

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. note	From "J"; re: Casino on Indian Land in Michigan (1 page)	07/25/1996	P5 <i>643</i>
001b. note	re: Instructions to Tom (Shea) (1 page)	07/29/1996	P5 <i>644</i>
002. memo	Eric Farnsworth to Mack McLarty; re: Call from Jim Reeder (1 page)	07/16/1996	P5 <i>645</i>

COLLECTION:

Clinton Presidential Records
Chief of Staff
Tom Shea (Subject File)
OA/Box Number: 8434

FOLDER TITLE:

Gaming Issues [Native American] [2]

Jimmie Purvis
2006-0197-F
jp824

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]

COPY



7/25 J-Harold should
definitely stay away
from this. This can
only lead to trouble
down the road.

P.S. I did not copy Stea
just in case you don't even
want to start it in the
"Process"

7/29

Tom knows
about this. Ask
him to look at
it. I don't believe
we need to put

unwriting ~~but~~

Tom should
alert Mack to
what's up.

— T. J. Ronnell
after Olympics

COPY

July 16, 1996



MEMORANDUM FOR MACK MCLARTY

FROM: ERIC FARNSWORTH ~~EX~~

SUBJECT: CALL FROM JIM REEDER

Reeder represents a client who has a proposal before the Interior Department to put a casino on Indian land in Detroit. Secretary Babbitt is empowered to approve this proposal, but is reluctant to do so because it would depart from current Interior practices (not further identified).

Senator Levin supports the proposal, but gambling in Detroit is politically sticky. Levin wants the casino, and therefore wants Interior to approve the proposal, but he fears he will take a beating at the polls if "gaming" becomes a question in November. Levin wants to meet with the President to encourage the White House to weigh in with Interior to approve the proposal, but at the appropriate time (after November).

According to Reeder, George Stephanopoulos has promised to arrange a meeting among the President, Levin, Congressman Dingell, and Governor Blanchard. Although Reeder wants to discuss this with you at greater length, for now his immediate request is that you talk to Stephanopoulos to encourage a timely meeting with the President to hash out this matter and arrive at an appropriate understanding.

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. email	Carrie Billy to David Beaulieu; re: Teacher Corps Proposal & OMB (2 pages)	12/07/1998	P5 647
001b. email	David Beaulieu to Carrie Billy; re: Teacher Corps Proposal & OMB (1 page)	12/07/1998	P5 648

COLLECTION:

Clinton Presidential Records
Counsel's Office
Mary Smith (Subject File)
OA/Box Number: 20851

FOLDER TITLE:

Native American Teacher Training - October 1998 [1]

Jimmie Purvis
2006-0197-F
jp765

RESTRICTION CODES

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

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

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.

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]

COPY



Jim Kohlmoos @ ed.gov
12/07/98 01:58:00 PM



Record Type: Record

To: Mary L. Smith

cc:

Subject: Re[2]: Teacher Corps Proposal & OMB

Mary,

See message below from Carrie Billy. I am getting a bit nervous...let's chat...jim

Forward Header

Subject: Re[2]: Teacher Corps Proposal & OMB

Author: David Beaulieu at WDCJ01

Date: 12/7/98 1:52 PM

Fyi David

Forward Header

Subject: Re[2]: Teacher Corps Proposal & OMB

Author: Carrie Billy at WDCC04

Date: 12/7/98 1:48 PM

The Congressional meetings are on a different matter, although I know that Senator Conrad has spoken to the First Lady about the need for such an initiative.

In your discussions with Wei Min, is the focus of the initiative still on Tribal Colleges, or is it equally on the mainstrems? I can tell you there will be a riot if mainstrems can apply for funding. They are already eligible for the new \$75 million initiative on Teacher Prep from OPE, but because of the way the legislation is drafted, TCUs will once again be virtually shut out. I would prefer a much small program, which focused on maybe 4-5 TCUs (with mainstream partners if necessary), rather than opening a program up to 25 grantees, who may or may not include TCUs.

The OMB folks I work with regularly seem fairly certain that Wei Min needs to meet with some TCU presidents. I'll let them know that you think it is under control, however, and let you know what they say.
Thanks -- clb

(ALSO: IS WEI-MIN WORKING WITH THE DPC OR NEC? I THOUGHT THAT MARY

COPY



SAID THE PROPOSAL WAS DEAD FROM THE DPC's perspective (THUS THE MEETING WITH NEC, WHICH WAS NOW OUR FOCUS. I was so disgusted with the DPC comments about Indians (not being a large enough political/voting block to care about), so that is when I asked Senator Conrad personally and Senator Daschle's staff (because Daschle was out of town) to speak to the First Lady and Bruce Reed, etc. They did this a few weeks ago, but I still thought we were working with NEC. I am just wondering if we are back to the DPC or if NEC is still taking the lead. Please clarify. Thanks -- clb)

Reply Separator

Subject: Re: Teacher Corps Proposal & OMB
Author: David Beaulieu at WDCJ01
Date: 12/7/98 1:27 PM

Carrie we are far along in our discussions and I believe we may be there soon. I should know today about where we are. Wei Min and I have been having discussions as has Mary Smith with him.

Also It may be premature to involve congressional folks within an internal administration budget process at this time given the need for internal discussion and debate. Hold back the troops a bit till we actually know the landscape. I will talk with you this afternoon or early tomorrow. David

Reply Separator

Subject: Teacher Corps Proposal & OMB
Author: Carrie Billy at WDCC04
Date: 12/7/98 1:17 PM

David: I spoke with a friend at OMB (the guy who does the TCU-Interior account) and he suggested that I meet with Wei-Min to give him some background and context on the Tribal Colleges and the TCU-EO. He is planning to schedule a meeting for sometime next week. I will ask Carty Monette and Lionel Bordeaux to come in for this meeting and a few others I am arranging with Congressional folks. I will keep you posted. Take care -- clb

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Lynn Cutler to John Spotila & Mary Smith; re: I Revisited the Rule on Self-Governance (1 page)	11/30/2000	P63(6)
002. memo	Evan Caminker to Robert Raben; re: S. 2868, Native American Languages Amendments Act (3 pages)	10/16/2000	P5 649

