

The original documents are located in Box 46, folder “President - Gifts Policies (3)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

Copyright Notice

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald R. Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

Gifts

GENERAL GOVERNMENT
DIVISION

B-159008

MAR 27 1975

Mr. Philip W. Buchen
Counsel to the President
The White House

Dear Mr. Buchen:

Enclosed is a copy of our report concerning the administration and operation of the Foreign Gifts and Decorations Act of 1966 and subsequent legislation, Executive orders, and regulations, requested by the Senate Committee on Foreign Relations. The report is provided to you because it discusses procedures for handling gifts received by President Ford. Our findings, conclusions, and recommendations are summarized in the digest of the report.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "V. L. Lowe".

Victor L. Lowe
Director

Enclosure





*REPORT TO THE COMMITTEE ON
FOREIGN RELATIONS
UNITED STATES SENATE*

Proposals To Strengthen
The Foreign Gifts And Decorations
Act Of 1966

Multiagency



*BY THE COMPTROLLER GENERAL
OF THE UNITED STATES*

ID-75-51

MARCH 26, 1975



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-159008

The Honorable John J. Sparkman
Chairman, Committee on Foreign
Relations
United States Senate

Dear Mr. Chairman:

This report is in response to your April 11, 1974, request that we examine the administration and operation of the Foreign Gifts and Decorations Act of 1966 and subsequent legislation, Executive orders, and regulations.

The report contains recommendations to the Congress for legislative changes and to the Secretary of State to improve the administration of current provisions of the act. In addition, we anticipate wide public interest in the matters discussed in the report. Therefore, as arranged with your office we are distributing the report to other committees and Members of Congress, to the Department of State, and to other interested parties.

Sincerely yours,

A handwritten signature in black ink, reading "James B. Stacks". The signature is written in a cursive style with a large initial "J".

Comptroller General
of the United States

C o n t e n t s

		<u>Page</u>
DIGEST		i
CHAPTER		
1	GIFTS AND DECORATIONS LEGISLATION	1
	Foreign Gifts and Decorations Act of 1966	1
	Regulations implementing the act	1
2	REPORTING OF GIFTS	4
	Gifts reported to the Chief of Protocol	4
	Presidential gifts not reported	5
	Presidential gift procedures	6
	Disposition of Presidential gifts	7
	Gift reporting by Vice Presidents and Secretaries of State	8
	Executive agency reporting requirements	8
	Congressional policies and procedures	10
	Judiciary policies and procedures	11
	Conclusions	12
	Recommendations	12
	Agency comments and our evaluation	12
3	ADMINISTRATION OF THE ACT	15
	Need for clarification of the act	15
	Actions the Office of Protocol could have taken	17
	Government employees' notification on provisions of the law	19
	Confusion on types of gifts required to be reported	20
	Acceptance of trips or travel at the expense of foreign governments	21
	Conclusions	22
	Recommendations	23
	Agency comments and our evaluation	23
	Matters for consideration by the Congress	24
4	QUESTIONABLE DISPOSITION AND USE OF GIFTS	29
	Disposition of gifts	29
	Lack of control over official-use items	31
	Conclusions and recommendations	32
	Agency comments and our evaluation	32
5	DECORATIONS	33
	Administrative burden	33
	Conclusions and recommendations	34
	Agency comments	35

		<u>Page</u>
CHAPTER		
6	SCOPE OF REVIEW	36
APPENDIX		
I	Request for the review	37
II	State Department memorandum on employee responsibilities under the Act	38
III	President Ford's new procedures for processing foreign gifts received by the President and First Family	41
IV	Agency comments	44
V	Revised statute	58
VI	Principal officials of Department of State responsible for administering activities discussed in this report	66

ABBREVIATIONS

GAO	General Accounting Office
GSA	General Services Administration

COMPTROLLER GENERAL'S REPORT TO
THE COMMITTEE ON FOREIGN
RELATIONS
UNITED STATES SENATE

PROPOSALS TO STRENGTHEN THE
FOREIGN GIFTS AND DECORATIONS
ACT OF 1966
Multiagency

D I G E S T

WHY THE REVIEW WAS MADE

The Senate Committee on Foreign Relations asked GAO to review administration and operation of the Foreign Gifts and Decorations Act of 1966 and subsequent legislation, Executive orders, and regulations. (See p. 37.)

The Chief of Protocol, Department of State is responsible for administering the act. (See p. 2.)

FINDINGS AND CONCLUSIONS

Deficiencies in the act and its implementing regulations limit the effectiveness of the law.

Gifts and decorations
legislation

Implementing provisions of the Constitution (see p. 1), the 1966 Act

- prohibits Government employees from soliciting gifts and decorations, and
- discourages acceptance of unsolicited gifts from other governments by limiting conditions under which gifts may be accepted. (See p. 1.)

Acceptance of unsolicited gifts and decorations is permissible if their refusal might offend or embarrass the donor or adversely affect the foreign relations of the United States. (See p. 1.)

The act permits acceptance and retention of gifts of minimal value and decorations for outstanding or meritorious service. All other gifts and decorations may not be retained and are the property of the United States. (See p. 1.)

Reporting of gifts

The act applies to Presidents, Vice Presidents, Members of the Congress and employees in all three branches of Federal Government, including civilian and military. It does not apply to some experts and consultants hired by the Government. (See p. 4.)

The President, Vice President, and Secretary of State and members of their families are the principal recipients of gifts from foreign governments. (See p. 4.)

As of September 1, 1974, 542 foreign gifts were reported by 141 employees of the executive

and legislative branches to the Office of Protocol. (See p. 4.)

This total does not include a large number of gifts received by Presidents Johnson or Nixon. Neither had reported to Protocol the gifts recorded by their Gift Units. (See p. 4.)

President Johnson's gifts are in the LBJ Library in Austin, Texas. Most of President Nixon's gifts are in storage at the National Archives. (See pp. 7 and 8.)

Gifts received by the Presidents are handled exclusively by a White House Gift Unit. The White House Gift Unit did not identify all gifts received by former President Nixon and members of his family. (See pp. 5 to 7.)

President Ford has approved new procedures relating to the acceptance of foreign gifts received by him and his family. GAO believes the new procedures will improve reporting and controlling these gifts under the act. (See p. 7.)

As of March 1975, Vice President Rockefeller's staff and the Department of State's staff were developing new procedures for handling gifts. (See p. 13.)

Records GAO has examined indicate that some Government officials may have received gifts which, up to the present, have not been reported to the Chief of Protocol. GAO was unable to

ascertain whether these were isolated instances or representative of a more general problem of a lack of reporting. (See pp. 4, 8, and 10.)

Administration of the act

The reporting system under the act relies heavily on voluntary compliance by the recipient. Neither the act nor its regulations require that gifts be reported within a specific time, nor is there an effective penalty for noncompliance.

These deficiencies limit the effectiveness of the law. (See p. 15.)

However, the Chief of Protocol could have

- alerted the Congress to difficulties encountered,

- requested the White House and other Federal agencies or units to report gifts received by their employees,

- advised gift recipients of the provisions of the act, and

- retained or prepared records of gifts known to have been received but not reported. (See pp. 17 and 18.)

Individuals receiving gifts often are in the higher civil service grades or hold elective or high appointee positions. GAO noted a reluctance on the part of the Office of Protocol to approach such individuals concerning requirements of the act. (See p. 18.)

Here are other aspects of the act and its regulations requiring clarification or change:

--Regulations do not explain that the act applies to gifts given by officials of any foreign governmental subdivision, not solely national governments. (See p. 20.)

--Regulations fail to explain that all gifts whether given as a personal or state gift, are under the provisions of the law. (See p. 20.)

--Neither the regulations nor the act state whether or not gifts from foreign quasi-government organizations or multinational organizations need to be reported. (See p. 16.)

Neither the act nor its regulations require an independent appraisal of the gifts. The burden of determining a gift's worth--"minimal value" defined as \$50 or less--rests with the recipient. (See p. 17.)

The act also applies to intangible gifts such as travel. However, as a general rule, intangible gifts of more than minimal value may not be accepted. (See p. 21.)

Questionable disposition and use of gifts

Once a gift is reported to the Chief of Protocol, he may permit its use for official purposes or declare it excess personal property and transfer it

to the General Services Administration for disposition. The Chief of Protocol was unable to locate all gifts, indicative of inadequate control. (See pp. 29 and 31.)

Generally, the General Services Administration advises suitable Government units, such as museums, that items are available. If there are no requests, the items may be sold.

