

4 AUG 19 1952

4 MEMORANDUM FOR GERALD D. MORGAN,
4 SPECIAL COUNSEL TO THE PRESIDENT

4 Re: Responsibility of the President to sign
1 bills passed by the House and the Senate

I attach for your information a memorandum which was prepared at my request following our telephone conversation on the captioned subject earlier this week.

If the President should decide to adopt the practice of using his initials to signify his approval of bills you may wish to consider whether it would be well to have him place a memorandum in the White House files to that effect.

The memorandum should record the bill with which the new practice is begun. So far as we have been able to discover the practice would be without precedent. Thus a record would be useful to historians and would serve to note that the change took place by choice rather than out of any necessity.

4 Malcolm R. Wilkey
1 Assistant Attorney General
1 Office of Legal Counsel

4 AUG 19 1958

4 MEMORANDUM

4 Re: Responsibility of the President to sign bills
passed by the House and the Senate

A question has arisen as to whether it is necessary for the President to sign his full name, "Dwight D. Eisenhower" in accordance with the prevailing practice, in signifying his approval of bills passed by the Congress or whether, as has been suggested, his approval might be signified by use of the initials "DDE".

This memorandum concludes that the suggestion for use of the initials "DDE" appears to be legally unobjectionable.

13 * * * *

The Constitution provides, inter alia, in Article 1, section 7, clause 2, that "every bill * * * shall, before

it becomes a law, be presented to the President.

* * * If he approve he shall sign it."

Research has not disclosed any record of debate concerning the specific responsibility which the Founding Fathers sought to place upon the President by the word "sign". Nor does any evidence give reason to think that the word was used other than in its commonly-understood meaning. There is no doubt that the responsibility is meant to be that of the President alone. He alone for the executive branch participates in the legislative process.

In the case of Gardner v. The Collector

6 Wall. 499, 506, (1867), the Supreme Court stated,

¹⁰
7 "The only duty required of the President by the Constitution in regard to a bill which he approves is, that he shall sign it. Nothing

7 more. The simple signing his name at the appropriate place is the one act which the Constitution requires of him as the evidence of his approval, and upon his performance of this act the bill becomes a law."

The Court had before it in the Gardner case a question as to when a bill takes effect after signing if no date is marked on it, and subordinate to that the question whether the President is under any duty to make some written statement as to the time he signs it. In deciding that he did not have that duty, the Court also concluded, as above quoted, that his sole duty was one of signing a bill "which he approves" 1/

The Court's language emphasizes the personal nature of the duty required of the President, thus precluding considerations of delegation. It also raises the important question of whether "the simple signing his name" is a requirement that he sign his full name. No other case has been found in which this duty of the President has been examined by the Court. However, the Court had occasion to rule on the requirement for signing in section 953 of the Revised Statutes in Origet v. U.S.

44/1/ ##FNI
See also an expression of this view in House Report No. 909, 27th Cong., 2d Sess., pp. 1-2.

125 U. S. 240 (1887). The section provided,

10 "A bill of exceptions allowed in any
7 cause shall be deemed sufficiently authenticated if signed by the judge of the Court in which the cause was tried, or by the presiding judge thereof, if more than one judge sat on the trial of the cause, without any seal of Court or judge being annexed thereto."

The Court construed the statute strictly and ruled that the necessity for signature precluded the use of initials ^{2/} "as the signature of the judge, or as a sufficient authentication of the bill of exceptions * * *" (p. 244). Notwithstanding this construction was followed thereafter in a number of cases, the rule, more generally followed was later adopted by the Court in Ghl & Co. v. Smith Iron Works 288 U.S. 170 (1932). In that case the Court held that the rule in the Origet case could not be "approved" (p. 176) and concluded, (pp. 176-177).

10 "The statute contains no indication that
7 the word 'sign' is used in other than the ordinary sense. The statute gives neither definition nor qualification. Signature by initials has been held to be sufficient under the Statute of Frauds and the Statute of Wills and in other transactions. It has been held in some States that a different rule obtains in the case of the official signature of certain

44/2/ ## FN 2
Although the Court had ruled in the earlier case of Simon Falls v. Coddard 55 U.S. 446 (1852) that initials satisfied the Statute of Frauds.

7 judicial officers, but the Congress has not established such a rule for the judges of the federal courts. Nor, in the absence of special statutory requirement, is there a uniform custom in relation to official signatures. It may be assumed that a requirement of the officer's signature, without more, means that he shall write his name or his distinctive appellation, but the question remains as to what writing of that character is to be deemed sufficient for the purpose of authenticating his official act. There is no rule that he shall adhere to the precise form of his name as it appears in his commission. The full name of the officer may or may not be used. Not infrequently Christian names are omitted, in part or altogether, or are abbreviated or indicated by initials. In some of the most important communications on behalf of the Federal Government, only the surname of the officer is used. When an officer authenticates his official act by affixing his initials he does not entirely omit to use his name; he simply abbreviates it, he uses a combination of letters which are part of it. Undoubtedly that method is informal, but we think that it is clearly a method of "signing." It cannot be said in such a case that he has utterly failed to "sign," so that his authentication of his official act, in the absence of further statutory requirement, is to be regarded as absolutely void.