COLLECTION:

Clinton Presidential Records
Counsel's Office
Mary Smith (Subject File)
OA/Box Number: 20856

FOLDER TITLE:

Native American - Legislative - (Starting May 2000) [1]

Jimmie Purvis
2006-0197-F
jp774

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]

COPY



U.S. Department of Justice

Office of Legal Counsel

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

October 16, 2000

**MEMORANDUM FOR ROBERT RABEN
ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGISLATIVE AFFAIRS**

From: Evan H. Caminker
Deputy Assistant Attorney General
Office of Legal Counsel

Re: S. 2688, Native American Languages Act Amendments Act

Attn: Velma Taylor

This memorandum sets forth the views of the Office of Legal Counsel on S. 2688, the Native American Languages Act Amendments Act. The purpose of the bill is to encourage and support the development of Native American Language Survival Schools and Language Nests in order to address the effects of past discrimination against Native American language speakers and to support the revitalization of Native American languages. The bill defines "Native American" to include "an Indian, Native Hawaiian, or Native American Pacific Islander." The bill authorizes the Secretary of Education to provide funding through grants or contracts to Native American Language Educational Organizations, Native American Language Colleges, or Indian tribal governments for the purpose of establishing such schools. One of the requirements to qualify as a "Native American Language Educational Organization" is that the organization "is governed by a board consisting primarily of Native Americans and as many speakers of 1 or more Native American languages as possible." In our view, the aspect of this requirement focusing on Native Americans per se, combined with the inclusion of Native Hawaiians and Pacific Islanders in the definition of "Native American," raises a constitutional concern.

To the extent that the bill focuses on the preservation of indigenous languages, rather than on providing benefits to a racially defined class, we do not see a constitutional problem. For example, the bill does not appear to exclude non-Native Americans from participation in the educational programs it would fund. At least some of the entities eligible to receive the funds,

COPY

however, appear to be defined by criteria that a court might regard as racial in that they must be governed by boards "consisting



COPY

primarily of Native Americans." Under *Morton v. Mancari*, 417 U.S. 535, 555 (1974), special government programs for Indian tribes or their members, unlike racial or ethnic preferences, are not subject to heightened scrutiny under the equal protection component of the Fifth Amendment Due Process Clause, but rather will be upheld if they are "tied rationally to the fulfillment of Congress's unique obligations toward the Indians." The Supreme Court in *Rice v. Cayetano*, 528 U.S. 495 (2000), however, treated as unsettled the question whether Native Hawaiians should be viewed as akin to members of Indian tribes, thereby creating some uncertainty whether the deferential *Mancari* standard would apply, or whether the provision of funds to entities consisting primarily of Native Hawaiians would raise constitutional questions to be addressed under heightened scrutiny standards. Legislation currently under consideration would clarify that Native Hawaiians occupy the same political status as federally recognized Indian tribes, and would thereby lend further support to the view that special programs for Native Hawaiians should not receive strict constitutional scrutiny. The benefits of the bill also apply to Native American Pacific Islanders, defined as "descendant[s] of the aboriginal people of any island in the Pacific Ocean that is a territory or possession of the United States." To the extent that this might be regarded by a court as creating a racial classification, rather than as dealing with an indigenous group analogous to Indian tribes (since aboriginal Pacific Islanders have not been recognized as Indian tribes), this provision would be subject to strict scrutiny and it would therefore be important for the legislative record to provide evidence to meet that standard, such as evidence that this measure is justified as a remedy for past discrimination against Pacific Islanders.

This office raised similar concerns in 1992 with respect to a bill (codified at 42 U.S.C. 2991b-3) that similarly provided grants to agencies serving Native Hawaiians and Pacific Islanders for the preservation of Native American languages. President Bush issued a signing statement noting his concern "about provisions in this bill that provide benefits to 'Native Hawaiians' in a race-based fashion," and stating that the term "Native American Pacific Islander" was "not defined with sufficient clarity to determine whether [it was] based on racial classifications." 1992 U.S.C.C.A.N. 2963. With respect to the present bill, we believe that this constitutional concern would be eliminated by deleting the requirement that Native American Language Educational Organizations must be governed by a board consisting primarily of Native Americans, and substituting for that requirement a requirement that the Board consist exclusively or primarily of persons who can speak or understand one or more Native American languages.

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Evan Caminker to Robert Raben; re: S. 1929, Native Hawaiian Health Care Improvement Act of 1999 (2 pages)	10/03/2000	P5 650

COLLECTION:

Clinton Presidential Records
Counsel's Office
Mary Smith (Subject File)
OA/Box Number: 20856

FOLDER TITLE:

Native American - Legislative - (Starting May 2000) [2]

Jimmie Purvis
2006-0197-F
ip775

RESTRICTION CODES

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

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

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.

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]

COPY



U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

October 3, 2000

**MEMORANDUM FOR ROBERT RABEN
ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGISLATIVE AFFAIRS**

From: Evan Caminker
Deputy Assistant Attorney General
Office of Legal Counsel

Re: S. 1929, Native Hawaiian Health Care Improvement Act of 1999

Attn: Velma Taylor

This memorandum sets forth the views of this Office on S. 1929, the Native Hawaiian Health Care Improvement Act of 1999. The Act, among other things, would authorize the Secretary of Health and Human Services to make grants to and enter into contracts with qualified entities in order to improve the health of Native Hawaiians. §§ 5, 7. It would also authorize the Secretary to provide funds to Native Hawaiian organizations in order to provide scholarship assistance to Native Hawaiian students, § 11, and to allocate funds to carry out Native Hawaiian demonstration projects of national significance, § 14.