As of September 1, 1974, 433 gifts had been turned over to the General Services Administration. Of these, 283 were on hand and 143 were transferred, with the remaining 7 being sold by the Administration.

One museum, to which gifts had been transferred, had exchanged or sold 26 items. Better control over disposition of gifts is needed. (See pp. 29 to 31.)

Decorations

The provisions of the act regarding decorations are generally being followed. (See pp. 33 and 34.)

RECOMMENDATIONS

The Secretary of State should develop clear procedures for the recording, control, and custody of gifts subject to reporting under the 1966 act. These procedures should include:

--Requesting that Federal agencies and U.S. missions report to the Chief of Protocol

Federal employees who received decorations or gifts beyond minimal value.

- Directing the Chief of Protocol to periodically disclose to the public, gifts reported to him; request an accounting of gifts received by the Vice President, the White House staff, and Secretary of State; and note and document gifts retained for official use, and gifts not deposited but known to have been received. (See pp. 12 and 23.)

AGENCY ACTIONS AND UNRESOLVED ISSUES

In disagreeing with GAO recommendations, the Department of State

- was of the opinion that it could not have taken any action which would have led to broader compliance with the act,
- said that actions which GAO feels the Office of Protocol could have taken, were not taken due to the absence of enforcement and compliance authority, and
- indicated that the Office of Protocol's reticence to advise the Congress of difficulties encountered in administering the act stemmed from Protocol's inability to effect compliance in a general way, rather than from sensitivity toward gift

recipients. (See pp. 12, 13, 23, and 24.)

The act and its regulations limit the State Department's administrative effectiveness. However, actions GAO indicated the Department could have taken were prudent administrative steps readily available.

In addition comments were received from the Department of Defense, Executive Office of the President, General Services Administration, and Smithsonian Institution and are discussed, where appropriate, in the report.

MATTERS FOR CONSIDERATION BY THE CONGRESS

GAO believes a need exists to amend the Foreign Gifts and Decorations Act to provide the basis for adequately implementing the constitutional intent to control the impact of gifts given by foreign governments. Further, a need exists for each branch of the Government to establish separate arrangements to see that the statute is followed. GAO believes it is unreasonable to expect the Office of Protocol to be in a position to effectively administer the act with respect to the legislative and judicial branches. GAO believes the act should be amended to require that

- separate entities be responsible for administering the act in each branch of the Government,

- gifts be reported and deposited within a specific period of time from receipt,
- there be an effective penalty for noncompliance with the act,
- appropriate coverage for temporary or intermittent experts and consultants be provided,
- permission be required from the Secretary of State before selling or trading a foreign gift, and
- responsibility for defining minimal value be given to the President and be defined as a specific dollar value not subject to interpretation (possibly \$100 U.S. retail price at the time of purchase) with consideration being given by him from time to time to making the value reflect inflation factors. (See pp. 24 and 25.)

The act should further be amended to

- require public disclosure and independent appraisal of gifts,
- clarify whether gifts from quasi-governmental and multinational organizations are included under the provisions of the act,
- distinguish and provide for the acceptance of intangible gifts and emoluments of more than minimal value, such as travel, where the benefits

clearly accrue to the U.S. Government as opposed to the individual, and when approved by an appropriate official of the executive, legislative, and judicial branches.

- clarify whether the President or his delegate is authorized to dispose of foreign gifts and decorations without considering restrictions of other statutes governing disposal of U.S. property, and
- clarify if a gift from a member of a foreign Head of State's family is to be considered a gift from a foreign government. (See p. 25.)

When considering the amendment and administration of the act, Congress may wish to consider alternative policy options in the interest of perspective. Four approaches are listed below.

- Consenting to the acceptance of gifts, where their refusal would likely cause offense or embarrassment or adversely affect the foreign relations of the United States, with the recipient permitted to retain those of minimal value (current approach).
- Consenting to the recipient's retention of gifts of minimal value, where their refusal would likely cause offense or embarrassment or adversely affect the foreign relations of the United States, and prohibiting the acceptance of gifts above such value.

--Consenting to the recipient's acceptance and retention of all gifts, where their refusal would likely cause offense or embarrassment or adversely affect the foreign relations of the United States.

--Prohibiting the acceptance of any gifts by Federal employees. (See pp. 25 to 28.)

GAO has drafted a revised statute, based on the current approach and the problems identified during this review. (See app. V.)

CHAPTER 1

GIFTS AND DECORATIONS LEGISLATION

Article I, section 9, clause 8, of the United States Constitution provides:

"No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State."

The Constitution does not prohibit the acceptance of gifts or decorations under all circumstances but only requires the Congress to consent to their acceptance.

FOREIGN GIFTS AND DECORATIONS ACT OF 1966

Before the October 15, 1966, enactment of the Foreign Gifts and Decorations Act of 1966 (Public Law 89-673), the Congress had received hundreds of requests for its consent to retain various gifts and decorations. The Congress passed the act, in part, to alleviate the legislative burden associated with the requests.

The act prohibits U.S. Government employees from soliciting gifts and decorations from foreign governments. It also discourages the acceptance of unsolicited gifts and decorations by limiting the conditions under which gifts may be accepted.

In the act, the Congress consented to retaining gifts of minimal value and decorations received for outstanding and meritorious services. Acceptance of gifts of more than minimal value is permissible only if their refusal would likely cause offense or embarrassment or would adversely affect the foreign relations of the United States. However, gifts of more than minimal value and decorations not received for outstanding and meritorious service may not be retained. They are the property of the United States to be used or disposed of as specified in regulations issued by the President to implement the act.

REGULATIONS IMPLEMENTING THE ACT

By Executive Order 11320, December 12, 1966, the President delegated his authority to the Secretary of State

to prescribe regulations under the act. Pursuant to this authority, the Secretary issued regulations (22 C.F.R. part 3) implementing the legislation. These regulations restate the provisions of the act, detail specific administrative responsibilities, and clarify certain provisions. More specifically, they delegate responsibility to the Chief of Protocol for administering the legislation and define "minimal value" as not to exceed \$50.

Under the regulations, any gifts or decorations which become the property of the United States are to be forwarded to the Chief of Protocol unless he approves their retention for official use.

The Chief of Protocol, in turn, is to forward gifts and decorations not permitted to be retained for official use to the General Services Administration (GSA). GSA transfers, donates, or otherwise disposes of the gifts in accordance with instructions issued by the Chief of Protocol or, in absence of such instructions, in accordance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended. (See ch. 4.)

While the act did not specifically define minimal value, the Congress was aware that minimal value would be established by regulation as not exceeding \$50. In a letter transmitting the draft legislation and in testimony on the legislation, the State Department had stated that minimal value would not exceed \$50. The \$50 ceiling was not defined in the law to allow other executive agencies to prescribe a lower dollar limitation. The Department of Defense, for example, has established a \$10 limit for personnel associated with the Military Assistance Program. The act does not specifically state whether the ceiling refers to wholesale or retail value and whether it relates to the value at purchase or to the present replacement value in the United States. GSA believes there should be a revised definition addressing this issue.

By establishing a minimal value, the Congress intended to allow recipients to accept and retain "small things, trivial things, marks of courtesy and respect." We noted, however, that the United States has experienced relatively high inflation during the 8 years since the \$50 minimal value was established. In view of inflation, the minimal value stated in 1966 dollars has been reduced by 40 percent to approximately \$30. As a result, the current figure of \$50 may be outdated and may not adequately reflect the Congress' original purpose in enacting a minimal value provision.

The Department of State has a different view. They believe that inflation has actually helped to bring the

regulation's \$50 limit more in keeping with the spirit of the legislative intent. We note, however, that the Department does not adhere to a \$50 limit in their own gift-giving practices.

As discussed later in the report, GAO believes certain changes are warranted in the act and implementing regulations to strengthen their administration.

CHAPTER 2

REPORTING OF GIFTS

While the act prohibits Government employees from soliciting gifts and discourages accepting unsolicited gifts from foreign governments, it is customary for high-level Government officials to participate in gift ceremonies when receiving or visiting foreign dignitaries. Such ceremonies are usually arranged in advance by the Department of State. Occasionally, valuable gifts are exchanged privately and not at formal gift exchange ceremonies. Gifts given by heads of foreign governments range from those of nominal value, such as photographs, to items worth tens of thousands of dollars, such as ancient national treasures.

The requirement for reporting foreign gifts to the Chief of Protocol applies to Presidents, Vice Presidents, Members of the Congress and employees in all three branches of Federal Government, including civilian and military. The act does not apply to certain experts and consultants hired by the Government.

