Case Number: 2016-0152-F

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the Clinton Presidential Library Staff.

Folder Title:				
Chron File - June 1993 #3 [3]				
Staff Office-Individual:				
Defense Policy-Bell, Robert				
Original OA/ID Number:				
45				
Row:	Section:	Shelf:	Position:	Stack:
31	3	2	1	V

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Legislative Referral Memorandum #I-733. [CIA Act] [partial] (1 page)	06/25/1993	P3/b(3)
002. paper	State Department Commetns on Options for Initial COCOM Liberalizations. (4 pages)	06/30/1993	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Defense Policy and Arms Control (Robert Bell)
OA/Box Number: 45

FOLDER TITLE:

Chron File - June 1993 #3 [3]

2016-0152-F
vz4425

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9304910
RECEIVED: 01 JUL 93 13

TO: LAKE

FROM: BOREN, DAVID L

DOC DATE: 30 JUN 93
SOURCE REF:

KEYWORDS: NUCLEAR TESTING
ARMS CONTROL
PROLIFERATION
NCO

PERSONS:

SUBJECT: SEN BOREN FWDS CY OF FLOOR STATEMENT ON NO FIRST TEST NUCLEAR PROLIFERATION POLICY

ACTION: FOR RECORD PURPOSES   DUE DATE: 05 JUL 93   STATUS: C

STAFF OFFICER: NONE   LOGREF:

FILES: WH   NSCP: CODES:

D O C U M E N T   D I S T R I B U T I O N

FOR ACTION	FOR CONCURRENCE	FOR INFO
		ANDREASEN
		BELL
		BERGER
		GOTTEMOELLER
		ITOH
		KENNEY
		LAKE
		PONEMAN
		ROSNER
		TENET

COMMENTS:

DISPATCHED BY ______ DATE ______ BY HAND W/ATTCH

OPENED BY: NSMEM   CLOSED BY: NSMEM   DOC 1 OF 1

UNCLASSIFIED

4910

DAVID L. BOREN
OKLAHOMA

United States Senate

WASHINGTON, D. C. 20510

June 30, 1993

Dear Dr. Tony

I thought you may be interested in reading this floor speech which I gave on the Senate floor today concerning nuclear testing and weapons proliferation.

Sincerely,

David L. Boren

4910

DAVID BOREN
OKLAHOMA

Russell Building
Washington, DC 20510

621 North Robinson
Oklahoma City, OK 73102

409 S. Boston
Tulsa, OK 74103

211 East Oak
Seminole, OK 74868

United States Senate

WASHINGTON, DC 20510-3601

SENATE CHAIRMAN
JOINT COMMITTEE ON
THE ORGANIZATION OF CONGRESS

MEMBER, JOINT COMMITTEE
ON TAXATION
MEMBER, COMMITTEE ON FINANCE
CHAIRMAN, SUBCOMMITTEE ON
TAXATION

MEMBER, COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY
CHAIRMAN, SUBCOMMITTEE ON
AGRICULTURAL TRADE

FLOOR STATEMENT OF SENATOR DAVID BOREN
ON A "NO FIRST TEST" NUCLEAR PROLIFERATION POLICY
JUNE 30, 1993

On July 1, the current moratorium on nuclear testing expires. I am greatly encouraged by reports in the morning press which speculate that the President will act to extend the moratorium and is also seriously considering a "no first test" policy. The President would show bold and decisive leadership not only for this country but for the entire world if he takes this path. If he does so, he will have my full support. I am sure that he will also have the support of the vast majority of Americans and he will deserve the appreciation of future generations.

After more than a thousand tests we can remain reasonably certain at least in the near term that our nuclear deterrent is both safe and reliable. We do not need more tests now to assure safety and accuracy. Nor do we need to be upgrading our stockpile of nuclear weapons in the current world environment. In fact, nothing would do more to undermine our national security in the long run than to resume testing now because it would encourage others to do the same and it would make it impossible for us to lead the effort to stop the proliferation of dangerous weapons around the world. It is that proliferation and not the possible inaccuracy of our weapons that is the greatest threat to our national security.

The recent turmoil in Russia should be a wake-up call to all of us as Americans. The window of opportunity opened by the end of Cold War will not stay open forever.

For the first time since the United States has become a world leader, we are not locked in a military confrontation with other superpowers or power blocs. Now, as domestic concerns dominate the agenda and as our foreign policy apparatus reacts on an ad hoc basis to one crisis after another, we may miss the greatest chance ever given to any American generation to make the world a safer place. Let us hope we are not already too late.

Our political leaders in both parties have referred in vague terms to a "new world order," but nothing has been done to create one. In particular, the United States must take bold, decisive action in two areas: collective security and non-proliferation.

In the aftermath of World War II, President Harry Truman recognized that collective security was not only possible but desirable. Unfortunately, the advent of the Cold War and the Soviet Union's veto power in the Security Council prevented the U.N. from ever developing an effective force to maintain international peace and to help prevent regional conflicts. But today, the establishment of a standing U.N. military force with contributions from nations around the world is a real possibility.

A well trained, well-led, multinational army makes good sense for America. It would spare the United States the empty choice between standing on the sidelines during international emergencies like that in Bosnia or going in alone to act as world policeman, a role we can no longer afford to play. At the same time, with our own veto on the Security Council, we would not surrender the ultimate power over the commitment of our national forces.

The creation of such a force can only happen, however, if the United States takes an active leadership role at the U.N. I am very encouraged by recent statements by the administration, especially by those of our Ambassador to the United Nations, Madeleine Albright, that we are considering new initiatives in this area. It will also require us to push for internal reforms in exchange for our resumption of full and timely financial support of the world organization. By the same token, American leadership is the key to establishing an effective regime to stop the proliferation of dangerous weapons of mass destruction around the world.

The director of the C.I.A. Jim Woolsey has identified weapons proliferation as the most serious long-term threat to our national security. This was the same conclusion I reached after serving six years as Chairman of the Senate Select Committee on Intelligence. It is easy to see why -- 23 nations are said to have or to be developing missile delivery capability. Five to eight more are said to be developing nuclear weapons, fifteen are thought to have chemical weapons and eight have biological warfare programs.

In many ways, the threat of future weapons proliferation is even more alarming than the nuclear standoff between the superpowers ever was. During the Cold War, there was at least the presumption that the U.S. and the U.S.S.R. would act rationally and that this "delicate balance of terror," as some called it, would prevent nuclear war.

There is no reason to believe that we can count on the same level of rational calculation from those who are now obtaining dangerous weapons and delivery systems.

In 1952 the Truman Administration endorsed a proposal for a United Nations Disarmament Commission to develop plans for dismantling nuclear weapons and guarding or peacefully converting fissionable material. It is time for President Clinton to seize the initiative and to revive Truman's bold plan.

An effective nonproliferation regime would include comprehensive verification and inspection procedures. It would be backed up by a good intelligence capability, which we can help provide to the U.N. It would also require the use of all possible tools of enforcement, including economic sanctions and, in the rare case, even military action.

But first the United States must confront its own policies in a way that might have been unthinkable even five years ago. We must decide how many nuclear and other weapons we truly need. How much long-range missile capacity is necessary? How much outside inspection of our own capabilities we will allow? Only when we have honestly faced these questions will we be able to make credible non-proliferation proposals to others. That is why a decision now to continue the moratorium on underground nuclear testing is so important and why we should help cause others to follow suit by announcing a "no first test" policy. We must not be the first to open the floodgates.

A recent series of meetings which I had with leaders in Pakistan, India, and China brought that point home to me. The conversations proceeded something like this: Pakistan expresses its willingness to do without some weapons -- but only if India will. India will agree if China agrees. China will consider some disarmament if the U.S. and Russia will do so as well.

But there is a simple lesson here. As the world's sole remaining superpower, if we do not set the example, we will have neither the practical nor the moral leverage to persuade other countries to behave responsibly.

American foreign policy at this critical juncture can not be limited to an ad hoc series of reactions, even intelligent ones, to world crises. Our leaders must be architects as well as capable trouble shooters. If we fail to plan ahead, to take on the task of building a truly viable "new world order," history will hold us accountable.

One day, our children and grandchildren will ask us what we did when we had the chance to make a difference. Let us be able to answer them in good conscience that we have done our best to leave them a safer and better world.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

June 30, 1993

ACTION

MEMORANDUM FOR WILLIAM H. ITOH

THROUGH: ROBERT BELL RGB

FROM: KEITH HAHN KH

SUBJECT: Defense-Proposed Report on H.R. 291

Attached at Tab II is a Defense-proposed response on H.R. 291, a bill to amend Title 10, United States Code, Missing Service Personnel Act of 1993. We have reviewed the draft response and concur.

Concurrence: Jeremy Rosner

RECOMMENDATION

That you sign the memo to Ronald Peterson at Tab I.

Attachments
Tab I Memo to Ronald Peterson
Tab II Incoming Correspondence

4800

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

MEMORANDUM FOR RONALD K. PETERSON

FROM: WILLIAM H. ITOH

SUBJECT: Defense-Proposed Report on H.R. 291, Missing Service Personnel Act of 1993

The National Security Council Staff has reviewed and concurs in the DOD-proposed response.

4800

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

SPECIAL

June 24, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-731

TO: Legislative Liaison Officer -

JUSTICE - Faith Burton - (202)514-2141 - 217
NSC - William H. Itoh - (202)395-3723 - 249
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 226

FROM: RONALD K. PETERSON (for) Ronald K. Peterson
Assistant Director for Legislative Reference

OMB CONTACT: MIKE GOAD (395-7301)
Secretary's line (for simple responses): 395-6194

SUBJECT: Defense Proposed Report RE: HR 291, Missing Service Personnel Act of 1993

DEADLINE: MONDAY, July 12, 1993

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
T. Stanners
K. MacIntyre

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is **simple** (e.g., concur/no comment) we prefer that you respond by **faxing** us this response sheet. If the response is **simple** and you prefer to call, please **call the branch-wide line** shown below (NOT the analyst's line) to leave a message with a secretary.

You may **also respond** by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please **include** the LRM number shown above, and the **subject** shown below.

TO: MIKE GOAD
Office of Management and Budget
Fax Number: (202) 395-5691
Analyst/Attorney's Direct Number: (202) 395-7301
Branch-Wide Line (to reach secretary): (202) 395-6194

FROM: ________________________________ (Date)

________________________________ (Name)

________________________________ (Agency)

________________________________ (Telephone)

SUBJECT: Defense Proposed Report RE: HR 291, Missing Service Personnel Act of 1993

The following is the response of our agency to your request for views on the above-captioned subject:

________ Concur

________ No objection

________ No comment

________ See proposed edits on pages ________________

________ Other: ________________________________

________ FAX RETURN of _____ pages, attached to this response sheet

DRAFT FOR OMB A-19 REVIEW

The Honorable Ronald V. Dellums
Chairman, Committee on Armed Services
United States House of Representatives
Washington, D.C. 20515-0001

Dear Mr. Chairman:

This is in response to your request for Department of Defense views on H.R. 291, 103rd Congress, a bill "To amend title 10, United States Code, to establish procedures for determining whether members of the Armed Forces in a missing status or certain civilian officers and employees are deceased, to require certain information to be kept in the personnel files of such persons, and for other purposes."

H.R. 291 attempts to ensure that missing members of the Armed Forces or civilian officers or employees accompanying an armed force in the field are fully accounted for by the Federal Government and not declared dead solely because of the passage of time. The bill would enact into law some current military regulations regarding the status of missing persons and establish an extensive hierarchy of inquiries and review board procedures regarding missing persons, to include review in the Federal Circuit Courts. The bill would also require the Secretary concerned to convene a board of inquiry in any case involving a presumptive finding of death made before the enactment of this bill upon the written request of any member of the immediate family of the person concerned.

The Department of Defense strongly objects to this legislation. H.R. 291 appears to be grounded on the erroneous impression that missing personnel can virtually always be fully and accurately accounted for. Such is not the case, especially in incidents involving combat operations and losses at sea. Several of the proposed requirements are impractical and others are unnecessarily redundant in that they provide rights which have been accorded by Service regulations since 1974 (McDonald v. McLucas, 371 F. Supp. 831 (S.D.N.Y. 1974)). Moreover, in some instances the bill actually provides less due process than that already provided by regulation.

The procedures required under Section 3 of this bill fail to fully appreciate the value of the temporary casualty status "Duty Status-Whereabouts Unknown" (DUSTWUN) that each Service has implemented for use during both hostile and non-hostile operations and that worked exceedingly well during Operation DESERT STORM. The commander places a member of the organization who appears to be absent for reasons other than their own free will (i.e. not absent without leave) in the DUSTWUN status for up to 10 days while conducting an investigation to determine the member's true status of missing in action, captured or deceased. The bill's requirement that the general court-martial convening authority appoint a Board of Initial Inquiry within 45 days in an overseas theater, at sea, or in a combat zone where the family has no access and where the commander often will be unable to investigate the geographic area of loss because it is not in U.S.-controlled territory is of questionable value. The time and place to review the adequacy of the search and rescue effort, to analyze the intelligence collected, and to conduct forensic examinations of remains recovered clearly is not during the conduct of combat operations, and not on the battlefield. The restriction on identification of recovered remains to "licensed practitioners of forensic medicine" is not realistic. The expertise of many disciplines other than medicine is appropriate and necessary. We strenuously object to imposing such a requirement on commanders especially during combat operations when losses may be great and occur rapidly. In mass casualty situations it could simply become impossible to meet the administrative burdens imposed by this bill.

Requiring a Board of Inquiry approximately 45 days into the missing status which could find the missing member to be deceased without the recovery of remains or other conclusive evidence of death, actually affords the missing person less protection than currently provided by the Missing Persons Act, title 37, USC. For example under title 37, once reported missing, the missing member would remain in this status for at least 1 year unless conclusive evidence of death is received by the Service. One year is a reasonable amount of time to elapse before the Service can "presume" a service member and certain civilian employees to be deceased. If a member's actual casualty status cannot be determined within the initial 10-day period, it is unlikely that this will occur within 45 days, unless conclusive evidence of death is received. For example during the Southeast Asia conflict, many aircrew members were carried in a missing in action status for more than 2 years before it could even be confirmed that they were captured (POW). Conducting the initial board within 45 days would often negate the effective participation of family members who, in our experience in such matters, often take a personal and active role in status reviews.