Special government programs for Indian tribes or their members, unlike racial or ethnic preferences, are not subject to heightened scrutiny under the equal protection component of the Fifth Amendment Due Process Clause but will be upheld if they are "tied rationally to the fulfillment of Congress' unique obligations toward the Indians." See *Morton v. Mancari*, 417 U.S. 535, 555 (1974). The Supreme Court in *Rice v. Cayetano*, 528 U.S. 495 (2000), treated as unsettled the question whether Native Hawaiians should be viewed as akin to members of Indian tribes, thereby creating some uncertainty whether the deferential standard of *Morton v. Mancari* would apply here or whether these provisions would raise constitutional questions to be addressed under heightened scrutiny standards. Legislation currently under consideration would

COPY

clarify that Native Hawaiians occupy the same political status as federally recognized Indian tribes and would thereby support the view that special programs for Native Hawaiians should not receive strict scrutiny. S. 2899, 106th Cong; H.R. 4904, 106th Cong.



COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. email	Adrienne C. Lavallee to Lynn G. Cutler at 08:20:08.00. Subject: Re: I just was told... (1 page)	02/17/2000	P5 71458
001b. email	Lynn G. Cutler to Marjorie Tarmey at 06:58:00. Subject: I was told... (1 page)	02/16/2000	P5
002. email	Dina S. Zicklin to Jonathan E. Kaplan, Lynn G. Cutler, etc... at 00:09:05:00. Subject: FINAL VP Schedule for Friday, Feb. 18. (partial) (2 pages)	02/18/2000	P6/b(6), b(7)(C), b(7)(E), b(7)(F)
003. email	Lynn G. Cutler to Monica M. Dixon at 05:21:27. Subject: Indian meeting video. (1 page)	02/16/2000	P5
004. email	Diana S. Zicklin to Jonathan E. Kaplan, Lynn G. Cutler, etc... Subject: Revised Final #2 of 2/18. (partial) (2 pages)	02/18/2000	P6/b(6), b(7)(C), b(7)(E), b(7)(F)

COLLECTION:

Clinton Presidential Records
Automated Records Management System [Email]
WHO 1999/12 - 2000/03 ([To Cutler])
OA/Box Number: 750000

FOLDER TITLE:

[02/16/2000 - 2/18/2000]

Adam Bergfeld
2006-0197-F
ab408

RESTRICTION CODES

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

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

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.

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]

COPY

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Adrienne C. Lavallee (CN=Adrienne C. Lavallee/OU=WHO/O=EOP [UNKNOWN])

CREATION DATE/TIME:17-FEB-2000 08:20:08.00

SUBJECT: Re: I just was told....

TO: Lynn G. Cutler (CN=Lynn G. Cutler/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TEXT:

I can't believe this - no one telling you and her writing down what you said, etc.

1458

Lynn G. Cutler
02/16/2000 06:58:00 PM
Record Type: Record

To: Marjorie Tarmey/WHO/EOP@EOP
cc:
Subject: I just was told....

Mary just informed me that a decision had been made to let Shelley Berkley take credit for any easing of our position on the deadbeat dad/casino proposal. They would let me notify the tribes at the same time. Noone, including Mary, had told me this, so my comments in the briefing were not so great. She informed me that she "wrote down" what I said.....I don't feel very nice about this--but won't be held responsible when noone bothers to let me know what's going on. Basically, all I said was that there was alot of discussion going on and potential revision of the proposal. I told them to tell tribes to stay calm and wait a week or so.

COPY

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Lynn G. Cutler to Mickey Ibarra, at 16:23:46.00. No subject. (partial) (2 pages)	07/03/1997	P5 1460

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO 1996/01 - 1997/12 ([To Ibarra])
OA/Box Number: 550000

FOLDER TITLE:

[06/09/1997 - 07/31/1997]

Adam Bergfeld
2006-0197-F
ab166

RESTRICTION CODES

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

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

- 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]

- 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 or records, the disclosure of which would be detrimental to the national defense [(b)(9) of the FOIA]

- 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.

COPY

CREATOR: Lynn G. Cutler (CN=Lynn G. Cutler/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 3-JUL-1997 16:23:46.00

SUBJECT:

TO: Mickey Ibarra (CN=Mickey Ibarra/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Suzanne Dale (CN=Suzanne Dale/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:
Priorities

In order to promote your tax proposal, we worked with the Vice-President's office to set up and implement two conference calls that the VP held with groups of mayors. The unique feature of these calls was that we asked the mayors to have the city hall press corps join them at their end of the call. This was very successful in garnering local press on brownfields, empowerment zones, enterprise communities, and the community investment bank. We will have a full press packet early next week.

We have also organized a press briefing with the VP, Secretary Rubin and seven local officials for Monday morning. There will be six mayors from communities that will really benefit from the proposals in your tax package. We will also have a county commissioner with the group. (Mickey, if you want to have names, let us know) We should have good coverage of this event and be able to talk about these issues while you are away.

Constituencies

We are deep into planning for the annual meeting of the National Association of Counties, which will be held in Baltimore July11-15th. As of now, Secretaries Babbitt, Cuomo, Slater and Herman will attend.

We are also working to implement your idea of a "One Stop Shop". We have asked all of the agencies to send representatives to Baltimore for Monday the 14th, and hold "office hours" for the county officials who may have questions for them. Mickey and Lynn spoke to the chiefs of staff of all of the agencies and asked for their cooperation on this effort. We are getting good response, and will report to you on how it went.

Indian Country

We met with an interagency group convened by Dr. Trujillo of the Indian Health Service, to see how we can mobilize to better serve Indian Country's health needs. Attached are some statistics that should inform us all about the needs.

Cherokee Nation NOTE: THIS WAS WRITTEN WITH ADVICE OF COUNSEL, SO PLEASE DO NOT MAKE CHANGES UNLESS WE TALK ABOUT THEM--THANKS.

Pursuant to your request, and following up on the work that we've been doing on this issue, Lynn Cutler and Maria Echaveste had a conference call with Wilma Mankiller on Monday. We also had Bill Marshall from Counsel's office and Karen Skelton, who is very good friends with Wilma on the call.

COPY

As a result of the call, we agreed that we would reach out further to the Office of Tribal Justice at DOJ. We also contacted David Hayes, Counselor to Secretary Babbitt, in order to try to have the two agencies on the same page in pursuit of a solution to a very bad and worsening situation.