GIFTS REPORTED TO THE CHIEF OF PROTOCOL

From the passage of the 1966 act through September 1, 1974, 542 foreign gifts had been reported to the Chief of Protocol. As shown below these gifts were received and reported by 141 employees.

	Number reporting <u>gifts</u>	Number of gifts <u>reported</u>
Executive employees	134	519
Legislative employees	7	23
Judicial employees	<u>-</u>	<u>-</u>
Total	<u>141</u>	<u>542</u>

The President, Vice President, and Secretary of State are the prime recipients of foreign gifts. Of the 542 foreign gifts reported, 203 were received and reported by various Secretaries of State or Vice Presidents. The figure does not include a large number of foreign gifts received by Presidents and a number of gifts received by other Federal employees but not yet reported and deposited with the Chief of Protocol.

PRESIDENTIAL GIFTS NOT REPORTED

Gifts received by Presidents are handled exclusively by a White House Gift Unit. We have been unable to find any explicit legal authority, such as an Executive order or regulation, creating the Presidential Gift Unit or prescribing its procedures. We have learned, however, that the Unit was established before the passage of the act to record and control gifts received by members of the first family and that the Unit continued to perform this function after the act was passed in 1966. In March 1969 the Office of Protocol and the White House discussed the need for coordinating procedures, but the matter was not pursued until late 1974.

Regulations issued pursuant to the act required that all gifts from foreign governments be reported to the Chief of Protocol. Presidents Johnson and Nixon had received a large number of gifts from foreign heads of state and recorded them in their own Gift Unit. However, neither reported his gifts to Protocol nor notified the Chief of Protocol of his intention to retain them for official purposes or to place them in a Presidential library. As discussed later, President Ford in December 1974 issued new procedures, including requirements for reporting Presidential gifts to the Chief of Protocol.

While the practice of Presidents Johnson and Nixon of failing to report gifts to the Office of Protocol did not conform with established regulations, we have concluded that, assuming they fully complied with other statutory and regulatory provisions, they did not act illegally by using the special White House Gift Unit rather than the Office of Protocol to record and dispose of gifts.

As a general rule, the statutory regulations of Government departments and administrative agencies have the force and effect of law and are binding on Government officials as well as on the public. Occasionally, however, courts have permitted Government agencies to depart from their own regulations. In these cases, the courts have focused on the purpose of the regulations, distinguishing between regulations intended solely for "the orderly transaction of business" and regulations designed to protect the legal rights and interests of a party.

Applying this principle to the regulation designating the Office of Protocol as the agency responsible for recording and disposing of gifts, it seems clear that the regulation was not adopted to protect the rights or interests of a party. Rather,

it applies more to promoting "the orderly transaction of business." The regulation prescribes the procedures by which the Government is to dispose of gifts and decorations received by Government officials and employees.

It might be argued that the regulation was designed to protect the legal interests of the Government since, under the act, any gift or decoration which may not be retained becomes the property of the United States. However, other provisions in the act and regulations specifying the gifts and decorations that cannot be retained serve to protect the Government's property interest in these items. We have concluded, therefore, that the regulation merely prescribes internal Government procedures and that its principal purpose is not to protect the interests of the Government or any individual.

The Office of Protocol has expressed concern that this conclusion may encourage other recipients of foreign gifts to believe that alternative modes of handling and disposing of these gifts are permissible under the act. However, we believe the position of the President is unique under the Act and unique as the primary recipient of foreign gifts.

In the Foreign Gifts and Decorations Act, the Congress explicitly named the President as the official responsible for promulgating regulations necessary to carry out the act. Unlike others who may receive foreign gifts, the President clearly has adequate statutory authority to establish his own gift unit for the administrative purposes of recording and disposing of gifts. Moreover, because of the President's paramount role in conducting foreign affairs, he is a primary recipient of foreign gifts, and thus, establishing a special unit exclusively for the purpose of recording and disposing of Presidential gifts is not unreasonable.

PRESIDENTIAL GIFT PROCEDURES

To identify the gifts that Presidents Johnson and Nixon received, and the controls over the gifts, we interviewed White House Gift Unit personnel and reviewed the records that had been prepared by that Unit. The Gift Unit did not have any written procedures governing the handling, storing, or recording of gifts for Presidents Johnson and Nixon. However, we received a briefing on their procedures.

Most gifts were processed through the White House mailroom. Here, an original card and five copies were prepared for each gift, listing the donor, date received, and a description of the gift. One card was attached to the gift,

two cards were maintained in the mailroom files, and the remaining three cards were forwarded to the White House Gift Unit.

After an acknowledgement had been sent to the donor the three cards would be filed by the Gift Unit. One card would be used in a gift-by-gift index, one card in a donor index, and the third card in a working file. If the gift is judged to be unusual or of substantial value, a photo of it would be taken. The gift would then be sent to the National Archives or placed on display with its location being recorded in the working card file.

On certain occasions, gifts were given directly to members of the first family and did not come into the custody of the Gift Unit. However, Gift Unit personnel claimed they were generally able to identify and record such gifts through outgoing thank you letters.

We examined on a test basis the Gift Unit records maintained for Presidents Johnson and Nixon and their families. We found that President Johnson's records were in order, but a number of gifts apparently received by President Nixon and members of the first family had not been recorded by the Gift Unit.

In addition to his Vice Presidential records and procedures concerning foreign gifts, President Ford made available to GAO his new procedures for handling Presidential gifts. These new procedures, finalized on December 13, 1974, indicate a tightening of controls over gifts received by the President and first family. Additionally, the procedures provide for periodic accounting by the Gift Unit to the Office of Protocol for gifts received and requires consent for gifts used for official purposes. (See app. III.)

DISPOSITION OF PRESIDENTIAL GIFTS

While a President is in office, the gifts he receives are generally stored at the National Archives--a part of GSA. They are stored under the authority of 44 U.S.C. 2107 and 2108 which relate to Presidential libraries. When a President leaves office, it is customary to retain the gifts in a Federal depository until they can be transferred to a Presidential library.

According to GSA officials, President Johnson's gifts, regardless of value or whether they were received from a foreigner or a U.S. citizen, are in the custody of the LBJ Library, a Federal depository in Austin, Texas.

According to Gift Unit records, most of President Nixon's gifts were in storage at the National Archives, Washington, D.C., or at San Clemente, California, at the time of our review. The National Archives was providing courtesy storage for the gifts pending shipping instructions from Mr. Nixon. Records relating to these gifts were in the possession of the Chief of Protocol.

We inspected a selected number of gifts at the LBJ Library and the National Archives to assure ourselves that the gifts that were recorded on the White House Gift Unit records were at these locations. All items selected for inventory verification were found to be present at the LBJ Library or the National Archives.

GIFT REPORTING BY VICE PRESIDENTS AND SECRETARIES OF STATE

No gift unit has been established with responsibility for recording gifts received by Vice Presidents or Secretaries of State. These individuals have established their own procedures for recording their gifts and reporting them to the Office of Protocol. A standardized set of guidelines or procedures has not been passed on from one Vice President or Secretary of State to another.

To identify gifts the Vice Presidents and Secretaries of State received, we relied on lists they provided us, Protocol Office records on gifts they had turned in, and in one instance National Archives records. However, due to the lack of independently available information on gifts received by the Vice Presidents and Secretaries of State, we were unable to test the adequacy and completeness of the gift lists. We were able to identify from independent sources, such as newspapers and U.S. missions personnel overseas, only a few gifts that they had received.

Nevertheless, not all of the gifts listed on the records provided us have been reported to the Office of Protocol. The gift recipients told us that they intend to report these gifts.

EXECUTIVE AGENCY REPORTING REQUIREMENTS

The Executive agencies with a large number of employees overseas--Department of State, Agency for International Development, United States Information Agency, and the military services--have issued regulations concerning employee conduct on receiving gifts and decorations.

The State Department, United States Information Agency, and AID employees are subject to the Standards of Conduct regulations explained in the Foreign Affairs Manual (3 FAM 621) and have the responsibility of depositing with the Chief of Protocol gifts exceeding \$50 in value. Decorations received must be processed through the employee's agency, since agency approval and the concurrence of the Chief of Protocol are required for retaining the decoration.

The Agency for International Development has provided further guidance on the matter in its Manual Order 443.1. This order requires that, if the employee is aware that a gift is to be tendered, approval of the principal AID officer at the post abroad is to be obtained before the gift can be accepted. The gifts accepted are then channeled through the Director, Program Management Services, to the Office of Protocol. Requests to retain gifts for official use are also channeled through this office.

