dozen biographical interviews with members of
Carter/Smith families in Georgia, Virginia and North Carolina. Completed legal
instruments and transcripts for deposit in Carter Library.**

Managed Presidential audiovisual and gift materials

- o Stored, preserved and retrieved on request the following:

- o WHCA audiotape and videotape copies of media coverage of Administration figures and events

- o film and videotape of President's public appearances prepared by Naval Photographic Center

- o Presidential gifts from foreign and domestic sources

Managed the exchange of documents or artifacts between Presidential Libraries or Archives exhibits and White House

Assisted White House staff involved in planning future Presidential Library

Solicited papers or other documentary materials for future Library

Completed contingency planning for Presidential records transition for both possible election outcomes

**Marie Allen
4/29/93**

GUIDELINES FOR RECORDS IN THE WHITE HOUSE OFFICE

On behalf of the President, White House Office staff members process hundreds of thousands of letters, memoranda, reports, photographs, charts, computer messages, maps, schedules, films, briefing papers, speeches, and other types of documentary materials every year. The majority of these materials are legally classified as

*** Presidential records**

Materials created or received by the President or his staff in the course of "conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President." (44 U.S.C. Chapter 22)

Examples include letters received by the President expressing support for or opposition to Administration programs; one copy of each speech given by the President or staff members (including copies of significant drafts); briefing papers prepared by staff for the President; etc.

Presidential records cannot be destroyed or removed permanently from the White House Complex without the concurrence of the White House Counsel.

Occasionally White House Office staffers will receive or create other types of record material which should always be filed separately from Presidential records in order to preserve their legal status. These other categories include:

*** Presidential political materials**

Letters, memoranda, reports, or other materials relating exclusively to the President's political associations or activities.

Examples: letters encouraging President's support for candidates for office; election campaign materials; correspondence with the Democratic National Committee that does not concern Presidential programs or policies; etc.

*** Presidential personal materials**

Letters, photographs, diaries or other materials of a purely private and nonpublic character. Examples: correspondence with a daughter's school or dance instructors about her activities; life or health insurance documents for members of the President's family; letters from close family friends; or diaries created for personal uses only.

*** Staffers' personal materials**

Letters, memoranda, photographs, or other materials of a purely private or nonpublic character. Examples: health or life insurance documents; personal diaries not used for official purposes; citations or other awards received, etc.

A staffer may not consider as personal any copies of memoranda, briefing papers, speeches, reports or other materials created as part of his/her job. Materials created as part of official responsibilities are Presidential records. However, the White House Counsel may approve the removal of extra copies of such materials at the request of individual staffers.

Further assistance in making these distinctions is available from the White House Counsel's Office, White House Office of Records Management, or National Archives.

Please note that the same definitions apply to Vice Presidential Records, with the substitution of "Vice Presidential" for "Presidential" in all of the categories listed above.

Also note that the White House Office is not classified as an agency for the purposes of the Federal Records Act, and, accordingly, does not create federal records. Most of the other units of the Executive Office of the President (OMB, NSC, OA, for example) are classified as agencies and do create federal records.

SAMPLE REFERENCE REQUESTS
for a
White House History Office

The following requests for historical information might be addressed to a White House history office by the president, members of the White House staff, presidential speech writers, the press corps, scholars, and the general public:

staffing

What is the origin of the chief of staff's position?

When did the White House begin the practice of detailing staff from executive agencies? Which administrations made most extensive use of this practice?

In what different ways have presidents structured their White House staffs? In what ways have presidents reorganized their staffs during their terms, and what were the results of those reorganizations?

constitutional prerogatives

How have presidents handled controversial nominations? What circumstances led to withdrawal of nominations, and what were the reactions of the Senate and the media? What problems did these withdrawals cause in naming and confirming a replacement candidate?

What has been the practice of presidents in inviting senators to participate in treaty negotiations?

What type of success have administrations over the past four decades had confrontations with congressional investigating committees?

Are there any patterns evident in the recent history of veto overrides?

To what extent have presidents been able to continue close relations with their appointees to the Supreme Court?

Have presidents ever vetoed, or otherwise blocked, congressional pay increases or legislative branch appropriations bills? If so, what were the circumstances?

operations

What has been the vice president's traditional role as legislative liaison?

Why have some legislative liaisons been considered more effective than others?

What examples have there been of particularly close relationships between presidents and congressional leaders of the opposite party.

