PJR Subj.

THE WHITE HOUSE

WASHINGTON

September 22, 1984

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: PETER J. RUSTHOVEN

SUBJECT: Departmental Reports on S. 2116 -- Findings and Recommendations of Commission on Wartime Relocation and and Internment of Civilians

OMB's Legislative Reference Division copied us earlier this month on a legislative referral memorandum forwarding copies of reports by the Departments of Justice, Transportation and the Treasury on S. 2116, a bill to accept the findings and implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians. Comments were to be directed to OMB's Branden Blum by September 5.

After reviewing these reports and discussing them briefly with Mr. Fielding, I advised Blum that day that we had no legal objection to the reports and would have no comment on the policy issues involved.

No further action is needed on this matter and the incoming materials may be filed. Thank you.

ID # CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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Subject: DOJ, DOT & Treasury Reports on S. 2116, a bill to accept the findings and implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians

ROUTE TO:		ACTION		DISPOSITION		
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5/81

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

August 29, 1984

SPECIAL

LEGISLATIVE REFERRAL MEMORANDUM

TO: LEGISLATIVE LIAISON OFFICER

Department of Justice
Department of Transportation
Department of the Treasury
Department of the Interior
Department of Housing and Urban Development
Department of Defense
General Services Administration
Office of Personnel Management
National Endowment for the Arts
Department of State

SUBJECT: Department of Justice, Transportation, and Treasury draft reports on S. 2116, a bill to accept the findings and implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians.

The Office of Management and Budget 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 provide us with your views no later than September 5, 1984.

Direct your questions to Branden Blum (395-3802), the legislative attorney in this office.

James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

cc: Karen Wilson
Jill Kent
Brad Leonard
Fred Fielding
Steve Galebach
John Cooney
Ken Schwartz

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

DRAFT

Honorable William V. Roth, Jr.
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is in response to your request for the views of the Department of Justice on S. 2116, a bill "[t]o accept the findings and to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians." The Department of Justice recommends against enactment of this legislation.

In 1975, President Ford formally revoked Executive Order 9066, issued by President Roosevelt in 1942, to permit exclusions from the West Coast, and the Congress repealed Public Law 77-503, which had been enacted in 1942 to ratify Executive Order 9066. In repealing the Executive Order, President Ford emphasized that with the benefit of what we now know, we can all recognize that the wartime exclusions were a mistake. Japanese-American demonstrated exceptional fidelity to our nation's ideals and loyalty to the United States despite the hardships visited upon them. There can be no doubt but that Executive Order 9066 visited injustice upon loyal Japanese-Americans. Also, removal of inhabitants of certain Aleutian Islands from their homes in the war zone during World War II visited hardship upon the persons affected by this action. Thus, we do not suggest that the persons of Japanese ancestry and Aleuts affected by governmental action during World War II did not suffer real losses.

After the conclusion of World War II, the Congress acted to authorize a program of compensation for the financial losses entailed by evacuations from the West Coast. The American-Japanese Claims Act, enacted in 1948, authorized compensation for "any claim" for damage to or loss of real or personal property as "a reasonable natural consequence of the evacuation or exclusion of" persons of Japanese ancestry as a result of governmental action during World War II. 50 U.S.C. App. §1981-1987. Under this Act, as amended by subsequent Congresses to liberalize its provisions for compensation, the Justice Department received claims seeking $147,714,876.18. Ultimately 26,568 settlements were achieved, most of which settled claims presented by family groups rather

than individual claimants. Thus, it is safe to state that of the over 100,000 evacuees, most submitted claims under the American-Japanese Claims Act and received settlements. It is in this context that we proceed to a section-by-section review of the bill.

1. Section 1(a) provides Congressional findings: (1) that the findings of the Commission on Wartime Relocation and Internment of Civilians (the Commission) accurately and completely describe the exclusion, relocation and internment of citizens and aliens of Japanese and Aleut ancestry; (2) that the internment of those persons of Japanese ancestry on the West Coast "was carried out without any documented acts of espionage or sabotage, or other acts of disloyalty" by them; (3 and 4) that there was no military or security reason for the internment and that it was caused, instead, by racial prejudice, war hysteria, and a failure of political leadership; (5) that the excluded persons of Japanese ancestry suffered enormous material, intangible, educational and job training losses; and (6) that the "basic civil liberties and constitutional rights" of those persons of Japanese ancestry were fundamentally violated by that evacuation and internment. Section 1(b) similarly states the purpose of the legislation.