Military personnel are, generally, subject to controls similar to civilian agency regulations. Gifts of more than \$50 in value, except in the case of personnel associated with military assistance programs who are subject to a \$10 limitation, are to be forwarded to the appropriate military officials. In one branch, the gift must be accompanied by a letter describing the gift, donor, and recipient. Upon receipt of gifts, military officials forward them to the Chief of Protocol or request approval to retain them for official use. Military decorations are processed through appropriate commands in a similar manner.

Lack of reporting from overseas missions

We visited U.S. missions in 10 countries to identify U.S. Government employees who received foreign gifts. U.S. missions are not required to report to the Office of Protocol gifts received by Federal employees. The missions had not established any procedures requiring gifts to be reported to them, nor had they maintained a systematic record of employees who had received gifts. We did note (see p. 19) that the missions were sent a Department of State memorandum in July 1974 on employee obligations under the Foreign Gifts and Decorations Act, and mission heads were encouraged to acquaint their personnel and official visitors with the contents of the memorandum and the requirements of the law.

Generally, mission officials believed that gifts of more than minimal value would be received by high-ranking visitors rather than by employees assigned to foreign countries. Visitors were not required to report to the missions any gifts received from the host government.

While the missions did not have any procedures requiring Government officials' gifts to be documented, we found indications through records maintained by secretaries, letters of correspondence, and personal interviews with officials, that gifts may have been received which in some cases have not yet been reported to the Chief of Protocol. However, due to the lack of records, we were unable to determine if these were isolated instances or representative of a more general problem of a lack of reporting.

CONGRESSIONAL POLICIES AND PROCEDURES

Members of the Congress, their staffs, and members of their families and households are covered by the Foreign Gifts and Decorations Act of 1966. In our review of the policies and procedures established to administer the act, we contacted the Senate Select Committee on Standards of Conduct, the House Committee on Standards of Official Conduct, and the Joint Committee on Congressional Operations. Senate Rule XLII requires that gifts received during the year from a single source, in the aggregate amount of \$50, be reported under the provisions of Rule XLIV. House Rule (XLI) on conduct prohibits a member of the House of Representatives from accepting gifts of value from any person or organization having a direct interest in legislation before the Congress. However, these rules did not specifically address the provisions of the Foreign Gifts and Decorations Act of 1966.

The House Committee on Standards of Official Conduct issued an advisory opinion on June 26, 1974, dealing with foreign travel by members and employees of the House of Representatives at the expense of foreign governments. The opinion of the Committee, based on advice from the Comptroller General and the Department of State, prohibited accepting travel or living expenses in specie or in kind from any foreign government, official agent or representatives thereof, by members or employees of the House of Representatives, including their family and household.

Office of Protocol records on gifts and decorations show that, as of September 1, 1974, Members of Congress have reported 23 gifts valued at over \$50 presented to them or their families by foreign governments since the passage of the act in 1966.

Because it is not uncommon for legislative branch officials to receive foreign gifts, we proposed that the Joint Committee on Congressional Operations consider including a reference to the act in the Congressional Handbook to remind

Congressmen of their obligations. GAO prepared an insert setting forth provisions of the act, which was included in the November 1974 edition of the Congressional Handbook.

JUDICIARY POLICIES AND PROCEDURES

The judiciary is generally broken into two main divisions for administrative purposes: the Supreme Court of the United States and the lower Federal courts. The Supreme Court handles its own administrative matters while the Judicial Conference of the United States, the governing body for the administration of the Federal judicial system, has an administrative office which handles those of the lower Federal courts.

The Supreme Court and the Administrative Office of the U.S. Courts do not have written regulations or policies that specifically refer to the Foreign Gifts and Decorations Act of 1966. However, on July 5, 1974, Chief Justice Burger issued a memorandum with an attachment from the State Department on the subject of the Foreign Gifts and Decorations Act. The memorandum and attachment were circulated to all the justices of the Supreme Court.

The Judicial Conference has adopted the American Bar Association's standards of conduct as delineated in the publication "Code of Judicial Conduct." The code specifically limits the gifts, bequests, favors, or loans a judge or a member of his family residing in his household should accept and requires that gifts over \$100 in value be reported in the same manner as income under canon 6C. Canon 6C of the "Code of Judicial Conduct" requires Federal judges to disclose all extrajudicial income in a "Public Report of Extra-Judicial Income," which is filed as a public document.

No foreign gifts have been reported to the Chief of Protocol by judicial branch employees since the act was passed in 1966. Our review of records and discussions with Department of State employees did not show any gift received by the judiciary's employees.

A "Code of Judicial Conduct for the United States Judges" is being prepared by the Administrative Office of the U.S. Courts as well as an updated analogous manual "Administrative Guide to United States Courts" for court personnel below Federal judges. GAO has prepared an insert similar to the one prepared for the Congressional Handbook for inclusion in these two documents.

CONCLUSIONS

The system for reporting foreign gifts in the executive, judicial, and legislative branches of the Government places almost complete reliance on the recipient's voluntary compliance. Additionally, Government agencies are not required to report gifts received by their employees or any other Government employees to the Office of Protocol. We believe, therefore, that improved controls and procedures should be developed by the Secretary of State.

RECOMMENDATIONS

Although we realize that compliance with this act will always be based largely on voluntary disclosure by the gift recipient, we believe certain actions should be taken to improve gift reporting procedures and controls.

We recommend that the Secretary of State

- develop definitive procedures for the recording, control, and custody of gifts received by the Vice President, Secretary of State, and members of their families;
- request Federal agencies and U.S. missions to report to the Chief of Protocol any Federal employees who receive decorations or gifts in excess of minimal value, and
- direct the Chief of Protocol to periodically disclose to the public all gifts reported to him, and request an accounting of gifts received by the Vice President, the White House staff, and Secretary of State.

AGENCY COMMENTS AND OUR EVALUATION

The Department of State found this report to be a comprehensive and useful review of the administration of the act and its attendant problems as far as it concerned the Department's role and functions. Additionally, the Department made the following comments:

- Definitive procedures have already been developed for handling the gifts received by the Vice President, Secretary of State, and members of their families. These procedures are unique, due to the high offices of their subjects; however, these individuals have the same obligations under the law as other Federal employees.

- Neither Federal agencies nor U.S. missions have the obligation, nor should they have under the statute or regulations, to report gifts received by their employees. However, they should acquaint employees with their individual obligations.
- The Chief of Protocol should not be burdened with the obligation of publicly disclosing gifts reported to him, or with requesting formal accounting by the Vice President and Secretary of State. Existing procedures are sufficient to satisfy such requirements, and the foreign gift records of the Chief of Protocol are open to the public. Further, the act confers no investigative powers on the Chief of Protocol, and he is not authorized to make such demands on employees or agencies.

In January 1975, after receiving the Department's comments, we attempted to obtain copies of the procedures developed by the Office of Protocol for handling gifts received by the Vice President, the Secretary of State, and members of their families. The Office of Protocol told us that the procedures were not finalized and consequently, were unavailable to us. We were also informed that the procedures for the Vice President will probably be similar to President Ford's new procedures, included as appendix III. As of March 1975, the Department of State's and Vice President Rockefeller's staffs were developing the Vice President's new procedures for handling gifts.

The Chief of Protocol is charged with administering the Foreign Gifts and Decorations Act of 1966, a function that, we believe, he should carry out vigorously. The acceptance of gifts takes place in many widely separated locations. Consequently, for the Office of Protocol to act as a central point for the collection of records regarding this activity, it is necessary for the Office to receive substantial cooperation from the agencies, missions, and individuals, including high officials, involved. We believe the Chief of Protocol should take the initiative in fostering this cooperation, which we feel would be easily attainable. We also believe the Office would not exceed legal limitations by requesting a formal accounting of gifts received from these areas.

The Chief of Protocol's gift records are open to the public under the Freedom of Information Act. However, we believe that an additional requirement for public disclosure would be beneficial in that it would serve to dispel the public cynicism surrounding the acceptance of gifts by public

servants. This disclosure should foster additional confidence in Government officials by demonstrating that they are complying with the law and receiving little personal gain from the practice.

We believe the appropriate vehicle for public disclosure would be periodic reporting in the Federal Register. Further, we believe that these actions would be welcomed by most and, in view of the importance of the subject, would be good administrative practice.