Under what circumstances have presidents claimed emergency powers that were not specifically provided to either Congress or the presidency, and what was the public reaction?

historical analogies

Should a presidential administration be measured by its "first 100 days" accomplishments? What were the origins of the "100 days" concept and how have subsequent presidents fared during this period? Why might it be considered an impractical analogy for modern presidents?

personal

What types of pressures have historically been placed on presidential families? How have presidents reacted to criticism of immediate family members? What public roles have presidential family members taken?

WHITE HOUSE HISTORY OFFICE

A Proposal

OBJECTIVE: To establish a permanent, professional history office in the White House.

PURPOSE: President Clinton is in a unique position to shape the way that the institution of the presidency, now and for generations to come, can benefit from the application of historical perspective and skills to its ongoing operations. As the presidency enters its third century, there could be no better way to serve this institution than to create, within the White House, a small, permanent, professional history program. Presidential scholars and government historians for many years have strongly endorsed the establishment of such an office within the White House. The current process of transition between administrations underscores the value of historical continuity to the presidency.

Establishing a permanent, professional history office would satisfy several vital White House needs. Most important, it would provide the basic institutional memory now so sadly lacking. Professional historians, who have been trained to gather documentation, evaluate its content, and present essential information in readable form, and whose tenure would not be confined to a single administration, would be in a unique position to promote continuity between consecutive administrations. A new administration would not have to waste time trying to locate internal information detailing earlier operational

decisions on particular issues. The experience of previous incoming administrations provides powerful evidence of the need to establish such an office. In recent weeks officials from the Johnson, Nixon, Carter, Reagan, and Bush administrations have complained that, when they entered the White House, it was an empty shell: Not a single piece of paper was left to inform the newly elected president of the commitments made by the former president.

A White House History Office would help to alleviate this problem by having prepared throughout the course of the previous administration analyses of key White House actions in the major areas of presidential responsibility. Moreover, a history office could also provide policy-related research support, advice on records management and records retention, and an oral history program for administration policy makers. In addition, as a singularly rich source of institutional history on the presidency, it would provide reference service on historical questions, acting as an information center not only for White House personnel, but for the media and the general public.

BACKGROUND: Congress, the Judiciary, and many Executive Branch departments and agencies maintain well-respected history offices that could serve as models for a presidential program. In these government-wide programs, professional historians routinely apply their analytical skills and historical perspective to explore and enrich their agencies' institutional memories. They assist in determining where institutional change is desirable and possible, and where it is likely to meet with resistance. They also aid in identifying the uniqueness of specific situations and the appropriateness of suggested historical

analogies. A White House History Office, working in cooperation with the Office of the White House Curator and the White House Library, would provide successive administrations with information on significant events, dates, precedents, and historical comparisons of current and past presidential activities.

PROPOSAL:

Phase 1: Detail a senior government historian to the White House for one year to determine the feasibility of establishing a permanent program. This professional would be selected for expertise in establishing and managing a government history program. At the end of the detail, the historian would provide the administration and advisory board a thorough study of the possible mission, structure, and goals of a permanent historical program.

Create an advisory committee to provide overall guidance to the historian and to determine future structures and procedures. This advisory committee would include nationally prominent presidential scholars, senior government historians, the White House Curator, the White House Librarian, and other senior administration officials.

By relying on a professional historian on detail from an Executive Branch department or agency, this phase could be implemented without cost to the White House. The advisory committee, in consultation with the historian, would make its recommendations to the administration regarding a permanent White House History Office after the one-year study. This would leave the administration free to decide how it wished to shape the program.

Phase 2: Establish a permanent, professional history office. The office would consist of one senior-level historian, one deputy historian, one professional archivist, and one secretary. The reporting responsibility of the office would be as close to the president as possible to ensure adequate support and access to key officials and institutions.

Create an internal advisory committee of senior executive officials to establish objectives and goals for the program. In addition, establish an outside board consisting of nationally prominent presidential scholars and senior government historians to guide the program.