In addition to the Board of Initial Inquiry within 45 days, the bill would require a Board of Further Inquiry at 12 months, a reconvened Board of Further Inquiry 3 years later, and, apparently, at 3-year intervals thereafter until such time as there is either sufficient evidence to support a determination of death or 50 years have passed. The bill specifically precludes a death determination made solely on the passage of a period of time less than 50 years.

This bill presents the clear probability that a great many cases could be kept open for 50 years with review boards every 3 years even when there is no new evidence to consider. This is a patently unrealistic requirement which would impose an economic drain (active duty pay and benefits would continue to accrue to the missing person's account) and be an impossible administrative burden.

Under the Missing Persons Act and current Service regulations, the Secretary of the military department concerned is required to conduct a status review at the end of 12 months in a missing status. If, as a result of that status review, the member is continued in a missing status, later reviews are made "when warranted by information received or other circumstances" (37 USC 555(a)). This procedure has proven to be eminently reasonable, provides for participation by family members, is fully compliant with federal court decisions, and permits both the government and family members the opportunity to bring matters to an effective closure. In our experience most families want closure within a reasonable time and expect a fair settlement of financial matters. This bill raises the specter that some parties might choose to deliberately oppose case resolution solely for pecuniary reasons.

In addition to the objections already stated, the process would be vastly complicated by the proposed availability of direct review by the federal Courts of Appeal. Individuals already have access to United States District Courts. Therefore, reviews by the Courts of Appeal seem unreasonable unless the plaintiff has proved the U.S. Government acted prematurely or capriciously in the decision, or the next of kin were not afforded rights in accordance with McDonald v. McLucas. In the case of Hopper v. Carter, 572 F.2d 87 (2d Cir. 1978), the United States Court of Appeals for the Second Circuit concluded:

"There is nothing that the government of a grateful people can ever do to fully compensate or comfort the next of kin of those who have given 'the last full measure of devotion,' and for whom there is no hope of return. But it is beyond dispute that the government now provides every opportunity for the discovery and consideration of any evidence militating against a determination of death. The conclusion is inescapable that the measures taken by the government suffice to defeat any claim that the constitutional rights of the plaintiff are being or may be violated."

Current Service regulations require that whenever a missing in action (MIA) status determination is made, it cannot be changed to killed in action (KIA) without advising next of kin (those in receipt of governmental financial benefits which could be terminated by the member's status being changed to deceased) of certain rights. This includes the date a status review is to be held and of their opportunity to attend the review hearings with private counsel if they choose. Status review boards are not adversary meetings nor are they similar to court-martial proceedings. Hence, the need for counsel or an attorney ad litem to represent the missing member at status review boards is not recognized, and further, could conflict with next of kin desires to secure their own counsel. The next of kin are also provided reasonable access to information on which the review is based and given an opportunity to present information they consider relevant. Military regulations do not provide or imply that missing persons should be declared dead based solely on the passage of time. The facts and circumstances surrounding the member's loss and any subsequent information received are the basis for continuation in a missing status or for changing the member's status to deceased.

Our regulations follow the procedural and substantive requirements set forth in McDonald v. McLucas. H.R. 291 would dilute the current rights afforded the primary next of kin in what appears to be an attempt to provide additional rights to other relatives. These rights are provided to next of kin who are receiving financial benefits, most often spouse, children or dependent parents. The proposed bill extends rights to all members of the immediate family defined as spouse, child, parent and siblings. It is important that a clear order of priority be established and maintained among next of kin to avoid competing claims. Spouses, parents, children, and siblings do not always agree. It would be neither wise nor equitable to grant to brothers or sisters rights equal to those of a spouse or child.

In addition to the basic rights set out above, Service regulations include procedures tailored to the combat circumstances of the different military departments. In the Air Force, for example, the members of the status review boards for personnel missing from the Southeast Asia conflict were required to be colonels and rated (flying) officers who served a combat tour in Southeast Asia. The bill inappropriately mandates specific board membership requirements, which in some cases would be very difficult to meet within the time limits imposed. In the case of missing civilians, the best that could be done would be a board member familiar with the occupational specialty of the missing person. In small, critical occupational specialty groups, the effect of board participation would be to compound the initial loss. This would be unacceptable during combat actions. The Services should retain discretion to tailor board membership.

H.R. 291 is intended to have retroactive effect. It requires that, upon request of any member of the immediate family, a Board of Further Inquiry be convened to review any case concluded before enactment of this legislation. Because the only limitation on this provision is the requirement for submission of a request by a member of the immediate family, the bill provides a statutory right to board procedures for potentially thousands of cases, dating back at least to World War II. Such an undertaking could be enormously expensive, totally disruptive to current accounting efforts, and, considering the passage of time, provide no reasonable prospect that the evidentiary and procedural standards of this bill could be met. This review would be available notwithstanding the absence of any evidence that the original determination was incorrect. This provision is not needed. In any case where there is evidence that the original status determination was erroneous or unjust, the Boards for Correction of Military/Naval Records already exist and have jurisdiction to act (10 USC 1552). Should this provision for retroactive review be enacted, it would be imperative to amend it to ensure that the missing person does not accrue pay and allowances during the review process.

Finally, the drafting of many provisions in the bill leaves uncertainty as to their purpose or scope. For example, section 2 refers to accounting for individuals "serving with or accompanying an Armed Force in the field under orders." The term "in the field" could be applied to a National Guard unit training in the United States as well as to a regular unit on active duty participating in an armed conflict abroad. Further, the term "accounted for" should not be used interchangeably with the legal status of "missing in action" or "prisoner of war." Status confers legal and financial benefits; "accounting" generally refers to the U.S. Government's commitment to achieving the fullest possible accounting of persons believed to have been killed, to include recovery of remains whenever possible and obtaining for the family members all information available concerning an individual's loss.

As other examples of unartful drafting, we note that there are no conforming amendments to title 5, subchapter VII, Payments to Missing Employees, and that section 3 makes the personnel file of a missing person available to any member of that person's immediate family. This is in clear conflict with the Privacy Act of 1974, 5 U.S.C. 552a(b) (1982). It is not clear whether preemption of the Privacy Act was intended in this instance, but that would be the effect. We would strongly oppose that result.

The military Services do compile a complete casualty file on all missing persons. For the Southeast Asia missing and unaccounted for, the casualty file contains all available information on their disappearance and is made available to primary next of kin. Where material cannot be fully declassified, a sanitized copy of the material is furnished. By special arrangement, the primary next of kin may be permitted to view, but not copy or possess, classified materials as well.

A further matter of critical concern, both from the perspective of operational security during continuing hostilities and the privacy interests of missing members and their families, is the mandate for open hearings. One of the most difficult aspects of casualty handling is guarding the privacy of the missing person and their family to avoid exploitation by the enemy, insensitive media, and unscrupulous entrepreneurs. Open board hearings, particularly during conflict, are inadvisable at best and extremely hazardous at worst. It is essential that personal and operational information not fall into enemy hands as it can be used against the missing person if captured. This occurred recently in the Persian Gulf War when spouses began talking to the media about their husbands only to learn later that they were POWs. There are also situations not involving continuing conflict when divulging information could be detrimental to the family whose privacy is lost or disregarded. Public hearings, as a matter of course, are not in the best interest of either the missing member or the family.

The Department of Defense is not opposed to conducting a review of our regulations and giving full consideration to amending inadequate or what some think to be unfair procedures. However, in our judgment, the proposed legislation is unrealistic and unworkable. Its passage would create far more difficulties than it would resolve. It would be a serious detriment to handling the cases of missing persons in a manner carefully designed to serve the public interest while fully and fairly protecting the interests of the individual involved and the next of kin.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9304890
RECEIVED: 30 JUN 93 20

TO: ITOH

FROM: SHERFIELD, M

DOC DATE: 30 JUN 93
SOURCE REF:

KEYWORDS: DEFENSE POLICY

PERSONS: DUETCH, J

SUBJECT: DUAL ABSENCE OF SEC & DEP SECDEF ON 3 - 9 JUL

ACTION: FOR RECORD PURPOSES   DUE DATE: 03 JUL 93   STATUS: C

STAFF OFFICER: NONE   LOGREF:

FILES: WH   NSCP: CODES:

D O C U M E N T   D I S T R I B U T I O N

FOR ACTION	FOR CONCURRENCE	FOR INFO
		BELL
		GOTTEMOELLER
		HAHN
		JONES

COMMENTS:

DISPATCHED BY ______ DATE ______ BY HAND W/ATTCH

OPENED BY: NSWEA   CLOSED BY: NSWEA   DOC 1 OF 1

UNCLASSIFIED

4890

OFFICE OF THE SECRETARY OF DEFENSE

WASHINGTON, DC 20301-1000

30 JUN 1993

MEMORANDUM FOR EXECUTIVE SECRETARY, NATIONAL SECURITY COUNCIL

SUBJECT: Dual Absence of the Secretary and Deputy Secretary of Defense

The Secretary of Defense will be in Wisconsin 3-9 July 1993. The Deputy Secretary of Defense will depart Washington, D.C. on Wednesday, 7 July at 1000 for Homestead AFB, Florida and will return to Washington at 1915 on the same day.

Accordingly, during the following period of time, the official indicated will be the Acting Secretary of Defense:

Date/Times	Acting Secretary of Defense
1000-1915, Wednesday, 7 July	Honorable John Duetch Under Secretary of Defense (Acquisition)

Michael B. Sheffield
Executive Secretary

cc: SecDef
DepSecDef
SecArmy
SecNavy
SecAF
USD(A)
DoD GC
Dir, WHMO
CJCS
NMCC
OSD Cables

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

June 30, 1993

INFORMATION

MEMORANDUM FOR WILLIAM H. ITOH

FROM: ROBERT BELL RGB

SUBJECT: Request for Comments on the President's Acceptance of the Ellis Island Congressional Medal of Honor

As I mentioned on the phone, I reviewed this issue (Tab A) and communicated by phone to Bill Burton in Mack McLarty's office my view that it would be a mistake for the President to accept this so-called "Medal of Honor." Bill Burton said that this was the unanimous view throughout the White House and that the President would not be accepting the award. That message will be communicated to the sponsors of the medal, and no further action is required.

Attachment
Tab A Incoming Correspondence

→ NSC Directory

4704

From the Office of the Chief of Staff

Phone: 202/456-6797 Fax: 202/456-1121

Date: June 21, 1993
Response needed by:
COS Office Contact: Bill Burton

	Action	FYI		Action	FYI
Rahm Emanuel			Howard Paster		
Mark Gearan		XXX	John Podesta	XXX	
David Gergen		XXX	Jack Quinn		
Jack Gibbons			Carol Rasco		
Marcia Hale	XXX		Bob Rubin		
Alexis Herman		XXX	Eli Segal		
Nancy Hernreich	XXX		George Stephanopoulos		
Tony Lake	XXX		Christine Varney		
Bruce Lindsey			David Watkins		
Katie McGinty			Maggie Williams		
Regina Montoya					
Roy Neel		XXX			
Bernie Nussbaum					
Leon Panetta					

Remarks:

Mack received the attached material from Hershel Gober at Veterans Affairs recommending strongly against the President's acceptance of the so-called "Ellis Island Congressional Medal of Honor." Mack would appreciate any thoughts/information anyone has on this issue -- and certainly should be advised before any steps are taken contrary to Hershel's advice.

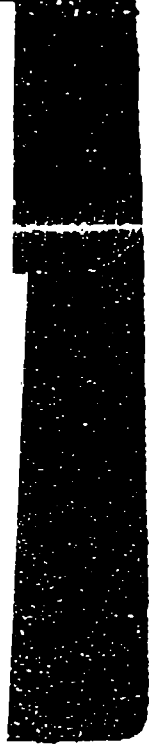
Response:

VILLAGE VOICE - MAY 18TH 1993 - TEL 475-3300

The Deputy Secretary of
Veterans Affairs
Washington DC 20420

Mack - Attached is more information on why I think the President should not accept this medal.

Hersh



FRED W. McDARRAH

rport to honor.

TAKEN FOR A RIDE

Bill Fugazy's 'Medal of Honor' is Just One of His Shams

By Wayne Barrett

This Sunday on Ellis Island, Bill Fugazy, grandson of an immigrant, bankrupt ex-limo tycoon and perpetual friend of the powerful and prominent, will prove once again that America is the land of opportunity, especially of imaginative commercial opportunity. For the fourth time, he will hand out 100 or so Ellis Island Congressional Medals of Honor to recipients ranging from Chrysler Chairman Robert Eaton to New York First Deputy Mayor Norman Steisel, and people will pay up to $15,000 a table to join a ceremonial dinner hosted by Fugazy that is supposed to be a celebration of the ethnic diversity of American greatness.

Until a few days ago, President Clinton himself was expected to come, which would have made him the third sitting president (and sixth overall, going back to Nixon) to receive the bronze medal displaying the Statue of Liberty and the Ellis Island Museum. What few, if any, of the 340 recipients in 1986, 1990, and 1992, or those who agreed to accept the medal this year, understand is that the award, like the man who invented them, is a sham.

While Fugazy, the tireless 68-year-old self-promoter, has alternated over the years in his own description of the awards, sometimes calling them "congressional medals" and sometimes just plain medals, he has consistently claimed that they have been "sanctioned by Congress." In fact, every time a resolution authorizing the awards has been introduced in Congress, it has died in committee. Steve Mangione, a spokesman for Fugazy, told the *Voice* that the reason Fugazy has made claims of congressional sanction is because the winners' names "have always been read into the congressional record," a perfunctory and commonplace process if true (in fact, the *Voice* could only find a full listing of winners in 1992).

Elliott Williams, a Vietnam veteran from North Carolina who heads the national association of real winners of the Congressional Medal of Honor, blasted Fugazy's imitation medal in a *Voice* interview, saying it is "insulting to the legitimate recipients" who "risked their lives" in combat. Told that a Fugazy-published magazine called *The Forum* has routinely referred to the Fugazy award as a "congressional medal," Williams vowed that his society, which he says includes the 204 living recipients of the medal actually awarded by the president, will "take the appropriate steps to end this disrespect." Last week, Williams wrote Clinton blasting Fugazy's "purported medals" as a "disgrace," charging that they were being given out "to enhance the success of a dinner."