CHAPTER 3

ADMINISTRATION OF THE ACT

NEED FOR CLARIFICATION OF THE ACT

The Foreign Gifts and Decorations Act provides that certain foreign gifts and decorations cannot be retained by recipients and must be deposited with the Government pursuant to regulations. However, the law cannot be effectively enforced due to three basic deficiencies in the act:

- The present system for reporting gifts relies heavily on voluntary disclosure by the gift recipient.
- The law specifies no time period for compliance.
- The act specifies no sanction or penalty for noncompliance.

The Office of Protocol has informed us that, since the act provides that gifts of more than minimal value become the property of the United States upon acceptance by a Government employee, sanctions are available under various laws and regulations related to the control, use, and disposal of Federal property. We agree that criminal and civil sanctions theoretically are available under these laws and regulations. One such sanction is contained in 18 U.S.C. §641, under which a gift recipient who retains a foreign gift in violation of the act may be subject to criminal prosecution for converting property of the United States. However, we know of no case in which these sanctions have been used and, in our opinion, as a practical matter, they cannot be used effectively.

For example, the Foreign Gifts and Decorations Act clearly contemplates that there are times when gifts may be accepted though not retained. Once accepted, the law must permit the recipient to retain the gift for a period of time before the obligation to deposit the property with the Office of Protocol develops into a violation of the act warranting the imposition of a civil or criminal penalty. However, as stated previously, the length of this time period is not defined in the act or the regulations. Moreover, the definitions of "gift" and "foreign government" provided in the act and implementing regulations do not specify with sufficient clarity the types of gifts that they cover. In summary, the Foreign Gifts and Decorations

Act is extremely vague on these and other important issues affecting enforcement of the act under existing law and leaves any attempt to impose a penalty for its violation vulnerable to challenge.

The act has other major weaknesses, not related to the question of sanctions, which further limit the effectiveness of the law. For example, certain experts and consultants hired by the Government presently are not covered by the act. Their exclusion results from the definition of "employee" adopted in the act.

Additionally, the act may result in inequitable treatment and fail to eliminate a potential source of foreign influence in that a member of a Federal employee's family living in the employee's household cannot retain gifts he receives, while a family member residing in his own household can. This interpretation results from the definition of "member of the family and household" (emphasis added) contained in the act. Only family members who are in the same household of a covered employee are required to report gifts.

There is a countervailing consideration, however, that the Congress may wish to consider before extending coverage to family members who reside outside an employee's household. Amending the act to eliminate this problem will subject thousands of private citizens to the act's restrictions merely because they are related to an employee of the Federal Government. Many may consider this an extreme result. Thus, the Congress should carefully weigh the competing policy considerations before amending the act to provide coverage of family members living outside an employee's household.

The act also is not clear as to whether gifts from foreign quasi-governmental or multinational organizations need to be reported--for example, gifts which are received from officials of multinational organizations, such as the United Nations and the North Atlantic Treaty Organization, or foreign associations, such as the Organization of Petroleum Exporting Countries. The Department of State has noted that multinational organizations are not specifically included in the statute. The Department believes, however, that any gift by these organizations could be considered a foreign gift under the statute because of the nature of the organization or because of the function that the organization serves as the agent of a foreign government.

Neither the act nor its implementing regulations require an independent appraisal of the gifts. Under current regulations, the recipient has the responsibility of establishing that the gift is worth less than minimal value. We found certain gifts had been reported that were relatively worthless. At the other extreme we noted apparently valuable items not yet reported.

The Department of State has indicated that establishing a system for independent appraisal of gifts would create a variety of new problems--who would perform the appraisal, at whose expense, would several appraisals be needed for certain art works--as well as the problem of the attendant administrative burden. We are aware of the possibilities for new problems; however, a workable independent system is feasible and worthwhile. Establishing such a system would provide for an objective, unbiased appraisal of gifts, effectively neutralizing any potential for impropriety.

It is also unclear from the act and the legislative history whether the Congress intended to grant the President independent authority to dispose of foreign gifts and decorations--the view adopted by the State Department and the General Services Administration--or whether the Congress intended such gifts and decorations to be disposed of under the same authority and in the same manner as other Government property. The language of the act could be interpreted to support either contention. Moreover, there are policy considerations to support both views. The President traditionally has been given wide latitude in matters influencing foreign relations and, thus, it is not unreasonable to conclude that the Congress intended to grant the President independent authority under the act to dispose of foreign gifts and decorations. On the other hand, under this interpretation, there is the possibility of abuse since there is no limitation on the President's authority for the ultimate disposition of a foreign gift or decoration.

ACTIONS THE OFFICE OF PROTOCOL COULD HAVE TAKEN

The Chief of Protocol is responsible for gifts which become the property of the U.S. Government under the provisions of the Foreign Gifts and Decorations Act. The Office of Protocol has stated with respect to its authority and responsibilities under the act and implementing regulations that neither the Secretary of State nor the Chief of

Protocol has any investigative, recovery, or enforcement powers needed to compel compliance with the act. The Office of Protocol also has implied that its role is limited to receiving foreign gifts deposited by persons who voluntarily comply with the statute and regulations. We cannot agree with this position.

We recognize that the act and the regulations rely largely on the personal integrity of gift recipients and on their willingness to comply voluntarily with the law's requirements. However, there are four actions which Protocol could have taken to administer the act more effectively without express statutory or regulatory authorization. It could have (1) advised the Congress of the difficulties encountered in implementing the law, (2) suggested that Federal agencies report any gifts received by their employees which were within the scope of the act, (3) documented known instances of noncompliance with the act, and (4) advised gift recipients of the provisions of the act.

The Office of Protocol has, however, not done any of the above. Its failure to advise the Congress of the difficulties being encountered in administering the act, we believe, stemmed from its reticence to report certain individuals who failed to report all gifts they have received.

Individuals receiving gifts are often in the higher civil service grades or hold elective or high appointee positions. The Office of Protocol appeared reluctant to document gifts received by these individuals as well as others. For example, a protocol officer accompanies the President, Vice President, and Secretary of State and certain other officials on trips abroad and is involved in recording and shipping gifts they receive. A copy of the processing form protocol officials used is shown below.

PRESIDENTIAL GIFT REGISTER

POST: _____

1. GIFT FOR _____ (Name)		DATE RECEIVED _____
2. DONOR _____ COMPLETE ADDRESS _____ _____		TITLE, OCCUPATION AND OTHER IDENTIFYING INFORMATION
3. DETAILED DESCRIPTION OF GIFT		<input type="checkbox"/> GIFT ACKNOWLEDGED BY POST (COPY OF LETTER ATTACHED) <input type="checkbox"/> TO BE ACKNOWLEDGED BY _____ <i>All letters prepared for signature by members of official party should be typed in final and given to Mr. John M. Thomas prior to departure.</i>
<p>NOTE: FIVE COPIES OF THIS FORM SHOULD BE PREPARED AND DISTRIBUTED AS FOLLOWS:</p> <ol style="list-style-type: none"> 1. COPY GIVEN TO MR. THOMAS WITH DRAFT LETTERS ATTACHED. 2. COPY GIVEN TO DEPARTMENT OF STATE REPRESENTATIVE. 3. COPY AFFIXED OUTSIDE SHIPPING CONTAINER. 4. COPY ENCLOSED IN BOX WITH GIFT. 5. COPY RETAINED BY POST GIFT OFFICER. <p>NON PERISHABLE GIFTS SHOULD BE SENT TO: Mr. John M. Thomas A. OPR Office of Operations Room 1417 U.S. DEPARTMENT OF STATE Washington, D.C. 20520</p> <p>PERISHABLE GIFTS Such as flowers, fruit or candy should be retained by Post Gift Officer Disposition of such items to be determined by Mr. Thomas.</p>		

The Department of State informed us that these records are prepared to assist an individual in identifying and acknowledging gifts; nevertheless, these records, if retained by the Office of Protocol, would have provided a partial check on the gifts received. However, State officials told us they do not retain any of these records.

GOVERNMENT EMPLOYEES' NOTIFICATION ON PROVISIONS OF THE LAW

A number of officials who had received gifts but had not reported them stated they were unaware of the provisions of the law. However, the executive, judicial, and legislative branches of the Government have recently initiated efforts to publicize the provisions of the act. For example, the State Department, on July 1, 1974, issued a new directive to all Government agencies reminding Federal employees of the provisions of the act. (See app. II.)

In an airgram transmitting the July 1, 1974, directive to the Embassies, the Department of State required that:

- The principal officer at each post take appropriate measures to insure that all employees under his direction read the attached memorandum concerning employee responsibilities under the act.
- The principal officer make certain that visiting U.S. Government officials are fully aware of the operation of the law and regulations concerning the acceptance and retention of foreign gifts and decorations, and that they are advised of any local gift-giving customs.
- Chiefs of missions initiate a tactful but thorough program of orientation aimed at key officials of the host government.