Prepared by:

Gerald K. Haines, President, *Society for History in the Federal Government*;
Historical Office, Central Intelligence Agency
(703 351-2621)

Maeva Marcus, Director, *Documentary History of the Supreme Court*
of the United States
(202 273-2815)

Richard A. Baker, Director, *U. S. Senate Historical Office*
(202 224-6900)

WHITE HOUSE HISTORY OFFICE

Summary of Services

- o provide policy-related research support for White House officials
- o document the institutional development of the presidency
- o participate in staff orientation and training
- o prepare analyses of key White House actions of previous administrations in the major areas of presidential responsibility
- o assist the National Archives and White House records managers in ensuring continuity of documentation between outgoing and incoming administrations
- o conduct an oral history program for administration policy makers
- o respond to reference requests for factual information from White House staff, the media, and the public
- o maintain a comprehensive bibliography of books and substantive articles about the presidency and individual presidents
- o issue publications, including narrative histories and reference guides, associated with the above-described functions

U.S. GOVERNMENT HISTORY PROGRAMS

A Selected List of Major History Offices

Legislative Branch

- o Senate
- o House of Representatives
- o General Accounting Office

Judicial Branch

- o Federal Judicial Center

Executive Branch: Cabinet Departments

- o Agriculture Department
- o Census Bureau, Commerce Department
- o Defense Department (All Services)
- o Energy Department
- o Food and Drug Administration, Health and Human Services
- o National Institutes of Health, Health and Human Services
- o Bureau of Indian Affairs, Interior
- o National Park Service, Interior
- o Federal Bureau of Investigation, Justice
- o Marshals Service, Justice
- o Immigration and Naturalization Service, Justice
- o State Department
- o Comptroller of the Currency, Treasury
- o Internal Revenue Service, Treasury
- o Federal Aviation Administration, Transportation
- o Coast Guard, Transportation

Executive Branch: Independent Agencies

- o Advisory Council on Historic Preservation
- o Central Intelligence Agency
- o Environmental Protection Agency
- o National Aeronautics and Space Administration
- o National Science Foundation
- o Nuclear Regulatory Commission
- o Arms Control and Disarmament Agency
- o Postal Service

SAMPLE REFERENCE REQUESTS
for a
White House History Office

The following requests for historical information might be addressed to a White House history office by the president, members of the White House staff, presidential speech writers, the press corps, scholars, and the general public:

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personal

What types of pressures have historically been placed on presidential families? How have presidents reacted to criticism of immediate family members? What public roles have presidential family members taken?



Date : May 6, 1993
Reply to :
Attn of : NL, Nancy Kegan Smith
Subject : First Ladies Papers
To : Marianne Smith

The papers of the First Lady traditionally have received less attention in terms of filing practices than those of the President. However, these papers are an extremely valuable resource to scholars. During the past decade, the twentieth-century First Lady, her influence on her husband and his policies, and her own management of an office that has no legally prescribed function, have become topics of great interest. Along with this new interest in First Ladies, has come an increasing use of their papers at the Presidential Libraries.

The First Ladies papers always have been treated on a different basis than those of the President's, because the First Lady is not an elected official and has no statutory role. Surprisingly, since the passage of the Presidential Records Act, no real examination of how this Act applies to the First Lady's papers has been undertaken until the Hillary Clinton health care task force raised some concerns. Because Hillary Clinton clearly is playing an important role in the Clinton Administration, her official and personal papers will be of vital interest to future scholars. Both archival and legal guidance is needed so that these papers can be filed properly and thus provide a full and complete record of the First Lady's activities.

Background on First Ladies Papers

Historically, most First Ladies papers since Eleanor Roosevelt either were donated to her husband's Presidential Library as part of the President's Personal Paper collection or donated as a separate collection of Personal Papers of the First Lady. These papers often have been deeded to the Library at a much later time period than the President's. Because the First Lady is a private citizen and has no statutory role, the papers have been viewed as more sensitive in terms of potential privacy concerns than those of the President.

The White House Social Office Files are the official files that document the ceremonial and official functions of the

First Lady's office. The Social Office Files are composed of several series, including: the Social Entertainment Files, the Social Secretary Files, the Press Secretary Files, and the Alpha File containing the correspondence of the First Lady's Office.

Some of the series in the Social Office Files document the ceremonial functions of the Presidency, including the Social Entertainment Files which contain invitation lists, entertainment materials, seating charts, and background on guests at Head of State dinners. Other series, for example, the Press Secretary's Files, traditionally have documented more of the policy role of the First Lady - her interests and projects. Until the Reagan Administration, the Social Office Files were kept separate from the President's files. During the Reagan and Bush Administrations, these files were interfiled with the President's records entered in the WHORM stairs system, and treated as a staff office file. Other files of the First Lady, for example, her own correspondence files, also were intermixed with the President's White House subject files.