Section 101, reiterating section 1 above, the Commission's findings, apologizes on behalf of the Nation.

We have reviewed the Commission's report. It does call attention to injustices perpetrated upon persons of Japanese ancestry. However, it must be recognized that the conclusions and subjective determinations which necessarily are an integral part of the report are subject to debate. Indeed, in June 1983, the Commission released an addendum to its report discussing a multivolume Department of Defense publication entitled "The 'Magic' Background Of Pearl Harbor" because it had not discussed the relevant material in its report. We question the wisdom and, indeed, the propriety, of accusing the World War II era leaders of the United States of dishonorable behavior. First, it is worth noting that the wartime decisions which form the predicate for the legislation were taken against a backdrop of fears for the survival of our nation; we had been recently attacked by totalitarian regimes which had enjoyed a virtually unbroken string of military successes, both before and immediately after they commenced war upon us. Redress for wartime decisions should be considered in that context.

Second, while it may be that the Commission was correct in concluding that the assumptions on which the exclusion and evacuation and detention programs were based were erroneous, it is a long and unsubstantiated further step to brand those actions as a product of "racial prejudice, or hysteria, and a failure of political leadership." In most instances, the persons so accused are not alive to defend themselves today. The accusations are subject to the same kind of infirmities as was the evacuation program itself.

Moreover, while we may disagree with some of the Commission's conclusions and with its selection of evidence to marshal in support of its conclusions; we must reiterate, it will serve no worthwhile purpose to debate matters best left to historical and scholarly analysis.

The Supreme Court in Hirabayashi v. United States, 320 U.S. 81 (1943), and Korematsu v. United States, 320 U.s. 214 (1944), upheld the programs at the time. Without unduly belaboring the point, we do not believe that this bill should be the vehicle for promulgation of an official version of historical events which will, in any event, continue to be the subject of scholarly and public debate. While we need not determine the motivations of the individuals involved in the events which occurred in the months following the attack on Pearl Harbor, we doubt whether their motivations can be fathomed from this distance in time and perspective. It would be unfortunate if this legislation were enacted because it would defame the reputations of long departed leaders without an adequate basis and without complete scrutiny of the complexities of the wartime decisional processes. Therefore, the findings are an inappropriate subject of this legislation.

2. The Department opposes section 202(a) and 202(b), which require the Attorney General to review certain criminal convictions with a view toward pardon and to submit pardon recommendations to the President in certain cases.

We question the need for §202 in general. In October 1983, in response to a coram nobis petition filed by Fred Korematsu in the United States District Court for the Northern District of California, the Attorney General determined that "it [was] time to put behind us th[is] controversy . . . and instead reaffirm the inherent right of each person to be treated as an individual." Accordingly, the Attorney General decided that "it is singularly appropriate to vacate [Korematsu's] conviction for nonviolent civil disobedience," as well as to do the same for other similarly situated individuals who request it. Korematsu v. United States, No. CR-27635W (N.D. Cal.) (Government's Response and Motion Under L.R. 220.6, filed October 4, 1983). See also, Yasui v. United States, Criminal No. C16056 (D. Ore., Jan. 26, 1984) (order granting motion of United States to vacate petitioner's conviction.) Vacating the convictions and dismissing the underlying indictments or informations of Japanese-Americans affords these individuals the full and meaningful relief to which a pardon would entitle them, and completely obviates the pardon review process provided in section 202.

Moreover, §202(b) would provide that the Attorney General shall recommend to the President for pardon consideration convictions which the Attorney General finds to have been based on certain factors. In our view, the proper relationship between the two political branches of the Government makes it generally

inappropriate, as a matter of policy, for Congress to impose mandatory duties on Cabinet officers. Therefore, such words as "may" or "is requested to" are more appropriate and consistent with the historical relation between the branches.