Similarly, though the Fugazy organization that sponsors the ceremony and dinner, the National Ethnic Coalition of Organizations (NECO), has been repeatedly instructed in writing by the Statue of Liberty/Ellis Island Foundation that it is not to use Foundation, the logo remains and the glossy brochure for the current event still boldly proclaims that the awards are granted "with the sanction of" the Foundation. As far back as October 1990, Foundation president Steve Briganti wrote Fugazy an unambiguous warning: "We do object when you . . . make it appear that the Foundation sanctions or sponsors the Medals—we do not." Indeed, though the Foundation sent copies of NECO newspaper ads to the group with the sanction claim crossed out in July 1991, a *Daily News* ad last month still contained the same censored language.

If those who have supported the event over the years, buying hundreds of thousands of dollars of dinner tickets, thought the proceeds were going to the restoration of the island, they were sadly mistaken. Pat Zitko, the spokesperson for the Foundation (which raises funds for and oversees the restoration of the island), says that not one cent of the funds raised at the awards events "has ever gone" to Ellis, adding that the Foundation "has nothing to do with the event" and "no idea what happens to the money."

In fact, NECO—which is nothing more than a loose amalgam of dozens of other organizations and operates out of Fugazy's Madison Avenue office—used most of the $288,000 it grossed on the December 1990 dinner, as well as the nearly $50,000 in additional contributions raised in 1991, to cover its own administrative costs. While NECO has yet to file a statement with state agencies for with the 1990 dinner, as well as expenses of $24,000 a year for a public relations consultant, $28,000 for a professional fundraiser, a $12,000-a-year sublet of Fugazyspace (which Fugazy claims is a bargain), $14,000 in conference costs, and $20,000 for "outside help."

NECO has never explicitly claimed that the proceeds from the event go to the island's restoration. Instead, one artfully worded promotional statement says only that ticket and journal ad purchases "benefit NECO, which is proud to have raised over $1 million for the Statue of Liberty/Ellis Island Foundation." The reference, often cited in NECO literature, is to a campaign that was completely separate from the medals ceremony—namely when

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SOLICITING TROUBLE

Bill Fugazy's National Ethnic Coalition of Organizations, the prime sponsor of the Ellis Island medal, is hardly the only Fugazy nonprofit out there raising big bucks, or even the only one associated with the medals. Fugazy's promotional literature describes two other organizations—the Coalition of Italo-American Associations and the Forum Club—as sister organizations also involved with the medals.

While both groups have been involved in one form of fundraising or another for years, state records indicate that neither is registered as a charity. Though NECO is current with its required state disclosure filings, the Coalition has been so negligent its registration was canceled in 1990 by Secretary of State Gail Shaffer.

It has also failed to file required disclosures with Attorney General Robert Abrams since 1985, though *Voice* inquiries sparked an April 30 letter from Abrams's office, which were followed by partial filings the day before this story closed. The last-minute filings, however, only covered up to 1989. A Coalition official, Richard Grace, contended in a letter to the *Voice* that the organization only learned "late last year" about the delinquent filings, though letters addressed to Grace warning of fines were sent to him by Abrams in 1991 and early 1992. Grace also claimed that preparation on the sudden rush of Coalition filings predated *Voice* inquiries.

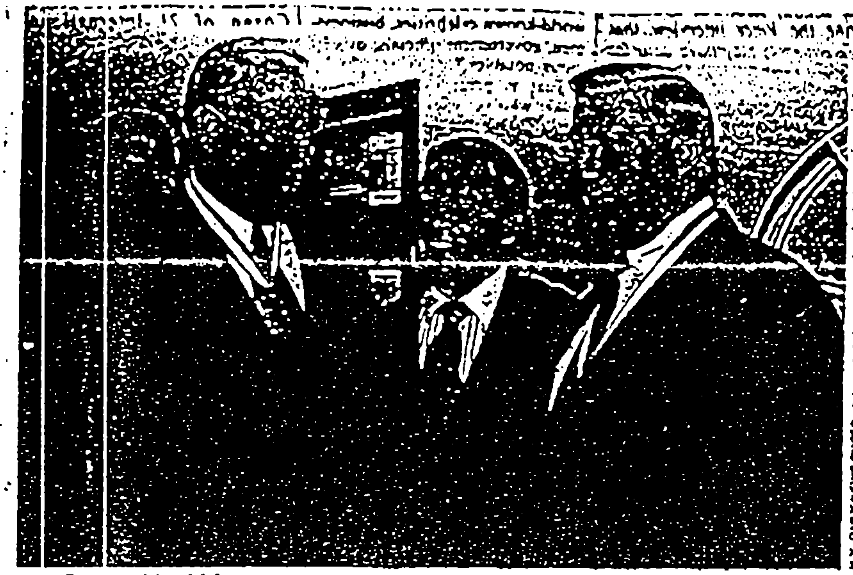
Shaffer's formal notice of cancellation on January 3, 1990, advised the Coalition that "any further solicitation of funds is in violation of the Executive Law and subject to the penalties provided therein," but the organization went right on hosting its annual dinner dance at the Waldorf Astoria. While IRS officials indicate that the organization appears to have made the submissions it requires, its failure to file with the two appropriate state agencies means that there is no immediately available public record of the organization's finances and expenditures (which amount to approximately $270,000 a year). Though required by law to make their annual financial returns available for any citizen to inspect, Fugazy's office declined to allow the *Voice* to examine the Coalition's (or those of any other Fugazy entity). A lawyer for the organizations, Vincent DeLorio, instead wrote a threatening letter to the *Voice* that simply asserted that the organization is "duly authorized to conduct business in the State of New York" and "is in good standing."

Despite the state's bar on

it, like many other citizen groups, sold the right, at $100 a pop, for any family to buy space and have its name inscribed on the island's Immigrant Wall of Honor. While the Foundation has raised almost $42 million selling these wall placements, mostly to Ellis visitors, NECO raised $757,000 over a six-year period ending in 1992. Wall sales is all, Zitko says, that NECO has contributed to the island. Though the organization has acted as just a solicitor and pass-through for wall donors, an appreciative Zitko is quick to note that it has sold more placements than any other group.

Fugazy created the awards in 1986, while serving as the chair of the New York State Statue of Liberty Centennial Commission, a post he was appointed to by his longtime friend Mario Cuomo. The original awards, which did involve the Foundation more directly, were announced in response to an outcry from Fugazy and others over the lack of ethnic diversity among the 12 recipients of Liberty Medals awarded by President Reagan during the July 4 festivities. Senator Al D'Amato and congressman Mario Biaggi, both of whom have long been closely associated with Fugazy, sponsored resolutions endorsing the medals that year, but Senate records indicate that the concurrent resolution died in the Judiciary Committee.

D'Amato, whose 1986 campaign periodically paid Fugazy Express for limo service, had previously been accused by United Nations officials of personally intervening in the award of a lucrative UN travel contract to try to steer it to Fugazy. While D'Amato, Cuomo, and the governor's wife ultimately got medals them-



N.Y. DAILY NEWS PHOTO

Fugazy with 1992 medal winners Norman Schwarzkopf and George Steinbrenner.

selves, Biaggi, who then was just months away from his first of two widely anticipated and publicized federal indictments, did not. Fugazy remained so close to the two-time convicted felon that he led a rally in Biaggi's support in 1988, hosted a welcome-home party for him when he got out of jail in 1991, and included the ex-congressman on the dais of the annual dinner dance of another of his "charitable" organizations, the Coalition of Italo-American Associations, in 1992. Biaggi was just one of several felons listed at that event—including Andy Capasso and former city transportation commissioner Tony Ameruso.

Fugazy's first link to the Foundation was Lee Iacocca, its founder and current chair emeritus, who has been a close friend of Fugazy's for more than 30 years. Their relationship was apparently a key to Fugazy's ability to get Iacocca's successor at the Foundation, William May, to play an active role in the 1986 awards event. Fugazy insists, through a spokesman, that May is still a member of NECO's executive committee, and that the Foundation, despite its paper trail of objections, is "deeply involved" in the awards activities (the Foundation did contribute $70,000 to NECO in 1990–91). But Zitko says that having "no problem" with the awards is a far cry from sanctioning them. Though Iacocca, May, Briganti, and two other Foundation officials have received medals, and though May has been present at medal activities in the '90s, the Foundation insisted in letters to Fugazy that these signs of "personal involvement" do not "imply the Foundation's sponsorship or sanction."

Though the Foundation did grant access to island facilities for the first two award ceremonies, it has not done so since 1990 for technical reasons. Instead, the National Park Service director on the island, Anne Belkov, gave Fugazy a permit in 1992 and 1993. While the 1993 permit for an evening event is now standard NPS practice (NECO will pay $6000 for the use, like any other group), Belkov acknowledges that NECO was the only group allowed to use the island for a daytime function when it hosted the medals there in April 1992. Asked why she approved the unique NECO use, Belkov said: "I was ordered to by then interior secretary Manuel Lujan"—another medal winner.

In addition to Fugazy's misleading claims about the medals, the awards have also been plagued by narrow commercialism. Fugazy did not resurrect the medals until hit by what appeared to be insurmountable personal and financial problems in 1989 and 1990 (prior to that, the problems in his checkered career had merely seemed enormous). Since then, and to a degree even as far back as 1986, he has not hesitated to exploit the medals for his own purposes, including awarding them to at least 25 honorees with apparent business ties to the various Fugazy firms (Fugazy's defense to this charge is simply that he is not "a committee of one" and that NECO names the recipients). NECO's penchant for selecting, from supposedly hundreds of nominees, business leaders connected to Fugazy interests has cheapened the medals, though it has passed unnoticed in the press.

The awards were revived six months after a jury in a federal civil racketeering lawsuit found Fugazy guilty of four separate acts of fraud—wire, mail, bankruptcy, and securities. The jury awarded a $46 million judgment against Fugazy to billionaire John Kluge, who contended in the lawsuit that his longtime friend had deceived him into buying Fugazy Express with false financials and a host of misleading claims. By July 1990, the Kluge verdict had sent Fugazy—whose prior history of 122 reportedly unpaid judgments stretched for more than a decade and reached a $19 million tally—into personal bankruptcy.

A suddenly destitute Fugazy reported in bankruptcy court that he actually owns virtually nothing, including none of the four homes—a Florida condo, two country estates, and an east side Manhattan apartment—that had once appeared to be his. A longtime business associate of George Steinbrenner, Fugazy even contended that the World Series ring he wears is really owned by his son John, a Yankee marketing director. With even his meager $100,000-a-year salary partially garnished by taxing authorities, Fugazy in recent years has subsidized his lavish lifestyle through the expense accounts of Fugazy business entities, including several owned by his children.

According to legal papers, Fugazy family companies cover the cost of a cook, housekeeper, and secretary in one country home, as well as pay for Fugazy's membership in three country clubs: the New York Athletic Club, the Columbus Club, and the Metropolitan Club. Restaurant tabs at a half dozen of Manhattan's best are also covered by the companies, as are his burgeoning legal fees and his constant transport in a Fugazy limo. An attorney for the companies, David Kaufman, told the *Voice* that these are legitimate business expenses because "Bill Fugazy spends 24 hours a day, seven days a week, 365 days a year doing nothing but business—everything except the few hours of legal action. Kaufman conceded during the *Voice* interview that the companies may have paid for personal Fugazy items that could not under any circumstances be seen as business-related, including toys Fugazy bought for his grandchildren. But the companies are taking the position that the cost of these personal items is more than offset by the tax garnishes on Fugazy's salary, which, strangely enough, Kaufman says have been unfairly assessed against Fugazy personally, when they should have been a liability of the businesses. State tax warrants against Fugazy personally total a current $4.1 million, including more than a million in warrants already filed when the governor installed him at the head of the centennial commission, while the IRS has a $288,000 claim against him.

These Fugazy businesses, ranging from a new limo company to lobbying and consulting firms, have conceded in the current Kluge litigation that they depend largely on the contacts cultivated by the senior Fugazy, though they are usually run by Fugazy's youngest son, Roy. In a recent deposition, Roy justified the exorbitant expenses the companies pay for his father by arguing that Bill Fugazy "means everything" to the family business "with respect to its promotions, PR, sales, marketing," adding that he "is the person that people most readily identify with through his contacts." Contending that the senior Fugazy's "high profile sustains" the family businesses' "very existence," Roy insisted, in the words of his lawyer, that his companies were viduals and entities, most of them world-known celebrities, businessmen, government officials, or religious notables."

That is precisely the sort of folks who've won Ellis Island medals. And that may also be why the one-page promotional résumé for the senior Fugazy features his work with NECO and two other nonprofit entities, even taking the space to list 14 winners of what it calls the "Congressional Medals of Honor."

In any event, Fugazy has managed to smartly mix the honorees with business ties to his family firms inside a larger universe of widely recognized, and even acclaimed, winners like Terry Anderson, Chicago Cardinal Joseph Bernardin, Cesar Chavez, Walter Cronkite, Coretta Scott King, General Colin Powell, General Norman Schwarzkopf, FBI director William Sessions, and Elie Wiesel. This has made the award valuable to the businessmen Fugazy courts, including these winners whose companies have been identified as clients of Fugazy firms by Fugazy sources in depositions, legal papers, or disclosure statements:

- Guy Snowden, chair of GTECH, the scandal-scarred lottery management firm that Roy Fugazy lobbies for in Albany;
- Abraham Gosman, president of the Mediplex Group Inc., the health care company for which a Fugazy firm is also registered to lobby at the city and state level;
- George Steinbrenner, whose payments to a Fugazy family firm were apparently structured to at least help cover a vital Bill Fugazy Cosette Productions; Marshall S. Cogan of 21 International Holdings;
- Robert L. Crandall and Jerry R. Jacob of American Airlines, which reportedly paid Fugazy a fee for securing a Rome route;
- Bob Hope of Bob Hope Productions, who was featured in Fugazy TV commercials;
- Dr. Harvey Schiller of the U.S. Olympic Committee (who denied a Fugazy tie in a *Voice* interview);
- Lee Iacocca, J. Paul Bergmoser, Gerald Greenwald, and Robert Eaton, current or former Chrysler officials whose business deals with Fugazy date back to Iacocca's arrival;
- E. Lawrence Bellante, a partner in the engineering firm of GSGS&B, which project-managed the Ellis Island restoration for the Foundation.