Archival and Legal Questions on the First Lady's Files

Early in the Clinton Administration decisions should be made on the handling of the Social Office Files and other files of the First Lady. Under the Presidential Records Act, the First Lady is not mentioned. However, the Act does say that Presidential records include: "documentary materials...created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon carrying out of the constitutional, statutory, or other official or ceremonial duties of the President."

Many of the Social Office Files document ceremonial or other official functions of the President. However, other series document the various activities of the First Lady. Are the Social Office Files to be treated in their entirety as Presidential Record material; or are some series, depending on the overall documentation in the file, to be treated as the Personal Papers of Hillary Clinton? Will Mrs. Clinton want her correspondence files interfiled with the President's or kept separate? Does Mrs. Clinton want to maintain all of the Social Office and First Lady's Files separately regardless of record status, or are some files to be intermixed? The status of the files dealing with the First Lady raise important archival and legal concerns that need to be studied and addressed early in the Clinton

With
intermixing
you lose
control
and past
first ladies
don't have
as easy
access to
their papers/
records

Administration. By addressing these questions early on, the First Lady will maintain control over the files she feels are her personal property and at the same time leave scholars a clear documentation of her role in the Clinton Administration.

Nancy Kegan Smith

Nancy Kegan Smith
Supervisory Archivist
Office of Presidential Libraries

Support Activities provided by the
National Archives
to the President

I. Current Archives Support Activities

- *** Provide guidance to WHORM on the Presidential Records Act. For example, this includes making recommendations on bulk mail disposal, sampling of bulk mail and giving advice on the distinctions between Presidential record and personal paper material.*** Archivist, NARA Legal Counsel, Office of Presidential Libraries
- *** Assistance to the National Security Counsel with declassification *** Office of Presidential Libraries
- *** The White House Counsel's Office will be receiving notification of requests for the Presidential records of Reagan and Bush. The notification is required by the Presidential Records Act and the accompanying regulations. The purpose of the notification is to give Counsel, on behalf of the incumbent President, the right to object to any request for access or release of Presidential records to protect Executive privilege. Any requests for special access that are received by the National Archives are referred to White House Counsel. The notification is in writing from the Office of Presidential Libraries and in accordance with the regulations gives Counsel 30 days to object.
- *** Maintain President's daily diary and detail a diarist *** Office of Presidential Libraries
- *** Provide reference or documents from Presidential Libraries dealing with domestic and foreign policy issues to facilitate the ongoing business of the incumbent President. *** Office of Presidential Libraries.
- *** Assistance to White House Counsel on archival issues including providing information on openings of Presidential records or Nixon White House materials. Provide guidance on the record status of materials produced in the White House. *** Archivist, Office of Presidential Libraries, Office of Records Administration
- *** Publication of weekly compilation of Presidential documents and public papers of the President, and transcription and annotation on these items. *** Office of the Federal Register

- *** Provide archival guidance to the following White House Offices: Photo Office, White House Television, White House Communications Agency (audio and video sections), Office of the Vice President. *** Office of Presidential Libraries
- *** White House Television video recordings, including President Clinton's Inaugural Address and Mrs. Clinton's Health Care Reform Message have been transferred to NARA. These recordings have been placed in the public domain and NARA is charged with the responsibility for making these recordings available to the public at the cost based on NARA's fee schedule. *** Office of Presidential Libraries and Office of Public Programs
- *** Provide background material on various Presidential Libraries and answer White House reference questions dealing with material in the Presidential Libraries. For example, during the Carter Administration, the Presidential Libraries provided reference materials from their holdings on the history of the Old Executive Office Building. Other examples, include loans of exhibit items and providing video recordings of Presidential events from previous Administrations.
- *** Assist the Gift Unit on archival and legal questions dealing with Head of State and personal Gifts. *** Office of Presidential Libraries and NARA General Counsel
- *** Provide courtesy storage of all White House materials destined for a Presidential Library. Material included in this category is: White House Central Files, textual records; White House Gift Unit, foreign and domestic gifts; WHTV and WHCA, video and audio recordings of Presidential activities; and Vice Presidential records. This material is stored in the National Archives Building in downtown Washington for rapid retrieval. *** Office of Presidential Libraries
- *** Recommendations on archival quality of inks and paper. *** Office of National Archives
- *** Assist with exit interview of departing staff. *** Office of Presidential Libraries