Additionally, the language of section 202 is ambiguous in four respects. Section 202(a) directs the review of "all cases in which United States citizens and permanent aliens of Japanesse [sic] ancestry were convicted of violations of laws of the United States, including convictions for violations of military orders, . . . during the evacuation, relocation and internment." First, the class of individuals whoses cases are to be reviewed is vaguely defined. The present wording of section 202(a) could be interpreted to require the review of not only the cases of those living but also the cases of those who are deceased. Secondly, provision for the review of "all cases" involving violations of "laws of the United States . . . [and] military orders" is overly broad. This language may be interpreted as requiring the review of both felony and misdemeanor offenses, as well as requiring the review of any crime committed during the evacuation, relocation and internment period such as murder, extortion, kidnapping, theft, counterfeiting and other offenses which may have been committed by members of the class on a Government reservation. Third, the language of section 202(a) fails to specify the nature of the pardon proceedings to be employed for case review and appears to disregard the pardon proceedings presently utilized by the President. Fourth, the use of the word "pardon" on line 3, page 8, and "pardons" on line 8, page 8, is ambiguous as to the basis of any Presidential relief extended pursuant to the Act. The bill does not state whether the pardons envisaged in it would be based on forgiveness or innocence.

To expand on these concerns, the present wording of §202(a) could be read as making the pardon provisions of the bill applicable to persons who no longer are alive. It has been a long established practice not to grant posthumous pardons. The legal basis of the practice is in large part the concept that a pardon, like a deed, must be accepted by the person to whom it is directed. Acceptance, of course, is impossible when the recipient is deceased. See United States v. Wilson, 7 Pet. 160 (1833); Burdick v. United States, 236 U.S. 79 (1915); Meldrim v. United States, 7 Ct. C. 595 (1871); Sierra v. United States, 9 Ct. Cl. 224 (1873); 11 Op. A.G. 35 (1984).

Section 202 indicates that the beneficiaries of this provision should be only those who were convicted as a result of violating the wartime restrictions of Executive Order 9066. The language, however, does not affirmatively exclude all violations of United States laws and military orders except the still effective misdemeanor convictions for violations of Executive Order 9066, which was formally rescinded by President Ford in 1976. (It appears that approximately 39 Japanese-Americans were convicted

of misdemeanor violations of Executive Order 9066, some of whom may no longer be living.) The provision therefore is in need of clarification.

Section 202(a) and (b) appear to envisage a case-by-case review. However, considering the ages of the convictions involved and the difficulty in obtaining uniformly complete and accurate information, the granting of pardon by proclamations to all of the offenders in the defined categories appears to be preferable. If this approach is adopted, section 202(c) would provide that any pardon granted should be in the form of a self-executing Presidential proclamation to take effect upon issuance. This would be similar in form to President Carter's proclamation in 1977 granting pardons to Vietnam-era Selective Service violators. But, as indicated above, the Government has already initiated steps to have the convictions involved vacated without resorting to the more cumbersome pardon process.

3. We also oppose the breadth of the definitions of eligible individuals set forth at section 201 of the bill.

a. The term "living" should be determined with more precision. It should be made clear whether it is intended to refer to the time of the enactment of the legislation, the time when application for a benefit is made, or to the time when payment of a benefit is made.

b. The definition would cover all persons who had been subject to the exclusion, relocation, or detention program, including persons residing outside the United States. See §205(c). The all-inclusiveness of the term "eligible individual" overlooks the important factor that at least several hundred of the detainees were fanatical pro-Japanese, had terrorized their fellow detainees loyal to the United States, and voluntarily sought repatriation to Japan after the end of the war. See the opinions, generally critical of the exclusion, relocation, and detention programs, in Acheson v. Murakami, 176 F.2d. 953, 958 (9th Cir. 1949); McGrath v. Abo, 186 F.2d 766, 771-72 (9th Cir.), cert. denied, 342 U.S. 835 (1951); and in particular the Findings of Fact 18, 20, 22, 25, 27, 29, 35, 39, 40, 44, 45, 46 of the United States District Court for the Southern District of California in Murakami v. Acheson, attached to, and made, in part, a part of the Court of Appeals' decision in Acheson v. Murakami, supra. It would be unfair to the United States and to the loyal persons of Japanese descent if the benefits of this legislation were made available to persons who had been disloyal to the United States. (We realize that many internees became disaffected as the result of the evacuation and detention programs and the conditions prevailing in the camps.) See Acheson v. Murakami, supra; McGrath v. Abo, supra.