A diplomatic note is also being circulated to transmit the provisions of the law to foreign embassies in Washington, D.C.

As discussed in chapter 2, the Congressional Handbook, which is provided to incoming senators and representatives, is being revised to contain a brief summary of the provisions of the law. The "Code of Judicial Conduct for the United States Judges" and the "Administrative Guide to United States Courts", which prescribe the codes of conduct to be followed by employees in the judicial branch, will soon be amended to contain a similar summary.

CONFUSION ON TYPES OF GIFTS REQUIRED TO BE REPORTED

During our review, we discovered considerable confusion among gift recipients and within the Office of Protocol over the types of gifts covered by the act. The confusion resulted from these erroneous assumptions regarding the nature of a gift that must be reported:

- A personal gift given by a foreign official need not be reported.
- A gift from a member of a governmental unit other than the National Government, such as a State or local government, need not be reported.

The intent of the law was to curb foreign influence upon Government officials. We believe that any gift from an official of a foreign government, whether a personal gift or state gift, comes within the scope of the law. The Office of Protocol has now adopted this position. However, some individuals have thought that if a personal gift were given by a foreign official it need not be reported. Further, the law is unclear whether a gift from a member of a foreign official's family, for example a wife, is required to be reported. The question of whether such a gift should be considered official remains unanswered.

There is also considerable confusion among gift recipients as to whether gifts from local government officials, for example a mayor, need be reported.

ACCEPTANCE OF TRIPS OR TRAVEL AT THE EXPENSE OF FOREIGN GOVERNMENTS

On several occasions, the question has been asked by Members of Congress and employees of various Federal agencies whether the acceptance of a trip or travel expenses provided by a foreign government is proper under the Constitution and the Foreign Gifts and Decorations Act. The extent of travel provided at foreign government expense is suggested by our findings concerning the Republic of China (Taiwan). It is common practice for Taiwan to pay travel expenses of Members of Congress and Federal employees invited as official guests. Based on only fragmentary records, we estimated that, at a minimum, in excess of \$100,000 was spent by Taiwan for these expenses during the past 2 years.

First, we have determined, and the Department of State agrees, that under existing laws the "acceptance of gifts of trips abroad by Members of Congress or members of their staffs that are paid for by foreign governments" is not permitted in most instances. We believe the same rule applies to other Federal employees. As a general rule, intangible gifts provided at the expense of foreign governments, such as trips or travel expenses, are "emoluments" within the meaning of Article I, section 9, clause 8 of the U.S. Constitution, and under that provision, they cannot be accepted without congressional consent. However, the term "gift" as defined in the Foreign Gifts and Decorations Act is sufficiently broad to encompass such items. Thus, trips or travel expenses of less than minimal value may be accepted under the act.

Nevertheless, trips or travel expenses offered by foreign governments usually involve trips abroad and cost in excess of the \$50 minimal value figure. While the act provides that gifts of more than minimal value may be accepted

under limited circumstances, it also prohibits retention of these gifts by the donee. Such gifts become the property of the United States upon acceptance and must be deposited with the Government. In other words, with respect to gifts of more than minimal value, the act only contemplates the acceptance of those that can be deposited with the Government. The act cannot be interpreted to authorize the acceptance of gifts of more than minimal value when the nature of the gifts precludes the donee from depositing the gift with the Government.

Second, we believe that provisions should be made to clarify those cases where the benefits conferred by the foreign country are extended during the course of official business with U.S. officials who otherwise would be reimbursed by the United States, and where the gift clearly is to the United States, and not to the individual involved. An example of this would be the situation in which a host country provides some transportation, food, and accommodations to members of a diplomatic mission. In this case, if the host government did not pay for these expenses, the U.S. Government would, and the gift thus extends to the United States. No gift or reimbursement to the individual is involved. Under these limited circumstances the acceptance of transportation, food, or accommodations provided by a foreign government would not fall within the constitutional prohibition.

We believe that where the circumstances and conditions are such that situations similar to the above exist, and where a cognizant official in the legislative and judicial branches or an agency head and Secretary of State or his designee in the executive branch, as appropriate, certify that the trip is official business, the employee may accept the transportation, food, or accommodations offered by the foreign government. Legislation should be enacted (1) stating this policy, (2) specifically designating officials in the legislative and judicial branches to carry out the policy, and (3) directing the Secretary of State to issue guidelines.

CONCLUSIONS

Because of the high positions generally held by gift recipients, enforcing the act is difficult and is unlikely to be accomplished without certain changes in the law. Action that can be taken against Government employees who fail to comply with the law is limited by the act's failure to specify a time period for compliance and the lack of an effective penalty for noncompliance. Also, the act's lack of clarity in certain areas and placing responsibility on the individual for evaluating gifts has affected its past administration.

Provisions of the act have been disseminated among the executive, legislative, and judicial branches of the Government. However, it appears that more detailed guidance is needed to help insure compliance.

The act does not contain the Congress' consent to the acceptance of intangible items of more than minimal value such as travel expenses. We believe legislation should be enacted to clarify those unique circumstances and conditions where it is appropriate to accept such intangible gifts.

The Department of State gift records are accessible to the public under the Freedom of Information Act. However, we believe that some type of additional requirements for public disclosure of gifts received might allay the fears of influence that are often associated with the receipt of a gift.

RECOMMENDATIONS

In order to provide an appropriate framework for administering the Foreign Gifts and Decorations Act of 1966, we recommend that the Secretary of State:

- Provide more detailed guidance to Federal agencies concerning those provisions of the act which are confusing or subject to misinterpretation.
- Direct the Chief of Protocol to note and document gifts known to have been received but not reported or deposited. After notifying the gift recipient of his responsibilities, consideration should be given to notifying the Congress and other appropriate officials and to documenting action taken.

AGENCY COMMENTS' AND OUR EVALUATION

The Department of State, in responding to a draft of this report, made the following comments:

- Actions, which GAO feels the Office of Protocol could have taken, were not taken due to the absence of enforcement and compliance authority. The Department has stated that it could not have taken any action which would have led to broader compliance with the act, and its inability to administer the Act is entirely unrelated to any positions which the individual gift recipients may hold.

--Records of trips abroad were not retained because there are no statutory or regulatory obligations imposed on the State Department and the Office of Protocol to use the information contained to enforce provisions of the act.

--Reluctance on the part of the Office of Protocol to advise the Congress of difficulties encountered in administering the act stemmed from its inability to effect compliance in a general way, rather than its sensitivity toward individual donees who may or may not have reported gifts.

We agree that the Department of State does not have--nor should they have--power to enforce compliance with the act. However, we believe, as stated previously, that the Office of Protocol has a responsibility for its vigorous administration. We recognize that there are legal limitations on that responsibility; however, the actions which we indicate could have been taken do not require express legal authorization. These actions are simply symptomatic of prudent administration and intergovernmental cooperation. Further, we believe that the absence of formal obligations to keep records should not deter any governmental entity from that activity, when it is essential to the proper performance of its duties and within the law.

MATTERS FOR CONSIDERATION BY
THE CONGRESS

It is evident that a need exists to amend the Foreign Gifts and Decorations Act to provide the basis for adequately implementing the constitutional intent to control the impact of gifts given by foreign governments. Further, a need exists for each branch of the Government to establish separate arrangements to see that the statute is followed. GAO believes it is unreasonable to expect the Office of Protocol to be in a position to effectively administer the act with respect to the legislative and judicial branches. Accordingly, GAO believes the act should be amended to stipulate that

--separate entities be responsible for administering the act in each branch of the Government,

--gifts be reported and deposited within a specific period of time from receipt,

--there be an effective penalty for noncompliance with the act,

- appropriate coverage for temporary or intermittent experts and consultants be provided,
- permission be required from the Secretary of State before selling or trading a foreign gift, and the General Services Administration be given authority to conduct negotiated sales (see ch. 4), and
- responsibility for defining minimal value be given to the President and be defined as a specific dollar value not subject to interpretation (possibly \$100 U.S. retail price at time of purchase), with consideration being given by him from time to time to making the value reflect inflation factors.