After several conference calls, we believe the situation to be the following: after numerous tries to get the opposing factions to the table, it was proposed that the Tribal Council, which is badly split, would put forth a joint resolution which would establish a commission of three to five members, which would look into allegations of misuse of power by Chief Bird and his administration. There is a lawyer there that is trusted by both sides, and he would head this effort.

The goals are: to reinstate the Judges that have been impeached, to restore the tribal marshalls, and to re-open the courthouse, which was taken and closed by Chief Bird and some security guards. The latter is the prime goal now, because of its symbolism and the tense nature of this situation.

It was very helpful in bringing the agencies together to reference your interest in this matter. We will continue to monitor the situation, but with the agencies taking the lead to promote resolution by the Tribal government of the problems.

NOTE; I WILL SEND OVER THE STATISTICS THAT I'D LIKE ATTACHED TO THE REPORT.

1460

COPY

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Lynn G. Cutler to Sylvia M. Mathews, at 18:18:00.00. Subject: letter from Alaska Inter-Tribal Council. (1 page)	10/14/1997	P5 1463
002. email	Lynn G. Cutler to Fred DuVal, at 19:03:23.00. Subject: Re: Arizona Report. (1 page)	11/03/1997	P5
003. email	Lynn G. Cutler to Ansley Jones, at 16:12:22.00. Subject: swearing in. (1 page)	11/10/1997	P5
004. email	Lynn G. Cutler to Fred DuVal, at 16:39:03. Subject: Re: NCAI (1 page)	11/11/1997	P5
005. email	(dehex) Attachment 1. Title: Draft List of Potential Stage Participants. (4 pages)	12/01/1997	P5

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO 1996/01 - 1997/12 ([From Cutler])
OA/Box Number: 550000

FOLDER TITLE:

[09/17/1997 - 12/23/1997]

Adam Bergfeld
2006-0197-F
ab210

RESTRICTION CODES

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

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

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.

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]

COPY

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Lynn G. Cutler (CN=Lynn G. Cutler/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:14-OCT-1997 18:18:00.00

SUBJECT: letter from Alask Inter-Tribal Council

TO: Sylvia M. Mathews (CN=Sylvia M. Mathews/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: William P. Marshall (CN=William P. Marshall/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

This is the famous Venetie case. Seth Waxman has decided that the US will not file at all in the case--either with the Indians or with the state of Alaska. It started with a tax issue and is very controversial. David Ogden at Justice and Bill Marshall here have asked us not to have any comment on this from the White House. Bill can give you more detail if you need it. I'll keep the paper unless you want it back.

1463

COPY

Withdrawal/Redaction Sheet Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. email attachment	Memo from Christopher Edly, Jr. to Maria Echaveste, Bruce Reed, and Lynn Cutler. Re: Native American Chapter of the Race Book. (1 page)	05/19/1999	P5
001b. email attachment	Draft- Memo to POTUS from Edley. Re: Native American Opportunity Section of Your Race Book. (2 pages)	[none]	P5
002a. email attachment	Memo from Christopher Edly, Jr. to Maria Echaveste, Bruce Reed, and Lynn Cutler. Re: Native American Chapter of the Race Book. (1 page)	05/19/1999	P5
002b. email attachment	Draft- Memo to POTUS from Edley. Re: Native American Opportunity Section of Your Race Book. (2 pages)	[none]	P5
003a. email attachment	Memo from Christopher Edly, Jr. to Maria Echaveste, Bruce Reed, and Lynn Cutler. Re: Native American Chapter of the Race Book. (1 page)	05/19/1999	P5
003b. email attachment	Draft- Memo to POTUS from Edley. Re: Native American Opportunity Section of Your Race Book. (2 pages)	[none]	P5
004a. email attachment	Memo from Christopher Edly, Jr. to Maria Echaveste, Bruce Reed, and Lynn Cutler. Re: Native American Chapter of the Race Book. (1 page)	05/19/1999	P5
004b. email attachment	Draft- Memo to POTUS from Edley. Re: Native American Opportunity Section of Your Race Book. (2 pages)	[none]	P5
005a. email attachment	Memo from Christopher Edly, Jr. to Maria Echaveste, Bruce Reed, and Lynn Cutler. Re: Native American Chapter of the Race Book. (1 page)	05/19/1999	P5

1464

Dups

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
OPD 1999/01 - 1999/10 ([To Cutler])
OA/Box Number: 300000

FOLDER TITLE:

[05/17/1999 - 05/19/1999]

Adam Bergfeld

2006-0197-F

ab258

RESTRICTION CODES

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

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

- P1 National Security Classified Information [(a)(1) of the PRA]
P2 Release 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.

- 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]

COPY

May 19, 1999

To: Maria Echaveste
Bruce Reed
Lynn Cutler

1464

From: Christopher Edley, Jr.

Cc: Todd Stern, Elena Kagan, Ben Johnson, Mary Smith

Re: Native American Chapter of the Race Book

As we ride down the home stretch, the question is whether we've done what we should in the Native American chapter, which was drafted principally by Mary Smith of DPC. Mary consulted widely and vetted things quite well. (Terry Edmonds, of course, edited and added some things.) I'm concerned, however, that the vetting – and especially the review by OMB – have resulted in something that is simply too tame.

Don't get me wrong: I'm quite proud of the draft chapter as it stands. The reader will learn a lot, and the proposed policy steps are creditable. In particular, they try to avoid the "over-promising" syndrome so toxic in Indian Country. But as welcome as the analysis and ideas will be, the proposals don't exactly rock.

So, I was thinking about giving POTUS something like the attached memorandum along with the chapter. Please let me know your thoughts, at edley@law.harvard.edu.

Thanks.

DRAFT

To: POTUS

From: Edley

Re: Native American Opportunity Section of Your Race Book

1464

Are the policy ideas in this section bold enough? Recall that the draft chapter is organized around Education, Economic Development and Community Security.

The central rationale for moving along the lines below would be that, while budget constraints and lack of Hill support make any near term victory unimaginable, if you don't put some bold ideas on the table there will never be the kind of conversation which might, over time, change the political and fiscal constraints that now keep us from making giant strides.