Besides these variously claimed clients, nine other medal winners have been described by Fugazy sources in legal papers, and other documents, as having done or attempted business deals with him:

- Donald Trump, who cosigned a major loan for Fugazy and paid him brokerage commissions on two real estate transactions (the ill-fated purchases of Trump Plaza of the Palm Beaches and Trump Palace in Manhattan);
- Howard Lorber, who bought 10 apartments in Trump's Palm Beach disaster, where Fugazy retained an interest;
- Alexander Haig, the former secretary of state who reportedly formed a partnership called Four Star with Fugazy and a major insurance provider;
- Maurice Greenberg of Ameri-
- Jon Hanson, former shareholder in Fugazy Express of New Jersey;
- Bill Simon, the Reagan Treasury secretary who once joined an unsuccessful Fugazy/Steinbrenner partnership that tried to buy Roosevelt Raceway in Long Island;
- Lew Rudin, the landlord at the company's east side apartment where Fugazy frequently stays;
- Tony Burgos, the longtime Cuomo aide whose largest lobbying contract was a half-share in the $20,000-a-month retainer a Fugazy firm won from GTECH;
- Zachary Fisher, whose family real estate firm was said by Roy Fugazy to have offered his father a job after his business collapse, and has reportedly paid Fugazy at least one commission.

Even John Kluge, who acquired Fugazy Express in 1985, won a medal before their 1987 falling out, as has NECO publicist Howard Rubenstein, who's helped keep Fugazy's name in the news for years. Of course the city and state officials Fugazy firms are paid to influence—from Cuomo to Mayor David Dinkins to Steisel—have also been named medal winners. John Brophy, the president of one new and controversial Fugazy client, Lockheed Information Management Systems Inc., told the *Voice* that he retained the Fugazy firm to help win a state contract after Bill Fugazy boasted to him of his close ties to Cuomo and state economic czar Vincent Tese, another medal winner.

With the PR and celebrity needs of his business activities in mind perhaps, Fugazy has also awarded medals to media giants

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pert Murdoch, and then *Daily News* editor Jim Willse. He's even included prosecutors like Manhattan D.A. Robert Morgenthau and then U.S. Attorney Andy Maloney, though ex-prosecutor Rudy Giuliani, whose mayoral campaign in 1989 featured Fugazy in a prominent fundraising capacity, declined the award this year.

Despite numerous suggestive findings in Fugazy civil cases of fraud and apparent forgery over the years, no prosecutor in town has ever taken a serious look at him. Though Giuliani installed Fugazy as the master of ceremonies and one of the cochairs of his first political fundraiser in the spring of 1989, he refused to comment when asked by the *Voice* if he'd ever become aware when he was a federal prosecutor of possible criminal allegations involving his longtime friend. In fact, Fugazy acknowledged in a Manhattan federal court proceeding as early as 1987 that he had improperly transferred a vital Federal Communications Commission license from the already bankrupt Kluge-owned entity, Fugazy Express, to one of Roy's companies, a finding that could've invited prosecutorial interest.

Giuliani's current law firm, Anderson, Kill, has represented Fugazy for years and is listed as a $1.7 million creditor in the bankruptcy. But the representation predates Giuliani's arrival and Giuliani was never involved. In fact the firm, which uses Fugazy limos and other services, is headed by Eugene Anderson, Morgenthau's brother-in-law. Fugazy has been active for years in Morgenthau's campaign finance committee.

Morgenthau is even listed as an officer of one of Fugazy's nonprofits, while a host of other prominent officials, including the governors of New York and New Jersey and all four U.S. senators from both states, are also name-dropped on the letterhead of these entities. While some of these officials told the *Voice* that they had not authorized the use of their names, others have frequently appeared at Fugazy's dinners and events as speakers and honorees, including Cuomo and Tese—apparently unconcerned about his outrageous record of state tax dereliction. Even the findings of a federal jury have deterred few from his embrace. A stark symbol of the political culture's indifference to values and its vulnerability to charm, Fugazy just seems to march on, a survivor of his own endless and dirty wars. ■

SOLICITING TROUBLE

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Coalition fundraising, Mario Cuomo attended the group's August 1990 dinner, where tickets went for $250 a person, and received its highest honor, the Hall of Fame award. Other state officials have participated in more recent Coalition affairs. A state tax warrant for $14,849 in unpaid withholding taxes was served on the Coalition this year.

There is some question about whether the Forum Club, which sponsors monthly "power lunches" attended by prominent business and political leaders, functions as a charitable or membership organization. The group's glossy journal, published monthly, advertises individual memberships at $500 a year and corporate memberships at $1000, suggesting that it functions as a private club—which would exempt it from public reporting requirements. Yet the same statement says the group was "conceived as a means of furthering civic and philanthropic activities," claiming specifically that it "raises funds for educational and life-enriching programs" from the "business community." Since the club has not filed as a charity—though DeIorio says its affiliates are "very actively engaged in a variety of charitable activities"—there is no public record of any donations or other financial support it may have provided. DeIorio claims, apparently accurately, that the Forum is registered as exempt with tax authorities (the club operates under three names, and one of them, Forum Metropolitan, is registered with the IRS and the state).

The only specific charitable activity cited in the Forum newsletter is a claim that the club, combined with NECO and the Coalition, is "committed to constructing a $1 million Inter-Group Relations Crisis Center" at John Dewey High School in Brooklyn, to be run by an organization called the Council for Unity. But council officials told the *Voice* that none of the organizations has yet contributed anything to the project, which has barely gotten off the ground.

While the Forum's philanthropic activities are unclear, its commercial usefulness is apparent. When two top state health officials appeared at the February power lunch as featured speakers, one was introduced by Mediplex president Abraham Gosman, a client of the Fugazy lobbying firm that is seeking state business. City transportation commissioner Lou Riccio, another recent speaker, was seated at lunch near Lockheed president John Brophy, a Fugazy lobbying client then negotiating a $200 million contract with Riccio's agency. In recent months, Fugazy has begun handing out Ellis Island medals to Forum speakers who won them in 1992 but did not appear at the awards ceremony. —W.B.

NEW YORK POST, TUESDAY, MAY 18, 1993

SO, SPEAKING of immigrants. If you were an Ellis Island Medal of Honor Awardee last Sunday and it was black tie, 65 degrees but 15 degrees colder on the Island, and it meant a boat ride, leaving by day, back at night, and it was rainy, and outdoors, what would *you* wear?

My husband, Joey, sat in a hat, raincoat and scarf. Cosmetics queen Tova (Mrs. Ernest) Borgnine wore floor-length slinky black and silver beaded Bob Mackie. One-time vice presidential candidate Geraldine Ferraro wore a short red suit with her husband's umbrella. Gloria Estefan, a white coat dress. "I didn't know what to put on," she told me. Penthouse mag publisher Kathy Keeton (Mrs. Bob) Guccione did a strapless pink ballgown, the skirt of which she carried schlepped up in her arms. Marathon racer Fred Lebow wore his racer's cap. Newswoman Rox Abrams featured a huge gray straw garden hat. Edward James Olmos' tux was as beautiful as his moustache.

George Steinbrenner had his barber specially come out to cut his hairs on Sunday. Someone said Steinbrenner nearly missed the boat "but it's OK because he could have walked over." Judith Lieber counted 35 ladies carrying her bags. Literary agent Mort Janklow, viewing the exhibit of pitiful baggage our ancestors came over with in the old days, said: "Look, Ralph Lauren luggage." Melba Moore said "Amen" after singing the Star-Spangled Banner. Archbishop Ted McCarrick threw in a prayer for weather, but no dice. The heavens opened.

John Zaccaro, Geraldine Ferraro's husband, cracked: "Bill Fugazy, the chairman of this, is Italian. If it had been a Jewish affair, they'd have put a tent over the whole thing."

Jay Leno, who had accepted the honor, never showed. Bill Clinton, who also accepted, asked that his be postponed. His Special Assistant Linda Moore told Bill Fugazy the Prez will come in next month to get it.

Howard Stringer, CBS exec who's Welsh and who nailed David Letterman, was excited when they hung the medal on his neck. He wore it home. The problem was, the thing bore the name of fellow Awardee, George Klein, a developer who's Austrian.

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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No. 1120

August Term, 1991

(Argued: April 24, 1992

Decided: DEC 17 1992)

Docket No. 91-7049

METROMEDIA COMPANY,

Plaintiff-Appellee,

- v. -

WILLIAM D. FUGAZY, TRAVELCO, INC., FUGAZY INTERNATIONAL CORPORATION, ROY D. FUGAZY,

Defendants,

WILLIAM D. FUGAZY, TRAVELCO, INC., FUGAZY INTERNATIONAL CORPORATION,

Defendants-Appellants.

WILLIAM D. FUGAZY, TRAVELCO, INC., FUGAZY INTERNATIONAL CORPORATION, ROY D. FUGAZY,

Third Party Plaintiffs,

WILLIAM D. FUGAZY, TRAVELCO, INC., FUGAZY INTERNATIONAL CORPORATION,

Third Party Plaintiffs-Appellants,

- v. -

JOHN W. KLUGE,

Third Party Defendant-Appellee.

KEARSE, Circuit Judge:

Defendants-third-party-plaintiffs William D. Fugazy ("William" or "William Fugazy"), Travelco, Inc. ("Travelco"), and Fugazy International Corporation ("International") appeal from so much of a final judgment, entered in the United States District Court for the Southern District of New York following a jury trial of consolidated actions before Robert L. Carter, Judge, as awarded plaintiff Metromedia Company ("Metromedia") a total of $46,661,792.67 in damages. The award included $15,553,930.89 on Metromedia's claim against William Fugazy, Travelco, and International for breach of warranty, the same amount against William on a claim under § 12(2) of the Securities Act of 1933 ("1933 Act"), 15 U.S.C. § 77l(2) (1988), and $46,661,792.67 in treble damages against William for violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq. (1988). On appeal, appellants contend that the district court improperly deprived them of a jury trial on the breach-of-warranty claim; William contends that Metromedia's other claims should have been dismissed as a matter of law and that the trial court erred in its instructions to the jury with respect to the fraud and RICO claims. For the reasons below, we reject appellants' contentions and affirm the judgment of the district court.

expressing an interest in purchasing Express, a radio-dispatche car business. After signing such a letter, Subotnick and hi staff began to explore the financial viability of Express, an conducted, inter alia, an audit, a market analysis, and a "du diligence" investigation.

Subotnick returned to Kluge with a report that, thoug "optimistic" about Express, advised against the acquisitio because Subotnick believed "this was not the kind of business w should be in." Kluge responded by having Subotnick inform Willia that Metromedia would not purchase Express. William urged Kluge to reconsider, however, and after additional analysis Subotnick and his staff concluded that Express was a potentially sound acquisition that could be made profitable with expanded operations and improved management.

As a result, on March 21, 1985, Metromedia and appellants entered into a Stock Purchase Agreement ("Agreement") pursuant to which Metromedia acquired newly issued common stock representing an 80% interest in Express. In exchange, Metromedia agreed principally to (1) pay $2,000,000 cash to Express or others on Express's behalf, (2) make a $4,000,000 subordinated loan to Express, (3) guarantee up to $3,000,000 in promotional advances from an automobile company to Express, and (4) cure any default on a loan previously made by Citibank, N.A., to William ("Citibank loan") in the original principal amount of $3,500,000. As discussed in greater detail below, the Agreement contained a section entitled "Representations and Warranties of Express and appeal dismissed for lack of jurisdiction, Nos. 92-5005, -5007 (2d Cir. Dec. 17, 1992).

B. The Present Actions

In April 1987, Metromedia commenced the first of the present actions, asserting claims against William, International, Travelco, and Roy Pugazy for misrepresentations and nondisclosure of material facts in connection with the issuance of the Express stock, in violation of, inter alia, § 12(2) of the 1933 Act, § 10(b) of the Securities Exchange Act of 1934 ("1934 Act"), 15 U.S.C. § 78j (1988), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, along with claims of common-law fraud, negligent misrepresentation, and breach of warranty. It sought, inter alia, $35,000,000 in compensatory damages and $250,000,000 in punitive damages. Defendants asserted various counterclai against Metromedia and brought third-party claims against Kluge, contending, inter alia, that he had entered into written agreements entitling them to contribution or indemnification for any judgment Metromedia might recover against them.

In 1989, Metromedia commenced a second action against William and Roy, alleging that they had engaged in, and conspired to engage in, a pattern of racketeering activity in violation of RICO, 18 U.S.C. § 1962(b)-(d). The complaint alleged that th predicate RICO crimes were bankruptcy fraud, in violation of 1 U.S.C. § 152 (1988); mail fraud, in violation of 18 U.S.C. § 1341 (1988); wire fraud, in violation of 18 U.S.C. § 1343 (1988); and with . . . Express in order to make Express's statement look better."

William and Roy admitted in the Pretrial Order that at the time William transferred the Express License to Roy, both had actual knowledge that Express was in bankruptcy. They admitted that the transfer was not authorized by the bankruptcy court.

At trial, in support of its securities fraud and RICO claims, Metromedia presented evidence that, inter alia, in January 1985, it had received by mail from Express financial statements for Express and one of its subsidiaries. Subotnick testified that these financial statements contained material misrepresentations on which Metromedia relied in deciding to purchase Express. In particular, a "Consolidating Income Statement for the 9 Months Ended Nov [sic] 30, 1984" showed Fugazy Express with a nine-month net loss of $2,683,256. While Metromedia's analysts speculated that the loss might perhaps be as high as $4,700,000, they did not anticipate that Express's eventual audited financials would in fact reveal a net loss of $9,912,802 for the fiscal year. Similarly, though appellants gave Metromedia an unaudited consolidated balance sheet as of November 30, 1984, which showed Express as having a net worth of $2,869,890, the audited balance sheet as of February 28, 1985, received by Metromedia months after the purchase was consummated, revealed a net worth of minus $5,530,468.

Prior to the purchase, Subotnick wondered whether Express might have liabilities or obligations that had not been disclosed.

there was no dispute that there were express warranties in th Agreement and that those warranties had been breached, an reading New York law as not requiring any other proof of relianc in such circumstances, the court granted Metromedia's motion for directed verdict as to appellants' liability on the breach-of-warranty claim.