Support Activities Provided by the National Archives to the President

2. Past Archives Support Activities

*** Conducting oral history interview with departing White House staff

*** Coordinating with the President's personal administrative staff to maintain storage of personal papers including tape recordings of meetings and phone conversations

*** Maintaining Personal Papers of the President

*** Establishing and maintaining a diary backup file for the President consisting of supporting documentation to the daily diary

*** Establishing and maintaining a Presidential night reading and handwriting file

*** Maintaining originals of Head of State correspondence file for future exhibits

*** Coordination with Presidential advance team members to ensure appropriate documentation on travel and to save potential museum items

*** Provide reference services to the President from his personal files and reference on topics of interest to the President

*** Liaison with the head of White House Office of Records Management on the President's Personal and official files

*** Assisted the White House Correspondence Unit with requests dealing with personal aspects of the President and his family history

*** Maintained scrapbooks of important events

National Archives



Washington, DC 20408

Date : April 26, 1993
Reply to
Attn of : NL
Subject : Archives White House Support
To : Marianne Smith

The attached memo gives a history of the Archives support for the President. The memo recommends the re-establishment of an "Archives Office" in the OEOB based on the Johnson Administration model. This recommendation is based on the fact that the Johnson archives office provided extremely effective support for the development of the LBJ Library, and my sense that this office would facilitate President Clinton's implementation of the Presidential Records Act.

The role of the Archives Office

The primary responsibility of the Archives office would be to provide archival assistance on Presidential records, storage and reference service on the personal papers of the President and the First Lady, and to assist the President in planning for his Presidential Library.

The Archives office would provide the same type of assistance for the President's and First Lady's personal papers, as is currently provided by the White House Office of Records Management for official Presidential files. The head of this office would work closely with the Director of the WHORM and the White House Counsel's Office to ensure that the Presidential Records Act is adhered to by following proper records handling practices. The Archives office would be particularly helpful to President Clinton in carrying out the Presidential Records Act requirement that documentary materials created by the President or his staff "...to the extent practicable, be categorized as Presidential records or personal records upon their creation or receipt and be filed separately." (44 USC 2203) By maintaining a separate file for personal papers, the Office would be implementing the requirements of the Presidential Records Act and guarding against inadvertent designation of personal papers as Presidential record.

For the most part, during the Reagan and Bush Administrations the early separation of personal and record materials simply did not occur, nor were there consistent record keeping practices on what papers should be filed

separately in a personal file. The Archives was not asked to provide assistance with the President or First Lady's personal archival material, or in ensuring the early creation and maintenance of a separate file for President's and First Lady's personal papers.

The Archives did provide assistance to the White House Office of Records Management, WHORM, and the Office of White House Counsel with respect to Presidential Records issues during the past two Administrations. This support has been provided by the Archives liaison to WHORM and through the Office of Presidential Libraries and NARA legal counsel to White House Counsel.

The lack of archival assistance for personal papers in both Presidential Administrations and the unfamiliarity with the Presidential Records Act created some archival problems that the Presidential Libraries are dealing with today. Clearly personal items, for example the President's letters to his grandchildren or the First Lady's letter to her close friends, have been filed with Presidential record material. Private political materials have also been filed with Presidential record material. The inadvertent mix of some Presidential record and personal papers causes confusion as to proper file status and as to the appropriate statutory authority governing access. Most of the separation of personal papers was done at the end of these Administrations at the very time when the determination as to proper record status is the most difficult to make.

Presidential personal papers are a highly valuable historical record of a Presidential Administration because they often contain the most personal and private insights of the President and his key advisors. Under the Presidential Records Act it is essential that these files be established and maintained on a consistent basis. Two Presidential Administrations have shown us that the distinctions between what is Presidential and what is personal record need to be thought about early in the Administration. Personal papers of the President, his advisors, and his family are usually donated by the President, or deeded in his will, to his Presidential Library. For the reasons mentioned above and to ensure the creation and proper protection of the most complete historical record, I believe that the National Archives should provide archival support for the President's and First Lady's personal files by the re-establishment of an Archives office.

Responsibilities of the Archives Office

The size of the Archives office staff would not have to be large because the volume of personal papers is much smaller than the Presidential Records file. The Personal Files could include the following types of materials: Diaries, Journals, Personal Notes, Campaign and Re-election Files, the President's records as head of the Democratic Party, Pre-Presidential files that the President may need to use as President, family and personal correspondence, financial records, First Lady's personal files, and copies of Presidential records that the President may want for his personal use.