4. Section 203 would require agencies to review with liberality applications for restitution of positions, status or entitle-

ments, giving full consideration "to the historical findings" of the Commission and the findings in the Act. We see no need for this provision, are uncertain as to how it could fairly be applied in practice at this late date, and suggest that it could lead to extreme difficulties in administration with resultant litigation.

5. Section 204 would establish a Civil Liberties Public Education Fund in the amount of $1.5 billion to be available for disbursement pursuant to sections 205 and 206.

Section 205 would provide for the award of $20,000 to every living person of Japanese ancestry who had been deprived of liberty or property as the result of the wartime programs. Nonresidents would also be entitled to the benefits of this section. Since, according to the Recommendations of the Commission, approximately 60,000 persons would benefit from those awards, about $1.2 billion would be expended on this program.

Section 206 would establish a Board of Directors of the Fund provided for in section 204. The Board would disburse the remaining $300 million of the Fund for the charitable purposes enumerated in subsection (b) of section 206.

By enacting the 1948 American-Japanese Claims Act, the Congress recognized long ago that many innocent Americans of Japanese descent were no less victims of this war than our soldiers who died or were wounded on the battlefield. It is impossible to restore to those Americans the freedom that was taken from them in the name of war, but Congress did pass relatively contemporaneous legislation and awarded them compensation. The recent Commission report challenged the amount of compensation chosen by Congress 35 years ago as inadequate and issued a recommendation, echoed in S. 2116, that would provide an additional lump sum payment to the survivors. Congress has spoken, however, after considerable debate, and there is no good reason to question that settlement now three and one-half decades later.

The American-Japanese Claims Act did not include every item of damages that was or could have been suggested. It did, however, address the hardships visited upon persons of Japanese ancestry in a comprehensive, considered manner, taking into account individual needs and losses. This effort to correct injustice to individuals was in keeping with our nation's best tradition of individual rather then collective response and was more contemporaneous with the injuries to the claimants than would be any payments at this late date. Moreover, in 1956 Congress considered legislation that directly called into question the adequacy of the claims settlements provided for in the 1948 Act. The bill as introduced would have liberalized the relief provisions of the Act by granting expanded compensation for certain losses. Congress rejected this proposal because it "would substantially reopen the entire project." H.R. Rep. 1809, 84th Cong., 2d Sess. 9 (1956). Thus, the

approach that Congress selected when it enacted the American-Japanese Claims Act was fundamentally sound. The results of that process, long since completed, deserve to be accepted as a fair resolution of the claims involved. In short, we oppose paying reparations which is at the heart of the bill.

We also must oppose the concept of a special fund incorporated in section 206. It is backward looking and inappropriate for government to fund studies from only one particular point of view. Government policy should not foster introspective reconsideration of past injustices; rather, at the same time as we stand reminded of events that might well embitter those affected, we should not reopen old wounds which have long since healed, with or without the scars of injuries inflicted at the time. Instead, we should use our resources to make this a better country for all our citizens to enjoy the fruits of a free society and devote resources to that end. Especially since the disbursements of the $1.5 billion fund would probably leave several hundred million dollars unaccounted for after all obligations under section 205(a) are satisfied, we seriously question the wisdom of a "Civil Liberties Public Education Fund" as a desirable body to have control over substantial sums of public money, without regard to the wisdom of focusing on the subject matter identified in the bill.

Finally, even if section 206 would otherwise survive challenge, we think that it would require modification to ensure that partiality and conflicts of interest by members of the eligible class cannot color the operation of the Board. Also, the Board should have only a limited amount of money allocated to it, rather than any remaining, presumably substantial, funds not disbursed under other provisions of the bill. Also, we think that it would be necessary to provide funds not only to prepare to distribute the hearings and findings of the Commission to textbook publishers, educators, and libraries, but also to require that significant challenges and debates concerning the Commission's hearings and findings also be funded, in order to avoid discriminatory support for a particular viewpoint by the Government.

In sum, we oppose providing reparations to individuals especially where Congress has already provided a comprehensive statutory scheme which enacted a reasonable and balanced contemporaneous remedy to affected individuals.