If you are interested in any or all of these, we will move them forward with the policy councils. As with most other book ideas, however, if we proceed with these ideas they should be presented in a long-term framework, so as not to raise expectations of more than a down payment in the FY 2001 budget.

1. Sovereignty: Build on your government-to-government framework by directing agencies to:

- (a) systematically inventory all the major grant-in-aid programs serving state or local governments and assess whether Tribal governments are included as direct recipients of federal funding (as need and capacity warrant);
- (b) submit recommendations to the White House (OMB) concerning places where regulations or statutes should be modified to remove impediments to creating the appropriate government-to-government relationship.

2. Education: Build on the One America vision of closing racial disparities by *either*:

- (a) state a goal of improving the quality of BIA schools to at least equal the quality of DOD schools, as measured by resource equity and student achievement; *or*
- (b) state a goal of improving the quality of BIA schools to at least equal that of state/local public schools in the surrounding region.

Please note that the costs of eliminating the capital maintenance backlog of BIA schools is an estimated \$1 billion. And that is only one item of the equity agenda.

COPY
Automated Records Management System
High-Speed Conversion

3. Child Health Disparities: Although Indian country health needs are extraordinarily compelling, these were a late, post-announcement addition to your disparities initiative last year, and the IHS remains deeply troubled. You could set a national goal of eliminating the disparities in these five key areas of Native American health care:

1. Reduce the rate of diabetes among the Native American population to the national average (currently three times the national rate);
2. Reducing by 50% the Sudden Infant Death Syndrome (currently twice the national average);
3. Detection, prevention, and screening for breast and cervical cancer in American Indian women in order to improve survival rates;
4. Reduce the rate of teen suicide in Indian country; and
5. Reduce smoking and alcohol abuse.

5. Economic Development: You could also work to improve economic development in Indian Country by working with the Federal Communication Commission (FCC) to have the FCC help ensure that geographically isolated tribes receive access to telecommunications advances to the same extent that other areas of the country do. Chairman Kennard is very interested in this.

1464

COPY

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001 memo	Lynn Cutler to POTUS; re: DCCC (Democratic Congressional Committee Caucus) with Tribal Leaders, March 9, 2000 (1 page)	03/08/2000	P5 4300

COLLECTION:

Clinton Presidential Records
WHORM-Subject File-General
IN
OA/Box Number: 23339

FOLDER TITLE:

412385

Jimmie Purvis
2006-0197-F
ip586

RESTRICTION CODES

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

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

- F1 National Security Classified Information [(a)(1) of the FRA]
F2 Relating to the appointment to Federal office [(a)(2) of the FRA]
F3 Release would violate a Federal statute [(a)(3) of the FRA]
F4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the FRA]
F5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the FRA]
F6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the FRA]

- 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]

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.

COPY

THE WHITE HOUSE

WASHINGTON



March 8, 2000

IN

MEMORANDUM FOR THE PRESIDENT

FROM: Lynn Cutler

SUBJECT: DCCC Lunch with Tribal Leaders, March 9, 2000

- Most of the tribes who will be at the Democratic Congressional Committee lunch are engaged in gaming. In your 2001 budget proposal, there was a measure proposed that would collect delinquent child support payments from gaming winnings. This was modeled on the reporting of certain gaming winnings, with the add-on of checking to see if winners over certain amounts owed child support. If so, the casino would retain winnings for the gamblers' children.
- There has been considerable complaint about this proposal. Indian country was not consulted during its development, and I did not know about it until it was announced. We have had several meetings with the agencies involved, the National Indian Gaming Commission, and with tribal leaders from the National Indian Gaming Association. I think we are very close to radically altering the proposal to a demonstration, voluntary concept.
- If you are asked about this, I recommend that you say that we are taking a very hard look at the whole idea, and that we have heard the very real concerns from tribes: i.e., lack of consultation, abridgement of sovereignty, concern about racist attacks from customers, etc.
- I recommend that you not commit to anything specific, but indicate that you are hopeful that we will soon have a different kind of proposal.

PHOTOCOPY
WJC HANDWRITING

COPY

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Jack Quinn to POTUS; re: Supreme Court Ruling on State Sovereign Immunity (2 pages)	04/1996	P5 <i>Dug</i>
002. memo	Stephen R. Neuwith to Jack Quinn; re: Seminole Tribe Ruling (1 page)	circa., April 1996	P5
003. memo	Jack Quinn to POTUS; re: Supreme Court Ruling on State Sovereign Immunity (2 pages)	04/1996	P5 <i>Dug</i>
004. memo	Jack Quinn to POTUS; re: Supreme Court Ruling on State Sovereign Immunity (1 page)	04/05/1996	P5 4301
005. memo	Jack Quinn to POTUS; re: Supreme Court Ruling on State Sovereign Immunity (1 page)	04/05/1996	P5 <i>Dug</i>

COLLECTION:

Clinton Presidential Records
Counsel's Office
Trey Schroeder (Subject File)
OAB/Box Number: 871

FOLDER TITLE:

Seminole Tribe Litigation

Jimmie Purvis
2006-0197-F
jp201

RESTRICTION CODES

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

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

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 advise 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]

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 [(b)(9) of the FOIA]

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.

COPY

April 5, 1996



MEMORANDUM FOR THE PRESIDENT

FROM: JACK QUINN

SUBJECT: SUPREME COURT RULING ON STATE SOVEREIGN IMMUNITY

You have asked whether the recent Supreme Court decision in Seminole Tribe v. Florida threatens private suits against states to enforce federal environmental laws. The Justice Department is undertaking a comprehensive review of the decision. My initial conclusion is that the decision may limit Congress' power to authorize private suits against states to enforce federal environmental laws, but that it preserves Congress' power to authorize private suits against *state officials* to enforce those laws.

The Court ruled 5-4 (with Stevens, Souter, Ginsburg and Breyer dissenting) that a private party could not sue Florida or its Governor to enforce the Indian Gaming Regulatory Act. The Court interpreted the 11th Amendment to grant States sovereign immunity not only from suits by citizens of other States and foreign nations (which is what the 11th Amendment says), but also from suits by citizens of the State itself. The Court held that the Indian Commerce Clause, the source of Congress' power to adopt the Indian Gaming Act, does not permit Congress to abrogate the sovereign immunity provided by the 11th Amendment.