The act should be further amended to

- require public disclosure of gifts and their independent appraisal,
- clarify whether gifts from quasi-governmental and multinational organizations are included under its provisions,
- distinguish and provide for the acceptance of intangible gifts and emoluments of more than minimal value, such as travel, where the benefits clearly accrue to the U.S. Government as opposed to the individual, and when approved by an appropriate official of the executive, legislative, and judicial branches.
- clarify whether the President or his delegate is authorized to dispose of foreign gifts and decorations without regard to the restrictions of other statutes governing disposal of U.S. property, and
- clarify if a gift from a member of a foreign official's family is to be considered a gift from a foreign government.

When considering the amendment and administration of the act, the Congress may wish to consider, in the interest of perspective, alternative policy options. Four approaches and their relative advantages and disadvantages are discussed below.

Consenting to the acceptance of gifts where their refusal would likely cause offense or embarrassment or adversely affect the foreign relations of the United States, with the recipient permitted to retain those of minimal value (current approach).

Advantages:

- Recognizes that it is a diplomatic custom to exchange gifts, and respects the historical and sociological precedents which form this custom's base.
- Reduces the potential for foreign influence by prohibiting retaining valuable gifts by recipients.

Disadvantages:

- Creates difficulties in administering the law. For example, there are sensitivities encountered by the administrators of the law because they lack independence from the prime gift recipients--President, Vice President, Secretary of State.
- Relies largely on voluntary compliance by the gift recipient. In this approach there are many instances where personal judgment is subjected to the strain of an opportunity for personal gain.

Consenting to the recipient's retention of gifts of minimal value where their refusal would likely cause offense or embarrassment or adversely affect the foreign relations of the United States, and prohibiting the acceptance of gifts above such value.

Advantages:

- Recognizes the diplomatic custom of exchanging gifts, and respects the historical and sociological precedents which form this custom's base.
- Reduces the potential for foreign influence by prohibiting the acceptance of a gift over a stated value.
- Eliminates the temptation which may arise after the acceptance of valuable gifts.
- Reduces administrative problems associated with the act--for example, handling, storage, and disposition of many valuable items.

Disadvantages:

- Creates diplomatic problems in that retaining valuable gifts, long a part of diplomatic custom, is not allowed.
- Creates difficulties in administering the law, particularly in designating a Government agency to implement the law which has necessary independence from prime gift recipients.
- Places responsibility on the gift recipient for an on-the-spot judgment on the value of the gift.
- Relies largely on voluntary disclosure by the gift recipient. In this approach, as in the first, there are many instances where judgment may be clouded by temptation for personal gain.

Consenting to the recipient's acceptance and retention of all gifts, where their refusal would likely cause offense or embarrassment or adversely affect the foreign relations of the United States.

Advantages:

- Respects the diplomatic custom of exchanging gifts.
- Eliminates administrative difficulties.

Disadvantages:

- Provides no protection from foreign influences, except that provided by public disclosure of gifts received which would be a necessary part of this approach.
- Permits gift recipients to obtain substantial personal gain from their government position.

Prohibiting the acceptance of any gifts by Federal employees.

Advantages:

- Reduces the potential for foreign influence.
- Reduces administrative difficulties.

Disadvantages:

- Disregards the diplomatic custom of exchanging gifts.
- Relies on voluntary compliance by the gift recipient. It would be unrealistic to assume that all situations in which gifts could be tendered could be controlled; therefore, the recipient's desire to comply becomes of paramount importance.

While each of these alternative policy approaches are reasonable, we have drafted a revised statute, based on the current approach and the problems identified during our review. (See app. V.)

CHAPTER 4

QUESTIONABLE DISPOSITION AND USE OF GIFTS

Once a gift is reported to the Chief of Protocol he permits it to be used for official purposes or declares it to be excess personal property and turns it over to GSA for disposition.

DISPOSITION OF GIFTS

As briefly discussed in Chapter 1, gifts which are forwarded to GSA are sometimes accompanied by instructions concerning their disposition. In the absence of such instructions the items are disposed of in accordance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended. Under this act, GSA has few options. Museums and other Government entities are notified that the property is available. If there are no requests for the property, GSA may either store the gifts or publicly sell them. The Department of State has noted some concern over the public sale of foreign gifts because of the possible effect on foreign relations.

The act does not give GSA the authority to conduct negotiated sales of foreign gifts. GSA must sell these items at public auction. Although GSA recognizes that negotiated sales would not necessarily generate the highest proceeds, they believe this type of sale may better serve the overall interest of the United States in view of the potential effect on foreign relations. Additionally, negotiations with gift recipients, subject to appraisal and appropriate safeguards, they believe, would seem appropriate in certain circumstances. GSA believes the Congress should address these questions and provide GSA with authority to negotiate sales.

As of September 1, 1974, records show that 433 gifts had been turned over to GSA of which 283 gifts were on hand and 150 had been transferred or sold as follows:

Smithsonian Institution	131
Department of the Army	5
White House	4
National Archives and Records Service	2
GSA Federal Supply Service	1
Sold	<u>7</u>
Total	<u>150</u>

In addition to the above mentioned gifts transferred to GSA, the Office of Protocol had deposited 10 cash gifts totaling \$13,000 directly with the U.S. Treasury. Additionally, the Office had five gifts on hand at September 1, 1974.

Questionable disposition of gifts by the Smithsonian

As shown above, the Smithsonian Institution has been the primary recipient of the gifts that have been transferred to GSA for disposition. We examined the records of 59 gifts, valued by the State Department at \$26,789, from the total of 131 acquired by the Institution as of September 1, 1974. From these 59, we selected 30 gifts (valued at \$5,694) which had been acquired in 1969, 1970, and 1971 by the Smithsonian's Department of Mineral Sciences, to determine if they used and controlled them properly.

These gifts were chosen because of their questionable usefulness as objects for display. For example, 14 of the 30 gifts selected were wristwatches. We found that most had been acquired by this department with the intent of exchanging or selling them in order to obtain other objects more suitable for display. Of the 30 gifts chosen, 26, valued at \$4,894, were exchanged or sold--16 being exchanged or sold within 3 months of their acquisition.

Although items of value were received in return for the objects exchanged, we were unable to determine the value received for specific items since many of them were from various sources and were exchanged or sold together. Additionally, shipping documents did not identify, in certain cases, the gifts reportedly exchanged or sold.

A Smithsonian Institution internal audit report in May 1972 had disclosed weaknesses in the controls and accounting over items being obtained from the Bureau of Customs. As a result of this audit, the Institution has halted sales and exchanges of Bureau of Customs material and also foreign gifts.

Suggested changes by Office of Audits, GSA

While we were reviewing the Act, the Commissioner, Federal Supply Service, GSA, requested the Office of Audits, GSA, to review GSA's management of those foreign gifts and decorations reported as excess personal property by the Chief of Protocol. An objective of the

audit was to review the methods, procedures, and practices used by GSA in accounting for and controlling the receipt, movement, storage, and ultimate disposition of foreign gift items.

The Office of Audits found a need for improved methods, procedures, and documentation to insure more effective control, accountability, and use of foreign gifts. In its opinion, the required improvements can be accomplished through developing and implementing a centralized inventory control system which would account for the foreign gifts from initial reporting to their ultimate disposition.

The Office believed the system should incorporate such management control techniques as written procedures and guidelines, centralization of data files, periodic inventory, physical possession and delivery of the items by GSA, and improved screening procedures and documentations.

The Office's findings and recommendations were presented to the Commissioner and other appropriate GSA officials in July 1974. We have been told that corrective action has already been initiated on some matters and additional action is planned to implement the other suggestions.

LACK OF CONTROL OVER OFFICIAL-USE ITEMS

Through September 1, 1974, the Office of Protocol had permitted retaining 94 foreign gifts for official use, with the stipulation that when the individual leaves office or the gifts no longer are needed for the purposes authorized, they be returned to the Office of Protocol. We noted that the Office had no followup procedures with respect to official-use items.

We made a study on 30 of the 94 gifts retained for official use. Initially, we could not locate 16 of the gifts selected and found another 9 were not being used for the purposes authorized; we requested the Office of Protocol to determine the location or disposition of the 16 gifts. By December 2, 1974, the Office of Protocol was able to locate and control all but three of the gifts identified in the test.

CONCLUSIONS AND RECOMMENDATIONS

We believe there is a need for greater control by the Office of Protocol of gifts retained for official use and therefore recommend to the Secretary of State that the Chief of Protocol periodically followup on these gifts.

We are encouraged by GSA's recent actions to improve its system for handling foreign gifts. Because of the political sensitivities involved in the sale of foreign gifts, we are recommending (see ch. 3) that the act be amended to require permission before these sales, and that GSA be given authority to conduct negotiated sales of these gifts.