In addition, the district court ruled that the Bankruptcy Court Decision collaterally estopped William from denying that he had engaged in bankruptcy fraud in violation of 18 U.S.C. § 152. That section makes it unlawful for any person "either individually or as an agent or officer of any person or corporation, . . . with intent to defeat the provisions of title 11, [to] knowingly and fraudulently transfer[] . . . the property of such other person or corporation." The bankruptcy court had found that William's conduct constituted a "clear violation" of § 549(a)(2)(B) of the bankruptcy code, 11 U.S.C. § 549(a)(2)(B) (1988), Bankruptcy Court Decision at 22, and that it was "serious misconduct" by William "in a less than arms-length transaction" in "connivance" with Roy, id. at 25-26. Accordingly, the district court decided that it would instruct the jury that, in considering Metromedia's RICO claim, the jury must find that William had engaged in bankruptcy fraud, but that whether or not that fraud constituted part of the alleged pattern of racketeering activity would remain a question for the jury to decide.

As for the counterclaims asserted by defendants, all but one asserted by William were withdrawn after the close of the should have been dismissed for lack of causation because there was no evidence of reliance by Metromedia itself; and (4) that the allegation of bankruptcy fraud should have been dismissed because Express's License was not an asset of the bankruptcy estate when William transferred it to Roy. In support of their motion for a new trial, appellants argued, inter alia, that the question of whether the warranties that were breached had been "bargained for" should have been submitted to the jury; that the court's instructions to the jury with respect to the RICO claims were erroneous; and that Metromedia had waived any right to assert collateral estoppel with respect to its allegation of bankruptcy fraud, because collateral estoppel had not been pleaded.

In an Opinion dated December 5, 1990, and published at 753 F. Supp. 93, the district court denied both motions. Reviewing the trial evidence in the light most favorable to Metromedia as the nonmoving party on the motion for judgment n.o.v., the court rejected all of defendants' challenges to the sufficiency of the evidence. It also rejected most of the legal premises of their motions for dismissal and their challenges to the instructions. Reviewing the evidence under a more relaxed standard on the new trial motion, the court stated that it would not order a new trial unless it were persuaded that prejudicial error had crept into the record or that a substantial injustice had been done, and it concluded that it was not so persuaded. The court noted that though appellants were perhaps correct in their contention that willfulness was a prerequisite for use of a § 12(2) claim as a that the court (1) should have granted his motion for judgmen n.o.v. dismissing the § 12(2) claim; (2) erred in ruling that h was collaterally estopped from contending that he had no committed bankruptcy fraud, instead of ruling that Metromedia wa: collaterally estopped from contending that he had committed suc! fraud; and (3) erred in its instructions to the jury as to RICO'; pattern requirement and the elements of the various RICO predicat acts. For the reasons below, we find no basis for reversal.

A. The Breach-of-Warranty Claim

In the Pretrial Order, appellants admitted (a) that in the "Representations and Warranties of Express and the Stockholders" section of the Agreement, they had warranted that Express had no pending or threatened litigation or outstanding contracts that were not there disclosed; and (b) that in fact there were six such litigations, four confessions of judgment, and a number of contractual obligations that were not there disclosed. Nonetheless, they contend that the district court erred in directing a verdict against them as to liability on Metromedia's breach-of-warranty claim, on the premise that there was a triable issue of fact as to whether the express warranties given by them in the Agreement were "bargained for." We reject their contention.

The trial court may direct a verdict where the evidence, viewed in the light most favorable to the nonmoving party, "'is such that, without weighing the credibility of the witnesses or as here, the express warranties are bargained-for terms of the seller." Id. at 506 n.5, 554 N.Y.S.2d at 454 n.5. The court stated that an "express warranty is as much a part of the contract as any other term." Id. at 503, 554 N.Y.S.2d at 453.

Since as a matter of law, an express warranty is as much a part of the contract as any other term, the inclusion in the Agreement here of the "Representations and Warranties of Express and the Stockholders" established that those representations and warranties were part of the bargain reached between Metromedia and appellants. No rational juror could have found that it was not part of the bargain. Indeed, it is noteworthy that appellants in their proposed jury instructions did not ask to have the jury decide such a question. Rather, they asked the court to inform the jury that Metromedia could prevail on its breach-of-warranty claim if it proved (1) the existence of an express warranty, (2) material breach of the warranty, (3) damages proximately resulting from the material breach, and (4) justifiable reliance on the warranty. Neither in their initial submission of this request nor in a slightly amended version thereafter did appellants make any mention whatever of a supposed question as to whether the warranties were "bargained for."

The first two questions appellants sought to have the jury consider had been answered by appellants' admissions in the Pretrial Order; the fourth was a matter of law under the ruling in CBS Inc. v. Ziff-Davis Publishing Co. Only the matter of damages was left to be decided, and that question was given to the jury.

15 U.S.C. § 77l(2). In support of their contention that this section does not apply to private sales, William cites only to general statements about the 1933 Act's legislative history and to various cases stating that the legislation was intended to protect the public. The section has, however, consistently been applied to private as well as public offerings of securities. See, e.g., Hill York Corp. v. American International Franchises, Inc., 448 F.2d 680, 695 (5th Cir. 1971) ("liability under Section 12(2) would not be affected by a finding that the offering was private"); see Wilson v. Saintine Exploration & Drilling Corp., 872 F.2d 1124 (2d Cir. 1989) (applying § 12(2) to private sale); Adalman v. Baker, Watts & Co., 807 F.2d 359 (4th Cir. 1986) (same); Nor-Tex Agencies, Inc. v. Jones, 482 F.2d 1093, 1099 (5th Cir. 1973) (same), cert. denied, 415 U.S. 977 (1974); see also L. Loss, Fundamentals of Securities Regulation 1021-22 (1983).

With respect to William's contention that he was entitled to judgment n.o.v. on the ground that the evidence was insufficient to establish an offer or sale "by means of" a prospectus or oral communication, our standard of review is identical to that with respect to review of the decision on a motion for directed verdict. See, e.g., Sir Speedy, Inc. v. L & P Graphics, Inc., 957 F.2d at 1038-39; 9 C. Wright & A. Miller, Federal Practice and Procedure § 2524, at 541-42 (1971) ("9 Wright & Miller"). Again we view the evidence in the light most favorable to the party against which the motion was made, see, e.g., Auwood v. Harry Brandt Booking Office, Inc., 850 F.2d 884, mails or instruments of interstate transportation or communication have been used in the sale of the securities. See, e.g., Schillner v. H. Vaughan Clarke & Co., 134 F.2d 875, 877 (2d Cir. 1943); Creswell-Keith, Inc. v. Willingham, 264 F.2d 76, 81 (8th Cir. 1959) ("a sale of securities induced by oral face to face fraudulent representations, which is completed by means of payment of the purchase price by mail, is protected by section 12(2)"); L. Loss, Fundamentals of Securities Regulation 1027-28 (1983).

Here, the evidence was sufficient to permit a rational juror to infer that false and misleading oral communications by William were instrumental in causing Metromedia to purchase the Express stock. Appellants delivered financial statements to Metromedia falsely showing, for example, that Express had a net worth of some $2.9 million when in fact its net worth was minus $5.5 million, and William assured Subotnick in a face-to-face conversation that "[t]here was nothing that [Metromedia] didn't know about." Subotnick testified that William also repeatedly telephoned him and attempted to convince him to consummate the acquisition, describing various Express prospects that William said would improve its business; that prior to the acquisition Metromedia did not know Express's true financial condition; and that had it known, it would not have proceeded with the acquisition. With Subotnick's testimony fully credited and all reasonable factual inferences drawn in favor of Metromedia, the record permitted the jury to find that in orally touting Express's prospects to Subotnick in an effort to persuade Metromedia to contends that in order to use a violation of § 12(2) as a predicate for a RICO claim, a plaintiff must prove that the violation was willful. He argues that the district court erred in failing to instruct the jury as to the need to find willfulness in considering the RICO claim. Accepting William's legal premise as valid, see Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 488 (1985) ("'a racketeering activity . . . must be an act in itself subject to criminal sanction' (emphasis added)" (quoting S. Rep. No. 617, 91st Cong., 1st Sess. 158 (1969)); Holmes v. Securities Investor Protection Corp., 112 S. Ct. 1311, 1325 (1992) (O'Connor, J., concurring) (RICO "unmistakably requires" that securities fraud, in order to serve as a predicate act, must have been "sufficiently willful to constitute a criminal violation"); Trane Co. v. O'Connor Securities, 718 F.2d 26, 29 & n.4 (2d Cir. 1983); § 24 of the 1933 Act, 15 U.S.C. § 77x (1988) (imposing criminal liability under § 12(2) only for violations that are "willful"), we nonetheless conclude that in light of the procedural posture of the case and the evidence in the record, there is no basis for reversal.

Several sets of procedural principles are pertinent. First, Fed. R. Civ. P. 50(b) generally prohibits judgment n.o.v. on any ground not raised in a motion for a directed verdict. See Abeshouse v. Ultragraphics, Inc., 754 F.2d 467, 473 (2d Cir. 1985); 5A Moore's Federal Practice ¶ 50.08, at 50-83 to 50-86 (2d ed. 1992); 9 Wright & Miller § 2537, at 598. Relief from this requirement is available only to prevent a "manifest injustice."

Processors, Inc., 715 F.2d 703, 710 n.8 (2d Cir. 1983). A party who only belatedly noticed the failure to submit a needed question to the jury could ask the court to submit that question in a postverdict interrogatory, and the trial judge would have discretion to submit such an interrogatory. See, e.g., Croce v. Kurnit, 737 F.2d 229, 233-34 (2d Cir. 1984).

Finally, a motion for a new trial on the ground that the verdict was against the weight of the evidence is committed to the sound discretion of the trial judge. See, e.g., Brady v. Chemical Construction Corp., 740 F.2d 195, 200 (2d Cir. 1984); Bevevino v. Saydjari, 574 F.2d 676, 684 (2d Cir. 1978). Assuming that the district court's denial of such a motion is reviewable, but see Dunlap-McCuller v. Riese Organization, Nos. 92-7676, etc., slip op. 189, 197 (2d Cir. Nov. 25, 1992) ("district court order granting or denying a motion for a new trial on the grounds that a verdict is against the weight of the evidence is not reviewable in this Circuit"); Kirschner v. Office of the Comptroller, 973 F.2d 88, 96 (2d Cir. 1992) (same); Roberts v. Consolidated Rail Corp., 893 F.2d 21, 26 (2d Cir. 1989) (same), such a denial will not be reversed unless the denial constituted an abuse of discretion, Brady v. Chemical Construction Corp., 740 F.2d at 201-02; Bevevino v. Saydjari, 574 F.2d at 684. See generally 11 C. Wright & A. Miller, Federal Practice and Procedure § 2819, at 120 (1973) (noting trend away from view that such decisions are not reviewable at all). Where the resolution of the issues depended on assessment of the credibility of the witnesses, it is proper new trial on the ground that appellants had not raised the question before the jury retired to begin its deliberations. The finding of default is clearly supported by the record. Defendants made no request for an instruction that § 12(2) could not serve as a RICO predicate act unless the violation was willful. Their requests to charge included a lengthy proposed instruction with respect to Metromedia's claim directly under that section; that request, properly, did not mention any need for a finding of willfulness. Though defendants also made a number of requests for instructions with respect to the other alleged RICO predicate acts, they made no mention of § 12(2) as a RICO predicate or of any additional questions to be considered by the jury in that connection. Further, defendants did not object to the trial court's instructions with respect to use of the § 12(2) claim as a RICO predicate; and they did not object to the special verdict form, which expressly instructed the jury that if it found in favor of Metromedia on the § 12(2) claim it was required to find that Metromedia had proven securities fraud as a RICO predicate act. Nor did they request that a postverdict interrogatory be submitted to the jury on the question of willfulness.

In this appeal, William argues that the trial court should have excused appellants' failure to raise the issue timely in order to avoid "obvious injustice." Given our interpretation of the term "willful" and given the evidence of record, we are not persuaded that a new trial was needed to avoid injustice.

that, with respect to oral communications in violation of § 12(2), willfulness may be established by a showing (1) that the defendant either (a) knowingly made false or materially incomplete misleading statements or (b) made false or materially incomplete misleading statements with respect to facts to which he had deliberately closed his eyes but which he had a duty to see, and (2) that he knew that his statements significantly increased the possibility of a sale of the securities in question.

We conclude that had the jury been so instructed in the present case, it could easily have found that William's violation of § 12(2) was willful. As discussed in Part II.B. above, William made oral statements falsely assuring Subotnick that all material facts had been disclosed to Metromedia, and he made other oral statements that were materially misleading because of their implicit adoption of, and failure to disclose the falseness of, the financial documents' representations as to Express's condition. As to willfulness, there was a sufficiently great disparity between the Express financial statements given to Metromedia prior to the acquisition (assets of some \$11.65 million and liabilities of some \$8.77 million) and the postacquisition revelation of its true financial condition (assets of approximately \$8.59 million and liabilities exceeding \$14 million) to permit the jury to infer that the preacquisition financials were false and that their inaccuracy was not attributable merely to negligence. The jury could also infer that William, given his 100% ownership of, and top executive positions that at the time of that transfer the License was not property of the bankruptcy estate. He also argues that Metromedia waived the right to assert collateral estoppel by failing either to plead it originally or to ask for leave to file a supplemental pleading asserting it, and that he was unduly prejudiced by Metromedia's presentation of evidence as to an issue on which there was to be an estoppel. We reject all of his contentions.

The doctrine of collateral estoppel, or issue preclusion, bars a party from relitigating in a second proceeding an issue of fact or law that was litigated and actually decided in a prior proceeding, if that party had a full and fair opportunity to litigate the issue in the prior proceeding and the decision of the issue was necessary to support a valid and final judgment on the merits. See, e.g., Gelb v. Royal Globe Insurance Co., 798 F.2d 38, 44 (2d Cir. 1986), cert. denied, 480 U.S. 948 (1987); Zdanok v. Glidden Co., Durkee Famous Foods Division, 327 F.2d 944, 955 (2d Cir.), cert. denied, 377 U.S. 934 (1964); see generally Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 n.5 (1979); 18 C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 4416, at 136-48 (1981) ("18 Wright & Miller"); Restatement (Second) of Judgments § 27 (1982). Certain of these conditions warrant elaboration for purposes of the present appeal.