Most significantly, in reaching its decision, the Court also held that the Interstate Commerce Clause -- a principal source of Congress' authority to pass environmental protection statutes and many other laws -- similarly does not permit Congress to abrogate State sovereign immunity. Indeed, the Court expressly overturned an earlier decision, Pennsylvania v. Union Gas Co., which had held that Congress' power to regulate interstate commerce includes the power to create private rights of action against States.

At the same time, the Court stated that it was not limiting the principle that Congress can authorize private suits against State officials to enforce federal laws, including laws passed pursuant to the Interstate Commerce Clause. The Court cited the Federal Water Pollution Control Act as an example of a statute permissibly authorizing "a suit against 'any person' who is alleged to be in violation of relevant water pollution laws." Notwithstanding this general principle, the Court held that the Seminole Tribe could not sue Florida's governor to enforce the Indian Gaming Act, because that Act creates a specific enforcement mechanism -- including mediation and other steps -- "which is significantly more limited" than the remedies a federal court could impose upon a State official.

In its decision, the Court also noted that the 11th Amendment does not prohibit the federal government from suing a State to enforce federal law. The Court also observed that 14th Amendment does give Congress power to create private rights of action against States to enforce statutes enacted pursuant to the provisions of that particular Amendment.

COPY

www.indianlaw.com/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Marcia Hale & Emily Bromberg to Leon Panetta et al; re: Indian Gaming National Governors' Association (1 page)	12/04/1996	P5
002. memo	Bruce Babbitt to Leon Panetta; re: Response to Seminole Tribe of Florida v. Florida (3 pages)	04/08/1996	P5
003. note	Stephen R. Neuwirth to Jack Quinn; re: Seminole Tribe Ruling (1 page)	circa., April 1996	P5
004. memo	Jack Quinn to POTUS; re: Supreme Court Ruling on State Sovereign Immunity (2 pages)	04/1996	P5
005. memo	Jack Quinn to POTUS; re: Supreme Court Ruling on State Sovereign Immunity (1 page)	04/1996	P5
006. memo	Elena Kagan to Harold Ickes; re: Seminole Tribe v. Florida (3 pages)	03/31/1996	P5

COLLECTION:

Clinton Presidential Records
Counsel's office
Kathy Wallman (Subject File)
OA/Box Number: 849

FOLDER TITLE:

Indian Gaming

Jimmie Purvis
2006-0197-F
ip202

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]

COPY

to
April __, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: JACK QUINN

SUBJECT: SUPREME COURT RULING ON STATE SOVEREIGN IMMUNITY

You asked, in a recent note, whether the Supreme Court's decision in Seminole Tribe v. Florida threatens private suits against states to enforce federal environmental laws. In that case, the Court ruled (5-4) that an Indian Tribe could not sue Florida or its Governor to enforce the Indian Gaming Regulatory Act. The Court reiterated that the 11th Amendment grants States sovereign immunity not only from suits by citizens of other States and foreign nations (which is what the 11th Amendment says), but also from suits by citizens of the State itself. Neither the Constitution's Indian Commerce Clause at issue in the case, nor the Commerce Clause, said the Court, permits Congress to abrogate that sovereign immunity.

The Justice Department is undertaking a comprehensive review of the decision. My initial conclusion, however, is that the decision necessarily limits only Congress' power to authorize private suits against States as a way of enforcing federal environmental laws. At the same time, the decision appears to preserve Congress' power to authorize private suits against State officials to enforce those laws. Suits against State officials for injunctive or declaratory relief are the principal instrument used by private parties to enforce federal environmental statutes such as the Clean Air Act and the Clean Water Act. Thus, the Court approvingly cited the Federal Water Pollution Control Act as an example of a statute authorizing "a suit against 'any person' who is alleged to be in violation of relevant water pollution laws."

Certain environmental statutes, such as the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), contemplate private suits directly against States for monetary relief. For this reason, the most significant impact of the Seminole Tribe decision on environmental litigation may be to foreclose the opportunity for private parties to obtain such monetary relief from States. However, while the law in this context is quite clear that a private party may not sue State officials to obtain payment of past damages by the State, the Seminole Tribe decision does not appear to foreclose the opportunity for a private suit against State officials for prospective relief requiring expenditures of State funds.

In its decision, the Supreme Court also noted three separate circumstances in which private suits against the States remain permissible. First, the 11th Amendment does not prohibit the federal government from suing a State to enforce federal law. Second, States can waive their sovereign immunity -- which would mean, for example, that Congress could make a waiver a condition of receiving federal funding. Lastly, the 11th Amendment gives Congress power to create private rights of action against States to enforce laws enacted pursuant to that Amendment.

cc: Harold Schrey
Katie McGinnis

COPY

Surg - we do need to include a TP on why he can't be sued, despite the "state grounds" vs. state district

Element

PRESIDENTIAL LIBRARY
4302

including state officials?

but the Seminole case was "to enforce" the Act, not for monetary relief, so why is this imp?

Sued

These suits appear to be quite common in which despite the restriction on suing States directly in the Seminole case

Element

First case

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. note	Stephen Neuwirth to Jack Quinn; re: Seminole Tribe Ruling (1 page)	ca., April 1996	P5
002. memo	Jack Quinn to POTUS; re: Supreme Court Ruling on State Sovereign Immunity (2 pages)	05/1996	P5 4303
003. memo	Jack Quinn to POTUS; re: Supreme Court Ruling on State Sovereign Immunity (2 pages)	05/1996	P5 dup
004. memo	Jack Quinn to POTUS; re: Supreme Court Ruling on State Sovereign Immunity (2 pages)	04/15/1996	P5 4304
005. memo	Jack Quinn to POTUS; re: Supreme Court Ruling on State Sovereign Immunity (1 page)	04/1996	P5 4305
006. note	Stephen Neuwirth to Jack Quinn; re: Seminole Tribe Ruling (1 page)	ca., April 1996	P5
007. memo	Jack Quinn to POTUS; re: Supreme Court Ruling on State Sovereign Immunity (2 pages)	04/1996	P5 4306
008. memo	Jack Quinn to POTUS; re: Supreme Court Ruling on State Sovereign Immunity (2 pages)	04/1996	P5 dup

COLLECTION:

Clinton Presidential Records
Counsel's Office
Stephen R. Neuwirth (Subject File)
OA/Box Number: 378

FOLDER TITLE:

Seminole Tribe [1]

Jimmie Purvis
2006-0197-F
ip199

RESTRICTION CODES

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

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

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]
T4 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.

