Mr. Gary L. Porter
Regional Historic Preservation Officer
National Capital Region
Government Services Administration

Subject: Murals, Ariel Rios Building

Dear Mr. Porter:

As stated in the three-sheet GSA "Overview," "There have been objections raised by visitors and federal employees at the Ariel Rios Federal Building about the appropriateness of six murals, including complaints that the murals stereotype Native Americans and that they contain images that are inappropriate for the workplace. The murals are located in elevator lobbies on upper floors through which agency employees and visitors pass." Those who have objected to the murals have demanded that they be removed, covered, or obscured.

The Overview further states that the Rios Building was built between 1931 and 1935 to house the U.S. Department of the Post Office. The murals were created for the building as part of the New Deal era federal art program, the first ever for a federal building under that program. The Rios Building has been designated a contributing structure in the Pennsylvania Avenue Historic District, which is included in the National Register of Historic Places ("National Register").

The U.S. General Services Administration has custody and control of the building, and has determined that removal, covering, or obscuring the murals would constitute an "adverse effect" upon the historic property and upon the National Register Historic District of which it is a part. According to the legislation which established the National Register, the finding of an adverse effect triggers a "Section 106 proceeding," a formal inquiry in order to determine whether the action (in the Overview, "the Undertaking") may be permitted, and if so, in what manner.

In my opinion, neither obscuring, nor covering the murals, nor removing them, is permitted by the provisions of the National Historic Preservation Act. The Undertaking would (in the words of the Act) diminish the integrity of the Rios Building, and of the Pennsylvania Avenue Historic District, with respect to their design, materials, workmanship, feeling, and association.

The Rios Building stands on one of the most prominent sites in the historic district; it is architecturally one of the most important buildings in the district. The historic district is one of the most important in the entire United States, perhaps the most important. The murals are integral to the building: the building was designed to have murals in the very locations where the murals now exist; and the murals were painted specifically for those locations. The murals are important representatives of their period and of their genre; their survival over the 70 years since they were painted has only enhanced the respect in which they should be held.

I do not know if this is a First Amendment issue. It is at least analogous: removal of the murals would be a kind of book-burning. Therefore, the test for any undertaking that would have an adverse effect on the murals or on the manner in which they contribute to the whole of the Rios Building must be of the utmost rigor. If the inappropriateness of the murals rose to the level of obscenity they could perhaps be removed…but that has not even been alleged. That some people find them offensive does not come close to passing the test. The only circumstance that would justify removal of the murals would be irreparable deterioration. The murals are in good condition. Hence there can be no question of their removal.

Conceivably the murals could be covered or obscured. If it were in a manner that protected them and was fully reversible, that might require a less rigorous test than for their removal. The situation as described, however, does not come close to passing even the least rigorous test. For example (using the test in Roth v. United States), would the average person, applying contemporary community standards, consider the dominant theme of the murals, or any one of the murals, taken as a whole, to appeal to prurient interest? The "worst" of the murals, the most "offensive," is said to be Frank Mechau's "Dangers of the Mail." Again, it may be offensive to some people, but not by any standard does it appeal to prurient interest, neither for the nudity, nor for the violence, nor for the portrayal of the Native Americans and other figures—certainly not by the standards of "the average person, applying contemporary community standards."

I am not a Native American. If some Native Americans, or others, find the murals offensive, it is not for me to say they are not offended. The murals are intended to illustrate the travails and the achievements of the Postal Service, but they are not poster art, nor are they propagandistic. Nor, on the other hand, could anyone mistake them for the kind of innocuous, feel-good civic art that is really not art at all. The murals are art, pure and simple, and art may sometimes offend some people. It may be objected that these murals are civic art. It is quite true that civic art, though it too must be allowed to offend some people, should not be offensive to many people, or even to many of an identifiable group of people. Thus it is fair to ask, How many people are offended by these murals? I passed a pleasant and instructive hour looking at the murals and enjoying the architecture of the building. During that time I made a point of observing the reactions to the murals of people passing them. It is perhaps sad to say, but I did not see anyone even stop to look at them. Thus, to begin with, if they are offensive, they are not offensive in any way that demands attention as, for example, a large statue in a public space might be. Only someone who stops to look, and look seriously, would focus on the elements that could be considered offensive, and there are few such people. I would venture to guess that from time to time someone, perhaps with heightened sensibility to a particular issue, does stop and look, is offended, and stirs up others of like mind; then there might be a clump of complaints. I would further guess that for large periods of time there are very few objections; more probably, there are no objections at all. Covering or concealing this mural would be like John Ashcroft's covering the partially draped statue in the Department of Justice several years ago: unnecessary to begin with, and creating an issue where one did not exist.

One must add that obscuring the murals before the issue has been duly considered is not only wrong on its face, but prejudicial to the proceeding. Materially, a screen may seem like as

small thing, since, obviously, it is reversible. In fact it is a large and inescapable statement, implying that there is something shameful going on behind the curtain, from which the public must be protected. But that is what is supposed to be decided. The screens should be removed.

To sum up: If the murals were inconsequential as art, not integral to an important contributory building in a National Register Historic District, not venerable on account of their age, they could be removed, covered, or concealed. These murals are consequential, integral, and venerable. If, notwithstanding that, their objectionableness rose to the level of obscenity, or greatly offended great numbers of people, they could be covered or concealed, provided it could be done in a manner that was reversible. These conditions are not met either. Therefore the murals should not be removed, nor covered, nor concealed.

I would like to add that I have had a 15-year career in historic preservation, first as director of operations of the New York City Historic Landmarks Commission, and then as managing director of the Historic Richmond Foundation, in Virginia. In the former capacity I had responsibility, among other things, for ruling on permissibility of alterations to individual landmark buildings and to buildings in historic districts. In the latter capacity, I was responsible for the restoration and custody of historic buildings and buildings in historic districts. I had the interesting experience of participating in a Section 106 preceding.

Finally, allow me to remind you of something I am sure you know very well. Practically every one of the works of man that we treasure today has had to be defended at some time against interests which desired its destruction. There are bad reasons, but also perfectly good reasons, why people have felt the need to destroy buildings and works of art. The bad reasons are often easier to stand against: their proponents may be embarrassed to insist upon them in the public forum, while those who are standing for what is right are full of self-assurance and confidence. A stauncher defense may be needed against the good reasons. Their proponents are sure they are in the right; they have no hesitation about insisting upon their reasons publicly and vociferously. Those who would stand against them must do so hesitantly, in the face of the popular wisdom. It is the passions of the present day that are hardest of all to stand against. Our government established the laws and regulations pursuant to the National Historic Preservation Act in support especially of those who must stand against the popular wisdom. That there are righteous factions today that would destroy the murals of the Ariel Rios Building is proof of the wisdom of the law. You have the burden, but also the honor, of seeing to it that the law is faithfully carried out.

Sincerely yours,

Michael W. Gold