First, the issue [illegible]

Whether a judgment that is not final within the meaning of § 1291 "ought nevertheless be considered 'final' in the sense of precluding further litigation of the same issue, turns upon such factors as the nature of the decision (i.e., that it was not avowedly tentative), the adequacy of the hearing, and the opportunity for review." Lummus Co. v. Commonwealth Oil Refining Co., 297 F.2d 80, 89 (2d Cir. 1961), cert. denied, 368 U.S. 986 (1962). The mere fact that the damages awarded to the plaintiff have not been yet calculated, though normally precluding an immediate appeal, see our companion opinion filed today in In re Fugazy Express, Inc., Nos. 92-5005, -5007 (2d Cir. Dec. 17, 1992), does not prevent use of a final ruling on liability as collateral estoppel. Zdanok v. Glidden Company, Durkee Famous Foods Division, 327 F.2d at 955; 18 Wright & Miller § 4434, at 321 ("Recent decisions have relaxed traditional views of the finality requirement by applying issue preclusion . . . to determinations of liability that have not yet been completed by an award of damages or other relief.").

When two lawsuits have resulted in inconsistent final decisions of the same issue, the general rule is that "it is the later, not the earlier, judgment that is accorded conclusive effect in a third action." Restatement (Second) of Judgments § 15 (1982). Although we question whether such a rule would be applicable to inconsistent decisions if the second "judgment" were an administrative agency decision and the first were a court decision, we have no doubt that where the court decision is with procedures established in 28 U.S.C. § 158(a) (1988). The fact that the appeal of that matter from the district court to this Court is being dismissed for lack of appellate jurisdiction does not mean that the bankruptcy court's decision was not sufficiently final for purposes of collateral estoppel.

On the other hand, even if there were no bankruptcy court decision, the language of the FCC Letter itself suggests that it could not be the basis for collateral estoppel in favor of William. That letter, which does not appear to have been issued after court-type proceedings, stated in part as follows:

> . . . Express, Inc., licensee of record, assigned the license for KXY-610 to R.D.F. Limousine, who then became the licensee of record for our purposes. Information submitted to us, the Consent Order of the Bankruptcy Court in particular, casts doubt upon the validity of this transaction, and would under other circumstances require an administrative inquiry on our part. . . .
>
> Affidavits submitted with the pleadings establish that KXY-610 ceased operations in December, 1986. Under Section 90.157 of our Rules, 47 C.F.R. § 90.157, the license for KXY-610 has therefore cancelled and must be returned to the Commission.

The reference to the need, or lack thereof, for "administrative inquiry" suggests that the agency itself treated its ruling as an administrative decision. Moreover, it is hardly clear that a decision as to whether the License was bankruptcy estate property when William transferred it would have been necessary to a regulatory decision as to whether to approve the trustee's sale of the License to Metromedia. Nor is it likely that the regulatory principles shaping such a decision would have been the same as the

The waiver argument borders on the frivolous. The bankruptcy court decision was filed on the day the present case went to trial. Metromedia's counsel made reference to the decision in his opening statement to the jury and asserted during trial that the decision collaterally estopped defendants from contesting that there had been bankruptcy fraud. Appellants had as much notice of the claim of estoppel as could reasonably be required.

Nor is there merit in the contention that appellants were unduly prejudiced by Metromedia's presentation of evidence in connection with a matter as to which they were collaterally estopped. Though the question of whether William had committed bankruptcy fraud had been determined, Metromedia was nonetheless required to introduce some evidence with respect to that fraud in order to show that it was part of the alleged pattern of racketeering activity.

3. The Mail and Wire Fraud Predicate Acts

William argues that the jury's findings with respect to mail and wire fraud as RICO predicate acts should be reversed because (1) the district court failed to instruct the jury properly as to the required "causal nexus" between these predicate acts and Metromedia's injury, and (2) the evidence adduced by Metromedia was insufficient to support a finding of justified reliance. We find no basis for reversal.

RICO provides that "[a]ny person injured in his business or property by reason of" a RICO violation may bring a civil absence of such an instruction here provides no basis fo: reversal. Subotnick testified that he received some of the fals· financial statements in the mail, that he had numerous telephon· conversations with William urging Subotnick to have Metromedi: make the purchase, and that if Subotnick had known the extent t· which the financial figures provided by William and Express ver inaccurate, Metromedia would not have entered into the stoc: purchase agreement. Thus, there was plainly sufficient evidenc· for the jury to find causation and reliance.

Finally, we reject William's contention that any relianc by Metromedia could not have been justified because it had a tea of attorneys and financial experts studying Express's condition Appellants' misrepresentations and nondisclosures denie Metromedia's advisors access to accurate information, and th record does not suggest that they knew the true state of Express' affairs. The suggestion that Metromedia could not justifiabl rely on appellants' representations is meritless.

4. RICO's Pattern Requirement

William challenges the trial court's instruction as t what Metromedia was required to prove in order to establish "pattern" of racketeering activity within the meaning of RICC The court told the jury, inter alia, that Metromedia was require to show that William's unlawful acts were neither isolated nc sporadic, that those acts were related to each other, and the they were continuing or constituted a threat of continuir bankruptcy fraud found by the bankruptcy court, the jury found that William had committed three other types of predicate acts--mail fraud, wire fraud, and securities fraud. The record supports inferences that the securities and mail fraud began at least as early as January 1985, when appellants mailed to Subotnick financial statements for Express that significantly overstated its net worth and understated the losses incurred in its recent performance. The unlawful activity continued at least until January 1987, when William committed bankruptcy fraud by transferring one of Express's assets to his son. The jury was instructed that in order to find for Metromedia on the RICO claim it must find that the predicate acts were related, and it presumably so found. The related predicate acts that the jury found proven spanned approximately two years, and the instructions' reference to a few weeks or months was therefore harmless.

CONCLUSION

We have considered all of appellants' arguments on this appeal and have found in them no basis for reversal. The amended judgment of the district court is affirmed.

CONGRESSIONAL MEDAL OF HONOR SOCIETY
UNITED STATES OF AMERICA
CHARTERED BY THE CONGRESS

May 25, 1993

Dear Medal Recipient:

We were disturbed to learn that you accepted a medal at Ellis Island on May 16, 1993 which has been called the "Ellis Island Congressional Medal of Honor" and "The Medal of Honor". Our Society is offended by the use of these terms. The medal is not sanctioned by Congress. Furthermore, the funds solicited for the ticket sales have never gone to Ellis Island.

As deserving as you may be of recognition, we consider this medal to a sham and crass commercialism intended to sell dinner tickets and to provide publicity for the presenters of the medals.

We assume that you were unaware of the enclosed Village Voice article. We would hope that your acceptance of the medal resulted from an innocent lack of information about the medal's background. We would also hope that had you known all the facts about the medal, it would have been rejected by you, as it was by others.

The members of our Society feel deeply about the medal that they earned risking their lives for America. It is the only Congressional Medal of Honor, or Medal of Honor, sanctioned by the United States Congress.

The dinner and medals ceremony in which you participated demeans the heroism and value of the medal for which the members of our Society and the families of those recipients no longer living feel strongly.

We have also included a copy of the Court of Appeals decision regarding the organizer of this medal ceremony.

We look forward to hearing from you concerning this matter.

Sincerely,

J. Elliott Williams

J. Elliott Williams, President
Congressional Medal of Honor Society

40 PATRIOTS POINT ROAD, MT. PLEASANT, SOUTH CAROLINA 29464, TELEPHONE (803)884-8862

Sunday Star-Ledger

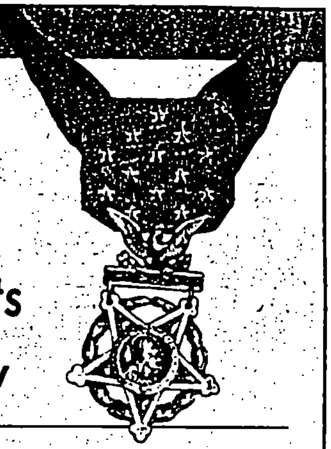
MAY 30, 1993

SUNNY AND PLEASANT Details on Page 2

JUST DOING THEIR JOBS, THEY SAY

MEN OF COURAGE, MEN OF HUMILITY

Medal of Honor recipients content in their obscurity



By DAVID SCHWAB

There's nothing in Nicholas Oresko's living room from his war years. He will take you to the dark cellar, where black and white photographs of Oresko with presidents and generals line one wall. He apologizes when he discovers his original framed citation, signed by President Truman, its glass cracked, in the middle of a stack of plaques piled on a chair.

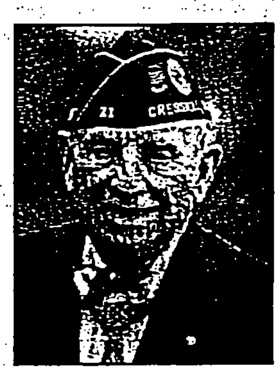


Photo by Jerry McCrea

Photo by Pim Van Hemmen

Hector Cafferata, left, enjoys a chat with old friend Richard Bernard at an outing in Oxford. Bernard lost both legs in action in Korea. Cafferata received the Medal of Honor for heroism that saved Bernard's life. At top, Nicholas Oresko at his Tenafly home, where he was kind enough to wear his medal for a photo

You've probably never heard of Nicholas Oresko. Born in Bayonne, the son of a laborer at the Bayway Refinery, Oresko worked for the Veterans Administration for 32 years before retiring in 1978 as a supervisor of the adjudication division.

Now 76, his wife having died years ago, he spends much of his time cooking, sewing and maintaining his modest Tenafly home almost as if to pass inspection.

You wouldn't know it by his demeanor or conversation, but he is also a recipient of the Medal of Honor, this nation's highest military decoration for bravery in action.

You might think the medal would make a person famous, that the nation would know and remember its 204 living recipients. But in many instances, we don't.

Most civilians wouldn't recognize the Medal of Honor, a small, dull bronze star that hangs beneath a field of 13 tiny white stars on a pale blue ribbon worn around the neck—certainly not the way they would spot an Olympic gold medal.

That's partly because of the nation's collective memory lapse the more time passes between wars and partly because of the way recipients view themselves.

Oresko and others downplay what they did, insisting they were only doing their duty. They keep their medals in a drawer, taking them out only for occasional functions, normally military affairs where it is the equivalent of the Olympic gold.

Medal of Honor recipients belong to one of the nation's most selective fraternities. They are invited to every presidential inauguration and given VIP seats. Presidents and generals salute those wearing the medal. As he presented them with their medals at the White House, President Truman would tell some recipients he would rather have that honor than be president.

"It's hard to explain," said Oresko, a short man with silver glasses and white hair, when asked why recipients appear so modest about the medal.

"You're happy that you have it,

Please turn to Page 14

Courageous men content with their obscur'ty

Medal of Honor recipients say they were just doing their duty

Continued from Page One

you are so grateful you are alive, and :hat actually is good enough," he said.

Oresko still remembers the chill :hat came over him when he realized he was preparing to die as he jumped from a foxhole in Germany one frigid January day in 1945. An Army master sergeant, he destroyed two machine gun bunkers that threatened his platoon before collapsing from bullet wounds.

But he's not eager to talk about this, and his official citation sits amid a stack of plaques piled on a chair in his cellar. He shrugs when he mentions how police in New Jersey periodically pull him over, not recognizing his specially issued license plate, believing it a fake.

Precisely because Medal of Honor recipients are known for their refusal to seek anything for themselves, a coalition of other veterans organizations is mounting a campaign on their behalf to increase recipients' special monthly stipends.

A bill to increase it from $200 to 500, the first raise in 14 years, was introduced in the House of Representatives last month. This is needed because at least 40 recipients are living at or near the poverty level, supporters say. Recipients like Oresko will have little or nothing to do with the effort.

Leading this national campaign is Richard Bernard, a deputy commissioner in the New Jersey Department of Military and Veterans' Affairs.

As a 19-year-old Marine reservist, Bernard was in Korea in November 1950 as the First Marine Division tried to retreat from the Chosin Reservoir in the face of an overwhelming attack by Chinese soliders. The Marines eventually succeeded in breaking out; Bernard lost both his legs.

Sliding out of his wheelchair onto a couch in his East Hanover home, Bernard, now 62, explained some of what happened. He was shot in the legs and spine, but had to wait with others for five days to be evacuated.

His life was saved, in part, by the 30-degree below zero temperatures that caused the blood to coagulate around his wounds. And it was saved by other Marines who continued to fight, including another Medal of Honor recipient who lives in New Jersey, his friend, Hector A. Cafferata Jr.

According to the official military citation, Cafferata, a 20-year-old Marine private, single-handedly held off an attacking force with grenades and sharpshooting after the rest of his

An enemy grenade landed in a foxhole occupied by wounded Marines and Cafferata rushed forward to throw it free; the grenade exploded, severing part of one finger.

He killed 15 and wounded many more, forcing a retreat and saving the lives of several fellow Marines until he was shot himself and forced to evacuate. Witnesses say he fought in his bare feet, having had no time to prepare for the surprise attack.

Cafferata, now 63, a resident of Alpha who works at the state's trout hatchery in Pequest, declined to be interviewed. But he's willing to be quoted as saying he's no hero.

"It was just a case of doing my job, like every other Marine, which was to defend each other and keep the hill," he said.

For some time there had been talk of honoring Cafferata in Montville, where he grew up and where his skills with a hunting rifle were considered legendary before he joined the Marines. But he had let it be known he would not approve—until last year that is.

When construction of a new subdivision began in the woods near where Cafferata used to hunt, Cafferata Court, now a cul-de-sac with two homes, was born.

About the same time, the Lance Cpl. Robert J. Slattery detachment of the Marine Corps League of Morris Plains decided a plaque should be erected at town hall. The event grew into a major celebration even though organizers held back on publicity for fear that Cafferata might disapprove of the larger crowds that would certainly attract.

Last October, more than 700 people filled the stadium at the high school. There were speeches by local dignitaries and by Gen. Alfred Gray Jr., the retired Marine Corps commandant.