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 or data, or maps, designs, or drawings [(b)(9) of the FOIA]

COPY

DRAFT

(S only)

April __, 1996

at the same time, it appears to

necessarily

MEMORANDUM FOR THE PRESIDENT

FROM: JACK QUINN

Seminole Tribe

SUBJECT: SUPREME COURT RULING ON STATE SOVEREIGN IMMUNITY

PP

in a recent note
You have asked whether the recent Supreme Court decision in Seminole Tribe v. Florida threatens private suits against states to enforce federal environmental laws. The Justice Department is undertaking a comprehensive review of the decision. My initial conclusion is that the decision may limit Congress' power to authorize private suits against states to enforce federal environmental laws, but that it preserves Congress' power to authorize private suits for injunctive or declaratory relief against state officials to enforce those laws. We understand that such suits against state officials are the principal instrument used by private parties to enforce federal environmental statutes such as the Clean Air Act and the Clean Water Act. However, certain environmental statutes, such as CERCLA, contemplate private suits directly against states for monetary relief. The most significant impact of the Seminole Tribe decision on environmental litigation therefore may be to foreclose the opportunity for private parties to sue states for such monetary relief. The Justice Department is assessing the practical implications of this restriction.

however,
is a way of informing

for monetary damages
spell out?
for this reason,

That case,
In Seminole Tribe, the Court ruled 5-4 (with Stevens, Souter, Ginsburg and Breyer dissenting) that an Indian Tribe could not sue Florida or its Governor to enforce the Indian Gaming Regulatory Act. The Court reiterated its longstanding view that the 11th Amendment grants States sovereign immunity not only from suits by citizens of other States and foreign nations (which is what the 11th Amendment says), but also from suits by citizens of the State itself. The Court held that the Indian Commerce Clause, the source of Congress' power to adopt the Indian Gaming Act, does not permit Congress to abrogate that sovereign immunity.

held
of the Constitution, said the Court,

In reaching its decision, the Court also held that the Interstate Commerce Clause -- a principal source of Congress' authority to pass environmental protection statutes and many other laws -- similarly does not permit Congress to abrogate State sovereign immunity. Indeed, the Court expressly overturned an earlier decision, Pennsylvania v. Union Gas Co., which had upheld Congress' creation of a private cause of action for monetary relief against the States under CERCLA.

At the same time, the Court stated that it was not limiting the principle that Congress can authorize private suits against State officials to enforce federal laws, including laws passed pursuant to the Interstate Commerce Clause. The Court cited the Federal Water Pollution Control Act as an example of a statute permissibly authorizing "a suit against 'any person' who is alleged to be in violation of relevant water pollution laws." Notwithstanding

thus, approvingly

COPY

CLINTON PRESIDENTIAL LIBRARY
4303

this general principle, the Court held that the Seminole Tribe could not sue Florida's governor to enforce the Indian Gaming Act, because that Act creates a specific enforcement mechanism -- including mediation and other steps -- "which is significantly more limited" than the remedies a federal court can impose upon a State official.

Finally,
~~In its decision~~, the Court also noted that the 11th Amendment does not prohibit the federal government from suing a State to enforce federal law. ~~In addition~~, the Court observed that States can waive their sovereign immunity -- which would mean, for example, that Congress could make a waiver a condition of receiving federal funding. Finally, the Court observed the Congress has power under the 14th Amendment to create private rights of action against States to enforce laws enacted pursuant to that Amendment.

Act, Second,

Lastly,

three separate
circumstances in
which ~~state~~ private suits
against the States
also remain
permissible. First,

COPY



April 15, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: JACK QUINN

SUBJECT: SUPREME COURT RULING ON STATE SOVEREIGN IMMUNITY

You asked, in a recent note, whether the Supreme Court's decision in Seminole Tribe v. Florida threatens private suits against states to enforce federal environmental laws.

Seminole Tribe made clear that in the context of federal legislation passed pursuant to the Commerce Clause of the Constitution, states have sovereign immunity from any type of private suit -- whether for injunctive or declaratory relief or for monetary damages. Specifically, the Court ruled that the Seminole Tribe could not sue the State of Florida for injunctive and declaratory relief to enforce the Indian Gaming Regulatory Act, a statute promulgated by Congress pursuant to the Constitution's Indian Commerce Clause. In so ruling, the Court also held that Congress similarly lacks authority under the general Commerce Clause to create private rights of action against states. State sovereign immunity, in this context, derives from the Eleventh Amendment.

At the same time, the Court made clear as well that Congress generally *does* have the power under the Commerce Clause to authorize certain private suits against *state officials*, as opposed to the state itself. (The Court dismissed the Seminoles' claim against the Governor of Florida, but for separate reasons related to the unique features of the Indian Gaming Regulatory Act.) The law is well established that private parties may sue state officials for declaratory or injunctive relief to enforce federal laws passed pursuant to the Commerce Clause. Such declaratory or injunctive relief against state officials can include a prospective requirement that a state expend funds. But the law is also quite clear that a private party may not sue state officials to obtain payment of *past* damages from the State fisc.

And, The Seminole Tribe decision is significant for environmental litigation because so many federal environmental laws are enacted pursuant to the Commerce Clause. I have been advised by the Department of Justice, however, that the majority of private suits to cause state enforcement of federal environmental statutes are suits against state officials for declaratory or injunctive relief. Nothing in the Seminole Tribe decision appears to restrict such suits. Indeed, the Court approvingly cites the Federal Water Pollution Control Act as an example of a statute authorizing such suits.