6. We turn now to Title III of S. 2116, entitled "Aleutian and Probilof Islands Restitution." In this connection, even the report of the Commission observed that "[t]he Aleut evacuation and the removal of persons of Japanese ancestry from the West Coast during the same period were separate events -- neither caused nor influenced the other . . . . The evacuation of the Aleuts was a reasonable precaution taken to ensure their safety." (Personal Justice Denied, page 318). The focus of the Commission's report was upon its conclusion that "the evacuation of the Aleuts

was not planned in a timely or thoughtful manner" leading to hardships upon the persons exposed to the conditions flowing from their evacuation from the war zone. (Id.) We will analyse below the specific provisions which S. 2116 would enact to benefit Aleuts. Fundamentally, however, we do not believe that wartime hardships of persons properly removed from a war zone provide any factual predicate for consideration of special, favorable treatment for this group as opposed to other individuals whose lives were disrupted and who suffered hardship or death during World War II. Thus, the very premise of the Commission's recommendation that the Aleuts be selected for favored governmental treatment is most dubious and cannot be accepted.

7. Turning to the specific provisions of Title III of the bill, we have the following comments.

(a) Section 302(1) provides for an "Administrator" who would administer certain expenditures made by the Secretary [of the Treasury] from the Aleutian and Pribilof Islands Restitution Fund established by §303(a). Section 305(a) designates as "Administrator" the "Association," defined in section 302(4) as "the Aleutian/Pribilof Islands Association, a non-profit regional corporation for the benefit of the Aleut people and organized under the laws of the State of Alaska. (We do not know whether the Aleutian/Pribilof Islands Association would have to be incorporated, or whether it is already in existence; we are likewise not informed whether it is or would be a not-for-profit regional organization under the laws of Alaska, established according to section 7(d) of the Alaska Native Claims Settlement Act of 1971, 85 Stat. 691, as amended, 43 U.S.C. §1606(d).) The designation in a statute of a person or corporation to perform statutory functions necessarily raises the question whether the designee is charged with functions which may be performed only by an officer of the United States. If that is the case, the person or the governing body of the corporation must be appointed in the manner provided for in the Appointments Clause of the Constitution (Art. II, §2, cl. 2), i.e., by the President, by and with the advice and consent of the Senate, or, where authorized by the statute, by the President alone, or the courts or the heads of Departments. Congress cannot appoint officers of the United States.

Whether a person is an officer of the United States in the constitutional sense depends upon his statutory duties. A person who performs merely advisory functions, and who possesses no enforcement authority or power to bind the Government, is generally not considered to be an officer within the meaning of the constitutional provisions cited above. 24 Op. A.G. 12 (1902); 26 Op. A.G. 247 (1907); H.R. Rep. No. 2205, 55th Cong. 3d Sess. 48-54 (1899). On the other hand, a person who performs significant governmental duties pursuant to the laws of the United States is an officer in the constitutional sense, and therefore must be appointed pursuant to Article II, §2, cl. 2 of the Constitution.

Buckley v. Valeo, 424 U.S. 1, 126, 141 (1976). We have examined the statutory duties of the Administrator under section 306 of the bill in order to determine whether its functions will be merely advisory or whether it will be involved in the actual administration of the Act. It is our conclusion that the latter is the case and that under the present statutory plan the Association cannot be designated to be the Administrator.

According to section 306(a), the Administrator would make restitution as provided for in that section for certain Aleutian losses sustained in World War II, and take such other action as required by Title III of the bill. These duties would include the establishment of a trust of $5 million for the benefit of the affected Aleutian communities and the appointment of not more than seven trustees to maintain and operate that trust (§ 306(b)(1)); the regulation of the manner in which the trust is to be administered (§306(b)(3)); the rebuilding, restoration, or replacement of damaged or destroyed churches and church property (§306(c)); and assistance to the Secretary of the Treasury in identifying and locating Aleuts entitled to receive per capita payments under §307 (§207(a)(3)). The Administrator, thus, would not be a mere conduit of funds but would be charged with the performance of a significant amount of administrative responsibilities under a federal statute. The Constitution, therefore, requires either that he be appointed in accordance with Article II, §2, cl. 2, or that the bill be amended so as to relieve him of any duties directly imposed upon by a federal statute.