A primary role of this Office would be to assist the President in his plans for a Presidential Library. The Office should serve as a liaison with groups working to establish a Clinton Library. The Office would work closely with the White House Gift Unit to make sure that appropriate exhibit material for the Clinton Presidential Library is properly identified and maintained. The staff of the Office would work closely with the President's and First Lady's advance teams to make sure that their trip activities are adequately documented and exhibit items are brought back to the White House for eventual use in the Presidential Library.

Archival concerns dealing with the development of computer systems in the White House offices could be referred to this office. The requirement to separate Federal Records and Presidential Records in the NSC and EOP offices has a parallel in the White House offices e.g., mixing personal and Presidential records may convert personal papers to government property. Under the Presidential Records Act any computer systems that include both Presidential records and personal records should have the ability to segregate these files so that the President does not lose control over his personal material.

The President's daily diary provides another example of a computer system that requires the ability to segregate personal and record material. The Diary, to be most useful to the President and future scholars, should contain both the President's official, personal and private political activities. Yet, if there is no provision to designate these types of activity when the information is entered, the President's personal information may become Presidential record.

Organizational Placement

If an Archives office is re-established, there are several options for the organizational placement of this Office. These options include reporting directly to: (1) the President and First Lady; (2) the Staff Secretary; (3) the Chief of Staff, and (4) Office of White House Counsel. Whatever the placement of the Office, it is important that the work of the Office be perceived as having high level support.

Additional areas of responsibility for this Office could include consolidating some activities that the Archives has performed for different offices in the White House. These activities include the Federal Register's publishing of the "Weekly Compilation of Presidential Documents", and the "Public Papers of the President"; preservation advice; research activities for the President and First Lady; and oral histories conducted with current and departing staff.

The proper selection of the person to head this office is critical to its success. This individual must have professional experience with personal papers. Presidential Library background and familiarity with the Presidential Records Act would be particularly useful to this Office. The individual must be one that will have the full confidence of the President and Mrs. Clinton.

I hope my preliminary thoughts on this topic have been of some assistance. If the re-establishment of an Archives Office is an idea that has interest to the White House, I will be happy to provide more detail as to the functions and staffing for this Office.



JOHN FAWCETT
Assistant Archivist
for Presidential Libraries

National Archives



Washington, DC 20408

Date : June 18, 1993
Reply to :
Attn of :

Mike Gillette

Subject :

The President's visit to Independence National Historical Park

To :

Marianne Smith

*Please do
give Marianne
Hale*

When the President visits Independence National Historical Park in Philadelphia on July 4th, his tour should include the National Archives' new Jefferson exhibition in the Visitors Center there.

At the time of President's Clinton's inaugural, he captivated the nation's attention by beginning his odyssey from Monticello. The trip to Philadelphia will renew the Jeffersonian bond and emphasize the similarities between the two presidencies. Both presided over an unprecedented measure of democracy while struggling for growth and economic independence. Yet the difficulties of the task are reflected in Jefferson's characterization of the presidency "A Splendid Misery."

The exhibition "A Splendid Misery:" The Challenges of Thomas Jefferson's Presidency uses his handwritten messages to Congress to reveal Jefferson's thoughts on the great events and issues of his presidency: the Louisiana Purchase, the Lewis and Clark expedition, the conspiracy of Aaron Burr, the conflict with the Barbary powers and the embargo. Although the visually compelling exhibit will attract anyone with an interest in history, the President will have unique appreciation. He will be able to view the challenges of our time from the perspective of history. He will find comfort in the fact that even Thomas Jefferson had to make the most of difficult choices and limited opportunities in this imperfect world.

The President can walk through the Jefferson exhibit in approximately ten minutes.


MICHAEL L. GILLETTE
Director
Center for Legislative Archives



Date : April 26, 1993
Reply to :
Attn of : NL, Nancy Kegan Smith
Subject : Presidential Records Act requests
To : Marianne Smith

The White House Counsel's Office will be receiving notification of requests for the Presidential records of Reagan and Bush. The notification is required by the Presidential Records Act and the accompanying regulations. The purpose of the notification is to give Counsel, on behalf of the incumbent President, the right to object to any request for access or release of Presidential records to protect Executive privilege.