However, certain statutes, such as the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), ~~have~~ contemplate private claims directly against states for past monetary damages -- such as clean-up contributions that a state failed to make.

COPY



In Seminole Tribe, the Court expressly overturned an earlier decision that had upheld a private action against a state for such monetary relief under CERCLA. States may now effectively be insulated from private suits for monetary damages under federal environmental statutes, since current law, as noted above, suggests that private parties also cannot sue state officials to obtain payment of damages by the state. The Department of Justice is currently analyzing how significant an impact this restriction is likely to have on private enforcement of federal environmental statutes.

Finally,

In its decision, the Supreme Court did emphasize three separate circumstances in which suits directly against states remain permissible. First, the federal government may sue a state to enforce federal law. Second, states can waive their sovereign immunity from private suits -- which would mean, for example, that Congress could make such a waiver a condition of receiving federal funding. Lastly, the Fourteenth Amendment gives Congress power to create private rights of action against states to enforce laws enacted pursuant to that Amendment.

And, third,

cc: Harold Ickes
Katie McGinty

COPY



April __, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: JACK QUINN

SUBJECT: SUPREME COURT RULING ON STATE SOVEREIGN IMMUNITY

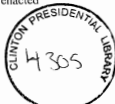
You asked, in a recent note, whether the Supreme Court's decision in Seminole Tribe v. Florida threatens private suits against states to enforce federal environmental laws. In that case, the Court ruled 5-4 that an Indian Tribe could not sue Florida or its Governor to enforce the Indian Gaming Regulatory Act. The Court reiterated that the 11th Amendment grants States sovereign immunity not only from suits by citizens of other States and foreign nations (which is what the 11th Amendment says), but also from suits by citizens of the State itself. Neither the Constitution's Indian Commerce Clause at issue in the case, nor the Commerce Clause, said the Court, permits Congress to abrogate that sovereign immunity.

The Justice Department is undertaking a comprehensive review of the decision. My initial conclusion, however, is that the decision necessarily limits only Congress' power to authorize private suits against *states* as a way of enforcing federal environmental laws. At the same time, the decision appears to preserve Congress' power to authorize private suits against *state officials* to enforce those laws. Suits against state officials for injunctive or declaratory relief are the principal instrument used by private parties to enforce federal environmental statutes such as the Clean Air Act and the Clean Water Act. Thus, the Court approvingly cited the Federal Water Pollution Control Act as an example of a statute authorizing "a suit against 'any person' who is alleged to be in violation of relevant water pollution laws."

Certain environmental statutes, such as the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), contemplate private suits directly against states for monetary relief. For this reason, the most significant impact of the Seminole Tribe decision on environmental litigation may be to foreclose the opportunity for private parties to sue states for such monetary relief. However, while the law in this context is quite clear that a private party may not sue state officials to obtain state expenditures covering past damages, the Seminole Tribe decision does not appear to foreclose the opportunity for a private suit against state officials for prospective relief requiring expenditures of state funds.

In its decision, the Supreme Court also noted three separate circumstances in which private suits against the States remain permissible. First, the 11th Amendment does not prohibit the federal government from suing a State to enforce federal law. Second, States can waive their sovereign immunity -- which would mean, for example, that Congress could make a waiver a condition of receiving federal funding. Lastly, the 14th Amendment gives Congress power to create private rights of action against States to enforce laws enacted pursuant to that Amendment.

COPY



April __, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: JACK QUINN

SUBJECT: SUPREME COURT RULING ON STATE SOVEREIGN IMMUNITY

You asked, in a recent note, whether the Supreme Court's decision in Seminole Tribe v. Florida threatens private suits against states to enforce federal environmental laws.

In that case, the Court ruled that an Indian Tribe could not sue the State of Florida to enforce the Indian Gaming Regulatory Act, a statute promulgated by Congress pursuant to the Indian Commerce Clause of the Constitution. In so ruling, the Court also overturned an earlier decision, which had upheld Congress' authority under the general Commerce Clause to create a private right of action against states for monetary damages under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The Court made clear that, in the context of statutes passed under the Commerce Clause (such as many environmental statutes), states have, pursuant to the Eleventh Amendment, sovereign immunity from private suits for any type of relief -- monetary, declaratory or injunctive.

At the same time, the Court also made clear that Congress generally *does* have the power under the Commerce Clause to authorize certain private suits against *state officials*, as opposed to the state itself. The law is well established that in the context of Commerce Clause legislation, private parties may sue state officials for declaratory or injunctive relief to enforce federal law. (The Court dismissed the Seminoles' claim against the Governor of Florida for separate reasons related to the Indian Gaming Regulatory Act.) Such declaratory or injunctive relief can include a prospective requirement that a state expend funds. But the law is also quite clear that a private party may not sue state officials to obtain payment of *past* damages.

I have been advised by the Department of Justice that the majority of private suits to cause state enforcement of federal environmental statutes are suits against state officials for declaratory or injunctive relief. Nothing in the Seminole Tribe decision appears to restrict such suits. Indeed, the Court approvingly cites the Federal Water Pollution Control Act as an example of a statute authorizing such suits.

However, certain statutes, such as CERCLA, do contemplate private claims directly against states for past monetary damages -- such as clean-up contributions that a state failed to make. Seminole Tribe may effectively preclude such private claims for monetary damages, because current law suggests that a state official cannot be sued to obtain payment of damages by the state. DOJ is currently analyzing how significant an impact this restriction is likely to have on private enforcement of federal environmental statutes.

COPY



In its decision, the Supreme Court also noted three separate circumstances in which private suits against the states remain permissible. First, the federal government may sue a state to enforce federal law. Second, states can waive their sovereign immunity -- which would mean, for example, that Congress could make a waiver a condition of receiving federal funding. Lastly, the Fourteenth Amendment gives Congress power to create private rights of action against states to enforce laws enacted pursuant to that Amendment.

cc: Harold Ickes
Katie McGinty

COPY