A Marine Corps color guard and a detachment in its dress blue uniforms prepared to pass in review to honor Cafferata. He invited the other members of his unit to the front to share in the honor. They stood in line, their hands over their hearts, as the young Marines marched by.

One of those who understands the psychology of the Medal of Honor recipient is Paul Bucha.

In March 1968, Bucha, an Army captain, directed his company of about 90 soldiers to engage what later turned out to be a force 15 times his own in the thick jungles of Vietnam, then organized a withdrawal and defense until his men could be evacuated. After learning he was to receive the Medal of Honor, his first reaction was to turn it down.

Bucha, 49, is a partner in Port Liberte, the struggling real estate venture in Jersey City on the Hudson River, who moved there from New York several years ago. The son of an Army colonel, he attended West Point and received his master's degree from Stanford Business School before reporting to duty. He later taught at West Point and worked for Ross Perot for many years.

Bucha knows many Medal of Honor recipients and understand why they may feel uncomfortable in the spotlight. He believes that's because the medal recognizes not simply daring on the battlefield but selflessness, putting the lives of others before your own, assuming they would do the same. Recipients really don't think they are special.

"It recognizes common day Americans who lived up to the potential that resides in every single kid," Bucha said of the medal.

Each recipient will insist he knows others in his unit who were more worthy. Bucha himself recommended a medic from his own unit for the Medal of Honor.

This all helps explain an important distinction the Congressional Medal of Honor Society draws: soldiers didn't "win" the award—as one might a contest—but were chosen without their knowing to receive it, as one might hold a trust for others.

This selfless attitude is why Bucha believes the effort to increase the monthly stipend could be doomed. This is one constituency that simply will not speak out and may not be noticed otherwise, like a decoration kept in a drawer.

"Recipients are like well placed flagpoles, of interest to people on certain days. But the vast majority of the time they are not aware of their presence," he said. He insists this doesn't bother him.

There's a flagpole in Bayon that sits in the middle of a block-lo park bounded on one side by Gre Lane, which runs from 23d Street 24th Street. The street was named Stephen R. Gregg, the second of t city's two World War II Medal Honor recipients. Graffiti cover t base of the flagpole, as well as t stone monument to Sister Miria Teresa, a candidate for sainthood, f whom the park is named.

In August 1944, Gregg was Army technical sergeant in Fran who in two days personally led medi to rescue seven injured soldiers; w briefly captured by German soldie but escaped when they were fir upon, and then recaptured a mort position, killing or injuring three a taking two prisoners.

Ever since returning to Bayon in 1945, Gregg has worked for th Hudson County Sheriff's Office. No 78, he is chief of the uniformed of cers. He had expected to return the Kearny shipyards but was offer the job by then Jersey City May Frank Hague, a legendary Hudsc County political figure.

Hague also offered a similar pos tion to a another Medal of Honor r cipient, Army Technical Sgt. Jol Meagher of Jersey City, and the tw worked side by side for some 35 year Meagher retired 13 years ago an moved to Toms River. He's now at th Veterans Affairs Medical Center Lyons.

Sitting in his basement office the Hudson County Courthous Gregg fondly recalled the many la ish, black-tie affairs he has been i vited to attend. He remembered ha ing drinks with Eddie Rickenbacke being greeted by Cabinet membe during a lawn party at the Whit House with John Kennedy, and Ge Colin Powell giving a prompt "Ye sir!" when asked if he would join hi so his wife could snap a picture.

His voice lowered just a bit whe he's asked if he considers himself hero.

"We shy away from that word be cause we saw so many who were kille

Continued on next page

Section One: Page 17
THE SUNDAY STAR-LEDGER
May 30, 1993

Veterans dedicated to humility

From preceding page

who could have been heroes had they lived," he said. "Men died beside you, in front of you ... We who were there know what action is and don't love to brag about it anyhow."

The Medal of Honor is presented by the President, on behalf of the Congress, which is why it is often imprecisely called the Congressional Medal of Honor.

It is given on the basis of recommendations of commanding officers or peers that are verified through interviews with witnesses. Recipients are normally unaware they have been nominated. Since the Civil War, 3,393 men and one woman have received the honor. About 60 percent of those honored died in combat.

The Medal of Honor recognizes those who have acted "above and beyond the call of duty," which normally means they did something they didn't have to do at the risk of being killed, often in hand to hand combat. None has been given since the Vietnam War. Most of the awards have gone to infantrymen. Many, therefore, believe the Medal of Honor tends to recognize the common man.

When Marine Pvt. Franklin E. Sigler returned to Little Falls with his medal, he thought about returning to work at a gas station.

Sigler had been at Iwo Jima in March 1945 and was recognized for fighting and helping to rescue other Marines even after a grenade took off a part of his ear and nose and he was shot through the hand.

Like other recipients, Sigler had been led to believe that job offers and opportunities might come his way, and like others he was disappointed. He had applied for jobs with the state game warden, the VA and others. Yet in August 1947 he was unemployed and engaged to be married.

That's when The Star-Ledger published a front page article explaining how town leaders two years before had raised $7,000 for a homecoming parade to honor him and had never given him a share of the money they had promised. A week later, he was appointed a state fish and game warden.

For 12 years, Sigler worked as a detective with the Passaic County Sheriff's Office. He retired in 1962, spent 10 years with a firm that built golf courses and now lives in Hampton in Sussex County.

Sigler, 68, doesn't attend many military functions these days. But he mentioned how honored he was to return last fall to Parris Island, S.C., for the graduation of his grandson, Pvt. Derrick J. Peter.

Peter recalled how thrilled the young Marines were to meet his grandfather. They had never seen a Medal of Honor but knew what it symbolizes.

Sigler is asked whether he feels Medal of Honor recipients have been forgotten.

"No, I don't think so," he said. "You got to realize the war's been over for quite a while, and the only ones who know would be people in the military."

The Deputy Secretary of
Veterans Affairs
Washington DC 20420

[redacted]

Mack — The President should not accept this medal. It would cause him problems.

I'll be glad to discuss if you need further information.

Hub

[redacted]

nton As 'Serious'

ar Doe

...C (UPI)—An Air ...d who allegedly ...ing public re... President Clinton ...d a scheduled so... ...nd until that ...rge is fully inves... ...ntagon said 8 June. ...serious matter," ...n spokesman Bob Hall. "The Air Force feels it's a serious charge that the Air Force...needs to look into."

During a public speech in Europe last month, Maj. Gen. Harold Campbell allegedly called Clinton a "gay-loving," "pot-smoking," "draft-dodging," "womanizing" commander-in-chief.

"There are specific guidelines...in terms of behavior, towards elected officials," Hall said, "and if there's a charge that this has been violated; they need to look into it."

Hall said Campbell would not be allowed to assume command of the Defense Fuel supply Center near Washington until the Air Force's investigation is complete.

"According to the Air Force," the Pentagon spokesman said, "his future assignment has been delayed until the completion of ..."

At the White House, press secretary Dee Dee Myers said Clinton had been advised of Campbell's alleged remarks before the case became public but insisted the matter should be left to the Air Force.

"The Air Force is investigating at this point," Myers said. "We'll leave it to them."

She said Clinton would have no comment on case.

The Air Force investigation of the incident is being carried out by Lt. Gen. Dale Thompson, ... Force Material Command and Campbell's former boss. Thompson is already in Europe and his initial report is due later this month.

Campbell, 53, a highly decorated fighter pilot who served two tours of combat duty during the Vietnam War, was deputy chief of staff for plans and programs at the commander at Wright-Patterson Air Force Base in Ohio through the end of last month. The command oversees

See Air Force, Pg. 10

INSIDE

Disability Denied Air Force Veteran With Brain Tumor Page 2

WWII's Costliest Battle Marks 50th Anniversary Page 5

Foundation Honoring Vietnam Memorial Sculptor Page 14

Court Action Mulled Over 'Medal Of Honor' Promoter

By Sheryl Henderson
Stars and Stripes Staff Writer

Since when are former vice-presidential candidate Geraldine Ferraro, comedian Jay Leno, singer Gloria Estephan and President Bill Clinton eligible for the Congressional Medal of Honor?

They aren't, according to the Congressional Medal of Honor Society (CMHS), whose members are recipients of the nation's highest military honor for acts of bravery in wartime.

The society is considering court action against William Fugazy, promoter of the "Ellis Island Congressional Medal of Honor," who for the past seven years has been awarding the medals to U.S. citizens of ethnic descent who can plop down as much as $1,500 for a seat at the event.

"This has nothing to do with the military," said Mike Williams, director of the CMHS.

According to Williams, the award is no medal of honor at all, but part of "a private enterprise for the promotion of one person's purse."

Williams said the CMHS had received complaints from the VFW, The American Legion and the Ancient Order of Hibernians, who thought the organization had loaned Fugazy's group its name and was somehow connected with the awards.

CMHS President J. Elliott Williams has called the presentation "crass commercialism" that is "blatantly offensive to the legitimate military heroes and families of the heroes who earned the Medal of Honor."

Fugazy, who has been accused

See Court Action, Pg. 10

W tl Vietn m

From 1

Affairs.

The resulting 1,223-page report of the 15-month investigation said there was "no compelling evidence" that any Americans currently remain alive in captivity in Vietnam, though the report also said questions remain for U.S. military teams regarding particular cases.

"We do not yet have the full accounting we insist upon," said James L. Brazee Jr., president of Vietnam Veterans of America, Inc. who was among the delegates, "but we are four steps closer to determining what became of our lost brothers."

The four steps include an ini- vete will l inf tion on MIAs from both countries, the joint archive, President Clinton's pledge to declassify American POW documents by 11 Nov., and the newly-released documents.

Among the documents given to the delegation are prisoners' medical records, statistical com-

The delegation also interviewed several Vietnamese military and prison officials, including Col. Doan Hanh, who managed POW camps, and Gen. Tran Van Quang, the subject of the controversial Russian document that alleged more pı ers were being held in Vie during the war than the U.S.

Court Action Mulled Over 'Medal Of Honor' Promoter

From 1

of forgery and an "alleged pattern of racketeering activity," was found guilty last year of mail fraud, wire fraud, securities fraud and bankruptcy fraud, according to U.S. Court of Appeals records.

Although Fugazy and the National Ethnic Coalition of Organizations (NECO), the group that sponsors the awards, have repeatedly claimed that the awards "are sanctioned on each occasion by the United States Congress," an investigative article published last month in the New York newspaper *The Village Voice* found that "every time a resolution authorizing the awards has been introduced in Congress it has died in committee."

Past recipients of the award include numerous state attorneys general and state supreme court justices, several congressmen, FBI Director William Sessions, Gen. Colin Powell, Gen. Norman Schwarzkopf, former U.S. Secretary of State James Baker and five former presidents.

According to a White House aide, President Clinton is expected to accept his award on his next trip to New York.★

Submarine S te

New Jersey Gov. Jim Florio, second from left, joins veterans viewing the future m submarine, in the bay off Veterans Park in Highlands. Florio recently visited the Acres funds for open space preservation statewide. Highlands, which received a Jersey Naval Museum to Veterans Park. Also pictured are Herb Georges, of Hackens Jersey Naval and Museum Submarine, and Paul Russ, MCPO state commander, S

The Stars and Stripes
The National Tribune

THE OLDEST NATIONAL VETERANS' WEEKLY NEWSPAPER

"To Care For Him Who Shall Have Borne The Battle And For His Widow And His Orphan" Abraham Lincoln

75¢ Per Copy U.S. Edition

116th Year Number 24 WASHINGTON, D.C., FOR THE WEEK OF 14 - 20 JUNE 1993

Story on next page

S. Delegation Cites ew POW Cooperation /ith Vietnam

By Sheryl Henderson
s and Stripes Staff Writer

A U.S. delegation to Hanoi ys the Vietnamese govern- ent is showing "a significant :w level of cooperation" in the arch for U.S. servicemen still iss from the Vietnam War, ccording to a statement released ist week.

The bipartisan congressional lelegation led by Sen. John Kerry (D-MA) returned from the Memorial Day trip to Vietnam 8 June reportedly encouraged by Vietnam's release of 12 new documents and the opening of a joint archive, said the statement.

"This trip reassured me that recent progress toward an accounting for our POW/MIAs is genuine," said Sen. John McCain (R-AZ), a former Vietnam POW.

The delegation's trip came four months after an exhaustive investigation by the Senate Select Committee on POW/MIA

See U.S. Delegation, Pg. 10

BBL Contribution

Dallas Cowboy legend Roger Staubach, second from left, recently presented representatives of the Dallas VA Medical Center with a check for $15,000 on behalf of the Benevolent Bowlers League (BBL). The BBL is comprised of representatives of various bowling centers in the Dallas area. The VAMC will use $12,000 of the money to construct a lighted softball field for veteran patients. The remaining funds will be used for patient bowling activities. Standing, from left, are Terry Wickman, chief, Recreation Therapy Service; Staubach; William Cox, assistant medical center director; and Charlie Baker, chief, voluntary service, Dallas VAMC.

...Alleged Ridicule

the investigation."

son, vice commander of the Air

4798

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

June 30, 1993

ACTION

MEMORANDUM FOR WILLIAM H. ITOH

THROUGH: ROBERT G. BELL RGB

FROM: KEITH HAHN KH

SUBJECT: Defense Proposed Report RE: S.134, Veteran Travel Privileges Authorization

Attached at Tab II is a draft Defense report ~~on~~ opposing S.134, a bill authorizing veterans who are totally disabled as the result of a service-connected disability to travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel. We have reviewed the draft report and concur.

Concurrence by: Jeremy Rosner

RECOMMENDATION

That you sign the memo to Ronald Peterson at Tab I.

Attachments
Tab I Memorandum to Ronald Peterson
Tab II Incoming Correspondence

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

MEMORANDUM FOR RONALD K. PETERSON

FROM: WILLIAM H. ITOH

SUBJECT: Defense Proposed Report RE: S.134, Veteran Travel Privileges Authorization

The National Security Council staff has reviewed the Defense proposed report and concurs.