Even though these records are not produced by the Clinton Administration, their premature release could have a chilling effect upon the advice received by the incumbent President, or the conduct of national security. For this reason, the Presidential Records Act gave the right to the incumbent and to the former President who created the records to object to the proposed access and release of any Presidential records.

Some previous examples of requests for Presidential records include requests for Reagan records dealing with Agent Orange, Iran/Conta, Nuclear Proliferation, and transition materials.

Under the Presidential Records Act, special access is the only type of access allowed to Presidential records for 5 years after the date on which the Archivist obtains custody of the records, or until processing has been completed. Therefore, until January 1994 for Reagan, and January 1998 for Bush all requests into Presidential records are governed under the special access provisions. In the case of sensitive material, access may be restricted for up to twelve years.

Special access during this period is allowed pursuant to:
(1) a subpoena or other judicial process issued by a court;
(2) a request by the incumbent President for ongoing business; (3) either House of Congress or their committee or subcommittee if such records are needed for the conduct of Congressional business; and (4) to the former President or his designated representative.

To protect the rights of the former and incumbent Presidents a formalized procedure was established. The basic elements of this formalized procedure are:

1. All Executive branch requests are coordinated through White House Counsel's Office for Presidential records. The coordination gives Counsel the opportunity to confirm that the request is really necessary for the ongoing business of the President and to specify any specific conditions for the access or release of Presidential records.
2. Counsel's Office will be notified of any subpoena or Congressional requests.
3. Any requests for special access that are received by the National Archives are referred to White House Counsel. The notification is in writing from the Office of Presidential Libraries and in accordance with the regulations gives Counsel 30 days to object.
4. Counsel's response to the special access request should be in writing to the Office of Presidential Libraries.

White House Counsel's Office will also receive notification of Nixon Presidential materials openings at least 30 days in advance. This is required by the Presidential Recordings and Materials Preservation Act and its accompanying regulations.

The current notification that Counsel's Office have received include:

1. Two outstanding special access requests for Reagan Presidential records - one is from the FBI, the other is from a U.S. attorney.
2. A notification of a proposed opening of 3 hours of Nixon White House tape segments dealing with Watergate and some Nixon textual files.

Our Office, along with NARA legal counsel, would be happy to meet with White House Counsel to discuss the following procedures in more detail.

Nancy Kegan Smith

Nancy Kegan Smith
Supervisory Archivist
Office of Presidential Libraries

National Archives' White House Liaison Office Programs During Carter Administration

Assisted White House staff with records management

- o drafted written procedures (usually at request of Counsel)**
- o surveyed records retained in staff offices
(jointly done with White House Office of Records Management)**
- o answered staffers' questions concerning records management**
- o provided courtesy archival storage and retrieval for personal,
political and other pre-Presidential documentary materials**
- o evaluated and recommended changes in recordkeeping practices
for Vice President Mondale's office**
- o identified appropriate destruction facilities for disposable
Presidential materials**
- o identified and/or created documentation for electronic records systems**

Planned and implemented oral history programs

- o conducted recorded interviews and secured legal instruments for deposit of
tapes in the Carter Library for over 150 staff members including Jody Powell,
Robert Lipshutz, Lloyd Cutler, Zbigniew Brzezinski, Ann Wexler, Tim Kraft,
Stuart Eizenstat, Gerald Rafshoon, Alfred Kahn, Kit Dobelle, Mary Finch Hoyt**
- o conducted several dozen biographical interviews with members of
Carter/Smith families in Georgia, Virginia and North Carolina. Completed legal
instruments and transcripts for deposit in Carter Library.**
- o submitted proposals for several other oral history programs, related to Camp
David Accords, among other events**

Advised White House staff on archival issues

- o prepared briefing papers at the request of various White House staff members
on such topics as the implementation of the Presidential Records Act, planning
for a Presidential Library, copyright and literary property issues, etc.**

Managed Presidential audiovisual and gift materials

o Stored, preserved and retrieved on request the following:

o WHCA audiotape and videotape copies of media coverage of Administration figures and events

o film and videotape of President's public appearances prepared by Naval Photographic Center

o Presidential gifts from foreign and domestic sources

Managed the exchange of documents or artifacts between Presidential Libraries or Archives exhibits and White House

Assisted White House staff involved in planning future Presidential Library

Solicited papers or other documentary materials for future Library

Completed contingency planning for Presidential records transition for both possible election outcomes

Marie Allen

4/29/93