(b) Section 306(c), dealing with the restoration of church property, also raises several constitutional problems. This subsection would authorize the Administrator "to rebuild, restore or replace churches and church property damaged or destroyed in affected Aleut villages during World War II." The Administrator would receive $100,000 from the Secretary of the Treasury to make an inventory and assessment of all churches and church property damaged or destroyed in the affected Aleut villages during World War II. Within one year after the enactment of this legislation the Administrator would be required to submit the inventory and assessment "together with specific recommendations and detailed plans for reconstruction, restoration and replacement work to be performed" to a review panel comprised of the Secretary of Housing and Urban Development, the Chairman of the National Endowment for the Arts, and the Administrator of the General Services Administration. If the Administrator's plans and recommendations are not disapproved by the review panel within sixty days, ~~[t]he Administrator and the review panel should be irreconcilable,~~ the Secretary of the Treasury would submit the matter to Congress for approval or disapproval by joint resolution. Section 306(c)(4) would authorize the appropriation of $1,399,000 to carry out the purposes of the church restoration program.

Section 306(c) raises the following two constitutional questions:

such plans and recommendations shall be implemented as soon as practicable by the Administrator. In any case where the Administrator and review panel have irreconcilable differences concerning plans and recommendations

(i) The payment of money for the reconstruction of religious property would not in itself constitute financial support of religion in violation of the First Amendment of the Constitution, at least as long as the payment is in the nature of damages for negligent or wrongful acts of the Government and the liability assumed by the United States would be analogous to that of a private individual under like circumstances (28 U.S.C. §§1346(b), 2674), i.e., where the injury was caused by neglect or vandalism by the military. The language of the bill, however, would not be limited to those situations, but would also cover damages caused by the enemy, by combat activities, and destruction by the United States to prevent the structures from falling into the hands of the enemy who could fortify them. For those losses the United States would not be liable if they were suffered by a private individual or corporation. United States v. Caltex, Inc. 344 U.S. 149 (1952). Hence, compensation for combat connected losses may well go beyond redress for a civil liability and may constitute an advancement of, or financial support for religion, which is prohibited by the First Amendment to the Constitution. Walz v. Tax Commission, 397 U.S. 664, 668 (1970); Meek v. Pittenger, 421 U.S. 349, 359 (1975); Gilfillen v. City of Philadelphia, 637 F.2d 924, 932-34 (3d Cir. 1980), cert denied, 451 U.S. 987 (1981). For that reason, the damages compensable under section 306(c)(1) must be limited to those resulting from inadequate maintenance and protection by the appropriate governmental authorities, as well as vandalism by the United States military, but must exclude damages related to combat activities.

(ii) As explained above, the compensation for the destroyed or damaged churches would not be turned over directly to the affected Aleut villages, but to the Administrator, who, as mentioned above, would be charged with the statutory duties of making an inventory and assessment "together with specific recommendations and detailed plans for reconstruction, restoration and replacement work to be performed;" of submitting the inventory, assessment, and recommendation to a review panel consisting of three federal officers; officers; and of trying to reconcile any differences between himself and the review panel, with irreconcilable differences between the Administrator and the review panel to be resolved by Congress. The effect of this procedure would be that the details of restoring or rebuilding of the churches would be determined by the Administrator (who, as the result of his statutory functions, would have to be an officer of the United States), and reviewed the Secretary of Housing and Urban Development, the Chairman of the National Endowment for the Arts, the Administrator of GSA, and possibly Congress. This governmental involvement of the manner in which the funds allocated for church repair or reconstruction are to be spent would raise serious First Amendment concerns. Meek v. Pittenger, supra, 421 U.S. at 370 (1975); Committee for Public Education v. Reagan, 444 U.S. 646, 659-60 (1980).

* * *

For all of the foregoing reasons, the Department of Justice recommends against enactment of this legislation.

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

Sincerely,

ROBERT A. McCONNELL
Assistant Attorney General

U.S. Department of Transportation

General Counsel

400 Seventh St., S.W.
Washington, D.C. 20590

The Honorable Willian V. Roth, Jr.
Chairman, Committee on
Governmental Affairs
United States Senate
Washington, DC 20510

DRAFT

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Transportation concerning S.2116, a bill

> "To accept the findings and implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians."