4798

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

SPECIAL

June 24, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-722

TO: Legislative Liaison Officer -

NSC - William H. Itoh - (202)395-3723 - 249
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 226
VA - Robert Coy - (202)535-8113 - 229

FROM: RONALD K. PETERSON (for) Ronald K Peterson
Assistant Director for Legislative Reference

OMB CONTACT: MIKE GOAD (395-7301)
Secretary's line (for simple responses): 395-6194

SUBJECT: Defense Proposed Report RE: S 134, Veteran Travel Privileges Authorization

DEADLINE: TUESDAY, July 20, 1993

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
W. Waites
B. Thierwechter
T. Grams

LRM #I-722

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is **simple** (e.g., concur/no comment) we prefer that you respond by **faxing** us this response sheet. If the response is **simple** and you prefer to call, please **call the branch-wide line** shown below (NOT the analyst's line) to leave a message with a secretary.

You may **also respond** by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please **include** the LRM number shown above, and the **subject** shown below.

TO: MIKE GOAD
Office of Management and Budget
Fax Number: (202) 395-5691
Analyst/Attorney's Direct Number: (202) 395-7301
Branch-Wide Line (to reach secretary): (202) 395-6194

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

SUBJECT: Defense Proposed Report RE: S 134, Veteran Travel Privileges Authorization

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No objection

_____ No comment

_____ See proposed edits on pages __________

_____ Other: ______________________

_____ FAX RETURN of _____ pages, attached to this response sheet

DRAFT FOR OMB A-19 REVIEW

The Honorable Sam Nunn
Chairman, Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This is in response to your request of January 25, 1993, for the views of the Department of Defense on S. 134, 103rd Congress, a bill "to amend Title 10, United States Code, to authorize veterans who are totally disabled as the result of a service-connected disability to travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel on such aircraft."

The Department must necessarily oppose the legislation. S. 134 would permit veterans rated by the Secretary of Veteran's Affairs as totally disabled due to a service-connected disability to fly on a space-available basis under the same conditions as retired military members now fly. While the Department of Defense (DoD) greatly values the contribution of every veteran, especially those who have sacrificed in the service of their country, there are a number of reasons why the Department cannot support granting the space-available privilege to totally disabled veterans.

Space-available travel is a highly-valued privilege which accrues to the active duty military member. Although travel is available to other categories of travelers at a lower priority, the principal objective of the space-available travel privilege is the morale and welfare of those currently serving on active duty. In addition, DoD aircraft are designed to move a fit fighting force, and are not equipped to accommodate handicapped personnel. Space-available transportation privileges are granted under the assumption that travelers fly in the plane as they find it, with no special modifications. Accessories and special services for handicapped travelers that are prevalent in commercial airlift are not practical for military aircraft that provide space-available travel.

Additionally, the entire space-available program is resource constrained. Any increase in the current demand for service would severely tax resources provided for mission support activities. To expand the privilege to other categories would consume added resources and diminish the value of the limited benefit currently available to active duty personnel and their dependents. In light of these considerations, and in the current climate of budget reductions impacting a myriad of high-priority defense programs including military manpower, it is not practical to expand the space-available program.

The DoD receives numerous requests to extend space-available travel to additional categories of people, including service-connected disabled veterans, widows of military retirees, retired Federal Civil Service employees, and Public Health Service officers. In each case, our review of present and future air travel requirements has precluded the Department from expanding the privilege. As a matter of DoD policy, the space-available travel privilege has not been extended to persons or groups beyond those currently authorized. This policy is primarily based on mission requirements and resource constraints. We ask your support in ensuring the privilege is also not expanded by legislation.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

cc: Honorable Strom Thurmond
Ranking Republican

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

June 30, 1993

ACTION

MEMORANDUM FOR WILLIAM H. ITOH

THROUGH: ROBERT G. BELL

FROM: KEITH HAHN KH

SUBJECT: Defense Proposed Report RE: H.R. 594, Temporary Lodging Payment Incurred by Certain Individuals

Attached at Tab II is a draft Defense report supporting, with a modification, ~~on~~ H.R. 594, a bill to provide payment of temporary lodging expense to the family of a member hospitalized for serious injury or serious illness. We have reviewed and concur in the response.

Concurrence by: Jeremy Rosner

RECOMMENDATION

That you sign the memo to Ronald Peterson at Tab I.

Attachments
Tab I Memorandum to Ronald Peterson
Tab II Incoming Correspondence

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

MEMORANDUM FOR RONALD K. PETERSON

FROM: WILLIAM H. ITOH

SUBJECT: Defense Proposed Report RE: H.R. 594, Temporary Lodging Payment Incurred by Certain Individuals

The National Security Council staff has reviewed and concurs in the Defense proposed report.

4815

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

SPECIAL

June 24, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-732

TO: Legislative Liaison Officer -

GSA - William R. Ratchford - (202)501-0563 - 237
NSC - William H. Itoh - (202)395-3723 - 249
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 226

FROM: RONALD K. PETERSON (for) Ronald K. Peterson
Assistant Director for Legislative Reference

OMB CONTACT: MIKE GOAD (395-7301)
Secretary's line (for simple responses): 395-6194

SUBJECT: Defense Proposed Report RE: HR 594, Temporary Lodging Payment Incurred by Certain Individuals

DEADLINE: WEDNESDAY, July 14, 1993

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
T. Stanners
B. Thierwechter

LRM #I-732

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is **simple** (e.g., concur/no comment) we prefer that you respond by **faxing** us this response sheet. If the response is **simple** and you prefer to call, please **call the branch-wide line** shown below (NOT the analyst's line) to leave a message with a secretary.

You may **also respond** by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please **include** the LRM number shown above, and the **subject** shown below.

TO: MIKE GOAD
Office of Management and Budget
Fax Number: (202) 395-5691
Analyst/Attorney's Direct Number: (202) 395-7301
Branch-Wide Line (to reach secretary): (202) 395-6194

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

SUBJECT: Defense Proposed Report RE: HR 594, Temporary Lodging Payment Incurred by Certain Individuals

The following is the response of our agency to your request for views on the above-captioned subject:

_______ Concur

_______ No objection

_______ No comment

_______ See proposed edits on pages ______________

_______ Other: ______________________

_______ FAX RETURN of _____ pages, attached to this response sheet

DRAFT FOR OMB REVIEW

The Honorable Ronald Dellums
Chairman, Committee on Armed Services
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This is in response to your request of January 28, 1993 for the views of the Department of Defense on H.R. 594, a bill "To amend title 37, United States Code, to provide for the payment of temporary lodging expense incurred by family members who receive transportation incident to the hospitalization of a member of the Armed Forces for a serious illness or serious injury sustained by the member in the line of duty."

The Department supports the legislation, but we recommend changing the term used to describe the entitlement to "per diem allowances." "Temporary lodging expense" is a term used to describe an entitlement service members and their dependents have when making a permanent change of station move to, from, or between duty stations within the Continental United States, as provided in 37 U.S.C. 404a. To refer to subject entitlement in the same way would confuse the two. Using the "per diem allowance" to refer to subject entitlement would use the same term used to reimburse members for similar expenses of their dependents while performing travel incident to a permanent change of station, as provided for in 37 U.S.C. 406.

H.R. 594 would provide a much needed service to the family of a member hospitalized for serious injury or serious illness. Currently, family members must pay their own expenses during long durations of hopitalization of the Service member. Authorizing this payment will increase morale and ease the family's financial burden.

The Department appreciates the Committee's interest and concern for the welfare of those service members who are hospitalized for a serious illness or serious injury sustained in line of duty.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

4817

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

June 30, 1993

ACTION

MEMORANDUM FOR WILLIAM H. ITOH

THROUGH: ROBERT G. BELL RGB

FROM: KEITH HAHN KH

SUBJECT: Defense Proposed Report RE: H.R. 1243, Prohibition Against Foreign Acquisition of Allison Transmission

that takes no position with regard to

Attached at Tab II is a draft Defense report ~~on~~ H.R. 1243, a bill to prohibit any foreign person from acquiring, directly or indirectly, Allison Transmission, a division of General Motors Corporation. We have reviewed and concur in the response.

Concurrence by: Jeremy Rosner

RECOMMENDATION

That you sign the memo to Ronald Peterson at Tab I.

Attachments
Tab I Memorandum for Ronald Peterson
Tab II Incoming Correspondence

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

MEMORANDUM FOR RONALD K. PETERSON

FROM: WILLIAM H. ITOH

SUBJECT: Defense Proposed Report RE: H.R. 1243, Prohibition Against Foreign Acquisition of Allison Transmission

The National Security Council staff has reviewed and concurs in the Defense proposed response.

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Legislative Referral Memorandum #I-733. [CIA Act] [partial] (1 page)	06/25/1993	P3/b(3)

COLLECTION:

Clinton Presidential Records
National Security Council
Defense Policy and Arms Control (Robert Bell)
OA/Box Number: 45

FOLDER TITLE:

Chron File - June 1993 #3 [3]

2016-0152-F
vz4425

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

4817

SPECIAL

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

June 25, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-733

TO: Legislative Liaison Officer -

CEA - Francine Obermiller - (202)395-5036 - 242
CIA - [redacted] (b)(3) [001]
COMMERCE - Michael A. Levitt - (202)482-3086 - 324
JUSTICE - Faith Burton - (202)514-2141 - 217
NEC - Sonia Mathews - (202)456-6722 - 429
NSC - William H. Itoh - (202)395-3723 - 249
OSTP - Susanne Bachtel - (202)456-7116 - 288
USTR - Fred Montgomery - (202)395-3475 - 223
STATE - Julie C. Norton - (202)647-2137 - 225
TREASURY - Richard S. Carro - (202)622-1146 - 228

FROM: RONALD K. PETERSON (for) Ronald K. Peterson
Assistant Director for Legislative Reference

OMB CONTACT: MIKE GOAD (395-7301)
Secretary's line (for simple responses): 395-6194

SUBJECT: Defense Proposed Report RE: HR 1243, Prohibition Against Foreign Acquisition of Allison Transmission

DEADLINE: THURSDAY, July 15, 1993

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
A. McNutt-Miller
J. McClelland
K. MacIntyre

LRM #I-733

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is **simple** (e.g., concur/no comment) we prefer that you respond by **faxing** us this response sheet. If the response is **simple** and you prefer to call, please **call the branch-wide line** shown below (NOT the analyst's line) to leave a message with a secretary.

You may **also respond** by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please **include** the LRM number shown above, and the **subject** shown below.

TO: MIKE GOAD
Office of Management and Budget
Fax Number: (202) 395-5691
Analyst/Attorney's Direct Number: (202) 395-7301
Branch-Wide Line (to reach secretary): (202) 395-6194

FROM: ______________________________ (Date)

______________________________ (Name)

______________________________ (Agency)

______________________________ (Telephone)

SUBJECT: Defense Proposed Report RE: HR 1243, Prohibition Against Foreign Acquisition of Allison Transmission

The following is the response of our agency to your request for views on the above-captioned subject:

________ Concur

________ No objection

________ No comment

________ See proposed edits on pages ______________

________ Other: ______________________________

________ FAX RETURN of _____ pages, attached to this response sheet

DEPARTMENT OF DEFENSE
[redacted] GENERAL COUNSEL
WASHINGTON, D.C. 20301-1600

DRAFT FOR OMB A-19 REVIEW

The Honorable Lee H. Hamilton
Chairman, Committee on Foreign Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Defense on H.R. 1243, 103d Congress, a bill, "To prohibit any foreign person from acquiring, directly or indirectly, Allison Transmission, a division of General Motors Corporation."

The Department of Defense has no specific goals that would be served by the legislation. Allison Transmission has been a critical supplier of new components and spare parts for more than 42,000 U.S. Army tracked combat vehicles; such as the Abrams tank series, family of M109 self-propelled howitzers, Field Artillery Ammunition Resupply Vehicles. Currently, and in the foreseeable future, Allison's products primarily support system upgrades and sustain fielded systems. New production is not anticipated. The Department agrees that Allison Transmission is an important component to the defense industrial base but believes that the proposed sale to a foreign corporation will not reduce employment opportunities or relocate job opportunities outside the United States. H.R. 1243 would prohibit any foreign person from acquiring, directly or indirectly, ownership or control of Allison Transmission, a division of General Motors Corporation. The bill would require the Attorney General to seek appropriate relief, including injunctive or divestment relief, in the district courts of the United States in order to carry out this section.

This legislation would have no effect nor is it expected that it will result in any additional cost to the Department.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

Jamie S. Gorelick

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NSC/RMO PROFILE

RECORD ID: 9320745
RECEIVED: 01 JUL 93 09

TO: LAKE

FROM: GROSSMAN, M

DOC DATE: 30 JUN 93
SOURCE REF: 9315193

KEYWORDS: COCOM
IWG
TELECOMMUNICATIONS
EXPORT CONTROLS
RUSSIA

PERSONS:

SUBJECT: STATE COMMENTS ON DRAFT NSC PAPER ON COCOM LIST LIBERALIZATION

ACTION: FOR RECORD PURPOSES   DUE DATE: 05 JUL 93   STATUS: C

STAFF OFFICER: NONE   LOGREF:

FILES: IFG   NSCP: CODES:

D O C U M E N T   D I S T R I B U T I O N

FOR ACTION

FOR CONCURRENCE

FOR INFO
ANDREASEN
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DECLASSIFIED
E.O. 13526
White House Guidelines, September 11, 2006
By VL NARA, Date 10/3/2016
2016-0152-F

COMMENTS: ______

DISPATCHED BY ______ DATE ______ BY HAND W/ATTCH

OPENED BY: NSJEB   CLOSED BY: NSJEB   DOC 1 OF 1

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ACTION DATA SUMMARY REPORT

DOC	ACTION OFFICER	CAO	ASSIGNED	ACTION REQUIRED
001		X	93070109	FOR RECORD PURPOSES

S/S 9315193

United States Department of State

Washington, D.C. 20520

20745

June 30, 1993

~~SECRET~~
DECL: OADR

MEMORANDUM FOR MR. ANTHONY LAKE
THE WHITE HOUSE

SUBJECT: State Comments on the Draft NSC Paper on COCOM List Liberalization

The attached paper summarizes State's comments on the draft NSC paper of June 29 concerning options for initial COCOM liberalization proposals.

Marc Grossman
Executive Secretary

Attachments:

As stated.

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. paper	State Department Commetns on Options for Initial COCOM Liberalizations. (4 pages)	06/30/1993	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Defense Policy and Arms Control (Robert Bell)
OA/Box Number: 45

FOLDER TITLE:

Chron File - June 1993 #3 [3]

2016-0152-F
vz4425

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]