10 7 "We do not approve the signing of bills of exceptions merely by the initials of the judge, but we regard the question as one of practice,--of regularity, not of validity. In the instant cases, the District Judge authenticated his allowance of the bills of

exceptions by a form of signature easily and actually identified as his. No one was misled or injured. We perceive no reason why petitioner should lose its right to have the rulings upon the trial appropriately reviewed by the appellate court, merely because the District Judge failed to sign his full name.***"

In an early opinion Attorney General Wirt (1 Op. A.G. 670) examined the similar question of whether instruments required by law to be "signed" (sic.) by the Secretary of the Treasury are valid in law if the Secretary "impress his name by the use of a stamp or copperplate, instead of pen and ink***". The Secretary had "been rendered by sickness unable to write his name in the usual manner***". The Attorney General observed that the question was "a new one -- at least," he said, "I have been able to find no direct decision upon the point. It must rest, therefore, upon analogy and the general reasoning of the law."

He began by saying that "laws are generally construed with reference to the usages of the country in which they are passed". He continued an analysis of the question in the following passages, portions of which

have been relied on in later opinions of the Attorneys

General/3/

7 10 "With regard to signing -- the only source of analogy which I can find, is in the interpretations given by courts to that provision of the statute of frauds which requires that a will shall be signed by the testator, or by some one in his presence, and by his authority. Under this statute it has been decided, that if the testator merely seal the instrument, it is a signing within the statute.***

7 10 "There would be great difficulty in maintaining the proposition as a legal one, that when the law required signing, it means that it must be done with pen and ink. No book has laid down the proposition, or even given color to it. I believe that a signature made with straw dipped in blood, would be equally valid and obligatory; and if so, where is the legal restriction on the implement which the signer may use? If he may use one pen, why may he not use several? -- a polygraph, for example, or types -- or a stamp which the court, in Lemaign vs. Stanley, said would be a sufficient satisfaction of the statutory requisition of signing. The law requires signing merely as an indication and proof of the parties' assent. It places the treasury of the United States under the guardianship of the Secretary. It requires that no money shall be drawn from the treasury without his authority. The evidence which it demands of his authority is, that the warrants shall be signed by him; but as to the method of signing, that is left entirely to

FN 3

44/ See e.g. opinion regarding a certificate required by law to be signed by Farm Loan Commissioner, 31 Op. A.G. 146; opinion regarding the signature of the Chief of the Bureau of Navigation, 31 Op. A.G. 349.

1 himself. He may write his name in full, or he may write his initials; or he may print his initials with a pen: that pen may be made of a goose quill, or of metal; and I see no legal objection to its being made in the form of a stamp or copperplate. It is still his act; it flows from his assent, and is the evidence of that assent. It is merely directory to the officers who are to act after him -- to the Comptroller, who is to countersign; the Register, who is to record; and the Treasurer, who is to pay. Being recognised by the Secretary himself, and known to the officers who are to act after him, the treasury has all the guards placed over it which the law has provided. It is true, that the stamp may be forged; but so also may the autograph of the Secretary. There would, perhaps, be more difficulty in the latter case than in the former; and the superior facility of forging a stamp, or a copperplate, may be a very good reason why the legislature should, by a positive law, prohibit the use of it, and define the manner in which the signing shall be done. They have not yet defined it; and the word signing does not, as we have seen, necessarily imply, ex vi termini, the use of pen and ink, held and guided by the hand of the Secretary himself: it does not imply it in legal acceptation, at least.***

The definition given in the law dictionaries of the verb to sign is, to affix a signature. Webster's Dictionary defines a signature as a distinguishing sign, stamp or mark. /4/ In the use of a signature

FN4
44/4/ See i.e., Black's Law Dictionary.

the law generally recognizes the rule that in the absence of a statute providing otherwise, a person may use any character, symbol, figures or designation he thinks proper to adopt as a signature, provided it is intended to be used as a substitute for his name. /5/

It is recalled that in a memorandum recently prepared, this office advised the Attorney General that there was no legal necessity for the President to continue to autograph the commissions of United States Marshals. As a result facsimile signatures are now used. The memorandum was a distillation of earlier memoranda dating as far back as 1926 in which the requirements for Presidential signature were carefully examined. These memoranda relied heavily upon the Wirt opinion above-quoted. They concluded in the main that:

FN5

44/1 See 58 C. J. "Signatures," for vast number of citations of cases which support this rule. See also Finnegan v. Lucy 157 Mass. 439 which contains a discussion of the principle of signatures and concludes, "It was and still is very generally held that when a document is required by the common law or by statute" to be "signed" by a person, a signature of his name in his own proper or personal handwriting is not required.

10 a. Neither the Constitution nor the statutes require that the Presidential autograph be affixed to a United States marshal's commission. The requirements of law are met if a signature is affixed by mechanical means.

10 b. There is doubt that the President may delegate the duty of issuing the commission because, "There is involved in the issuance of a commission a form of discretion which is inextricably interwoven with the act of making the appointment."

The authorities herein examined point to similar conclusions with respect to the use of the President's initials as a signature provided he intends it and adopts it as such. As to a., neither the Constitution nor the statutes require that he use his full name in signifying his approval of a bill. Perhaps it should be added as to b., that a bill would seem to present an a fortiori case in which under the Constitutional provision the signification of the President's approval requires an exercise of personal discretion and therefore cannot be delegated.

The foregoing conclusions have been reached without examining the desirability of the change sought. For such use as the information may be it is recorded here that upon inquiry of those who are now in charge of

handling the bills which have received Presidential approval, there is not in the memory of any a President who has ever signified approval except by his full name. /6/

##ENC6

44/6/

This information was elicited at the Federal Register Division of Archives in the General Services Administration.