The bill would provide certain benefits to eligible individuals of Japanese ancestry and individuals of Aleut ancestry who were excluded, interned, or relocated during World War II. For eligible individuals of Japanese ancestry, these benefits include (1) an apology by Congress on behalf of the nation, (2) review of criminal convictions with recommendations for pardons as appropriate, (3) payment of $20,000 to each individual, starting with the oldest, as restitution, and (4) establishment of the Civil Liberties Public Education Fund to sponsor research and educational activities regarding relocation and internment activities and similar civil liberty abuses. For eligible individuals of Aleut ancestry, the benefits include (1) establishment of the Aleutian and Pribilof Islands Restitution Fund to make restitution for certain Aleut losses sustained in World War II, (2) restoration of certain church property, (3) payment of $12,000 to each individual as compensation, (4) cleanup of wartime debris, and (5) rehabilitation of Attu Island.

The only provision of the bill affecting the Department of Transportation is section 309, the Attu Island Rehabilitation Program. This section conveys to the Aleut Corporation all right, title, and interest of the United States in and to the lands and waters comprising Attu Island, Alaska. A provision is made regarding an agreement between the Department of Transportation and the Aleut Corporation to allow the Coast Guard to continue essential functions on Attu Island. To this end, the patent conveying the lands would reflect the right of the Coast Guard to continue such essential functions, with reversion to the Aleut Corporation when and if the Coast Guard terminates its activities on Attu Island.

The Department of Transportation has no substantive objection to section 309 of the bill. We do believe ~~[some minor]~~ changes are necessary to insure Coast Guard operations on Attu Island are not unnecessarily impeded. ~~[These changes are shown in the comparative type entry in the enclosure.]~~ We ~~have no comment~~ as to the remaining sections of the bill. defer to the views of the Department of Justice

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

Sincerely,

Jim J. Marquez
General Counsel

Enclosure

~~COMPARATIVE TYPE~~

~~(Deleted material is in brackets; new material is underlined)~~

ATTU ISLAND REHABILITATION PROGRAM

Sec. 309. (a) * * *

(b)(1) * * *

(2) The Secretary [of Transportation] of the department in which the the Coast Guard is operating and the Corporation have certified to the Secretary of the Interior that [the Department of Transportation and the Corporation] they have reached an agreement which will allow the [United States] Coast Guard to continue [essential] functions determined by the Coast Guard to be essential on Attu Island. The patent conveying the lands under this section shall reflect the right of the Coast Guard to continue such essential functions on such island, with reversion to the Corporation of all interests held by the Coast Guard when and if the Coast Guard terminates its activities on the island.

(c) Rules and Regulations. -- The Secretary of the Interior, in consultation with the Secretary of the department in which the Coast Guard is operating, is authorized to promulgate such rules and regulations as may be necessary to ~~carry out the purposes of this section.~~]

DEPARTMENT OF THE TREASURY
OFFICE OF THE GENERAL COUNSEL
WASHINGTON, D.C. 20220

DRAFT

Dear Mr. Chairman:

This report responds to your request for the Department's views on S. 2116, a bill "To accept the findings and to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians."

On behalf of the people of the United States, the bill apologizes to those Japanese-Americans, permanent resident aliens of Japanese ancestry and individuals of Aleut ancestry, who suffered injustices through the acts of the United States in connection with World War II. The bill provides for a public education fund to inform the public about the injustices, and provides for compensation to the affected peoples for losses attributable to the acts of the United States.

Although the Department supports the purposes of the bill, the following comments are offered:

Section 204 and 303

We object to the investment provisions of sections 204 and 303 for two reasons: (1) an appropriation is not a sum of cash available for investment. Rather, it is a limit on the amount of money an agency may spend. Thus, the investment authority for each of the Trust funds is inappropriate; and (2) the investment of appropriations increases the interest on the public debt, hence, it results in higher costs to the Government. Such investment is, in effect, a backdoor method of providing an indeterminate amount of money to finance the purposes of a bill. A more straightforward approach would be to determine the exact amount of financing needed and to authorize the appropriation of that amount.

Section 305

As the Government's principal fiscal officer the Secretary of the Treasury's role is to preserve capital and make disbursements upon instructions from appropriate agencies. The Secretary of the Treasury has little

expertise in the negotiation and execution of agreements such as those called for in Sec. 305. Therefore, we object to the role cast for the Secretary of the Treasury in Sec. 305 and strongly suggest that the Secretary of the Interior or the Attorney General negotiate and execute the agreements required by this section. Both the Department of the Interior and the Department of Justice have most likely negotiated similar agreements in the past.

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

Sincerely yours,

Deputy General Counsel

The Honorable
William V. Roth, Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Attention: Marikay Riney