AGENCY COMMENTS AND OUR EVALUATION

The Department of State believes that responsibility for property control, and inventory system responsibility for gifts retained for official use, must rest with the user possessing physical control of an item. The Department contends that problems in the past resulted because the Office of Protocol did not make it clear to the agency requesting retention of property for official use that such property should be controlled and accounted for at all times, like other Federal property within the agency's jurisdiction. The Department informed us that new criteria has been developed for passing upon such agency requests, and subsequent correspondence with agencies will state agency responsibilities concerning the safeguarding of this property.

We are encouraged by the Department's new procedures on agency requests to retain gifts for official use. We agree that ultimate responsibility for property control and inventory must rest with the user possessing physical control of an item. However, we do not believe, because of the potential foreign policy implications, that this relieves the Chief of Protocol from responsibility to insure that gifts on official use are used for their stated purpose.

CHAPTER 5

DECORATIONS

Whenever a U.S. Government employee receives a decoration from a foreign government he is required to obtain the approval of his agency and the concurrence of the Chief of Protocol to retain it. Should the agency disapprove or the Chief of Protocol not concur in its retention, it is to be deposited with the Chief of Protocol for disposition.

An exception to the above procedure is the presentation of decorations to U.S. military personnel for service in Vietnam. The Congress specifically granted its consent in Public Law 89-257, 79 Stat. 982, for retaining such decorations.

ADMINISTRATIVE BURDEN

We found that the agencies were submitting to the Chief of Protocol for his concurrence lists of employees who had received decorations. The Department of Defense whose personnel are the prime recipients of decorations, has issued explicit regulations on reporting decorations. In our visits to Defense commands overseas, we found officials to be aware of military personnel and civilian employees who had received decorations.

Officials of the Departments of State and Defense, and civilian agencies with whom we discussed the decoration procedures believed that decorations are being properly controlled under existing procedures and regulations. One problem noted was the disposition of decorations which the Chief of Protocol or agencies had disapproved for retention. GSA has had difficulty in disposing of the items due to their lack of demand for display purposes and their limited monetary value. We noted that as of September 1, 1974, about 500 decorations were at GSA or the Office of Protocol. A GAO photograph of certain decorations which were at the Department of State is shown below.



From the passage of the act in 1966 through September 1, 1974, it was estimated that several thousand decorations had been approved for retention by the Chief of Protocol. Although hampered to some extent by the unavailability of records, we noted only a few instances in which decorations had been received but not yet reported.

Many of the decorations which are being processed through the agencies for approval and concurrence by the Chief of Protocol have only minor significance and most are of little material value. However, much paperwork is associated with obtaining approval to retain these decorations. For example, U.S. Army and Air Force officers in Germany were recently processing about 200 requests per month for retention of awards. These are primarily marksmanship badges awarded during German-American firearms matches. We noted that the Chief of Protocol has since granted blanket concurrence to the Army and Air Force to perform their own review of such qualifications and skill badges.

CONCLUSIONS AND RECOMMENDATIONS

The provisions of the act--to accept and retain decorations--are generally being followed. We believe past instances of failing to report decorations were the result of lack of knowledge of the law and any future non-compliance should be reduced by recent notification measures taken by the Department of State and the Congress. (See ch. 3.)

Current procedures, however, do pose an administrative burden for Defense and the Office of Protocol. In our opinion, the minor significance of certain decorations does not justify the administrative burden associated with approval. We believe that the Chief of Protocol's blanket concurrence to retain certain types of decorations--such as marksmanship badges--would reduce the administrative burden and would not affect compliance with the act.

We, therefore, recommend to the Secretary of State that the Chief of Protocol review the recurring requests for authority to retain various classes of medals and and badges and consider providing blanket concurrence to the Armed Forces for those badges and medals that are of nominal stature. We believe that if the Office of Protocol provides such concurrence, the military departments should also delegate this approval authority to a command level consistent with the statute attached to the medals.

AGENCY COMMENTS

The Department of State and Defense agreed with our recommendations concerning the desirability of reducing the administration burden of processing routine decorations. State told us that a review of recurring requests will be undertaken with a possible provision of blanket concurrence where it is appropriate.

CHAPTER 6

SCOPE OF REVIEW

We reviewed the controls, policies, and procedures in the executive, legislative, and judicial branches of the Government for the administration and operation of the Foreign Gifts and Decorations Act of 1966 and subsequent legislation, Executive orders, and regulations.

We interviewed officials and examined pertinent records and procedures of the Executive Office of the President, Department of State, GSA, Agency for International Development, Peace Corps, United States Information Agency, National Aeronautics and Space Administration, Department of Defense, Smithsonian Institution, House Committee on Standards of Official Conduct, Senate Select Committee on Standards and Conduct, Joint Committee on Congressional Operations, Administrative Office of the United States Courts, and Supreme Court of the United States. Additionally, we interviewed officials associated with recording gifts received by individuals who hold or have held the Office of President, Vice President, and Secretary of State since the passage of the act.

Our review was conducted at numerous locations in Washington, D.C., the LBJ Library in Austin, Texas, and at Department of State missions in 10 countries--Iran, Morocco, Germany, Jordan, Korea, Thailand, Japan, Taiwan, Brazil, and Mexico.

J. W. FULBRIGHT, ARK., CHAIRMAN

JOHN SPARKMAN, ALA.
MIKE MANSFIELD, MONT.
FRANK CHURCH, IDAHO
STUART SYMINGTON, MO.
CLAIBORNE PELL, R.I.
GALE W. MCGEE, WYO.
EDMUND S. MUSKIE, MAINE
GEORGE MCGOVERN, S. DAK.
HUBERT H. HUMPHREY, MINN.

GEORGE D. AIKEN, VT.
CLIFFORD P. CASE, N.J.
JACOB K. JAVITS, N.Y.
HUGH SCOTT, PA.
JAMES B. PEARSON, KANS.
CHARLES H. PERCY, ILL.
ROBERT P. GRIFFIN, MICH.

PAT M. HOLT, CHIEF OF STAFF
ARTHUR M. KUHL, CHIEF CLERK

United States Senate

COMMITTEE ON FOREIGN RELATIONS
WASHINGTON, D.C. 20510

April 11, 1974

The Honorable Elmer B. Staats
Comptroller General of the
United States
Washington, D. C.

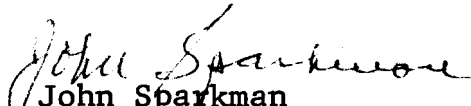
Dear Mr. Staats:

In order to assist the Committee on Foreign Relations to fulfill its legislative review function under the Legislative Reorganization Act of 1946, as amended, I request that the General Accounting Office make a report to the Committee on the administration and operations of the Foreign Gifts and Decorations Act of 1966, and subsequent legislation, executive orders and regulations, copies of which are enclosed.

If you should have any questions about this matter, Mr. Pat Holt, Chief of Staff of the Committee, will be glad to discuss them with you.

Thank you for your courteous consideration of this request.

Sincerely yours,


John Sparkman
Acting Chairman

Enclosures

APPENDIX II



DEPARTMENT OF STATE

Washington, D.C. 20520

July 1, 1974

MEMORANDUM

TO : HEADS OF ALL FEDERAL AGENCIES

FROM : The Chief of Protocol *SWR*

SUBJECT: Foreign Gifts and Decorations Act of
1966: Employee Responsibilities

The Foreign Gifts and Decorations Act of 1966 (Public Law 89-673), as amended in 1967 (Public Law 90-83), 5 USC §7342, 22 USC §2621, declares Congressional policy that employees of the United States Government shall not request or otherwise encourage the tender of any gift or decoration from any foreign government or official thereof, and may not accept or retain any such gift or decoration, except as specifically provided in the Act. By Executive Order 11320, dated December 12, 1966 (31 F.R. 15789), the President delegated to the Secretary of State the authority to prescribe rules and regulations to carry out the purposes of the Act. These regulations were published on April 28, 1967 (32 F.R. 6569) and are contained in Title 22, Code of Federal Regulations, Part 3.

In furtherance of the responsibility delegated to the Secretary of State, this memorandum is being circulated to remind all employees of their responsibilities under the Act and regulations and to respond to inquiries concerning their provisions which have arisen from time to time. It is requested that all agency heads bring this information to the attention of employees of their agencies.

The Act is applicable to all employees of the United States Government as defined in 5 USC §7342. In addition, members of the families and households of such employees are included within

the Act's coverage. These persons are under an obligation not to accept gifts from foreign governments or their representatives, except when the gift is of minimal value and tendered as a souvenir or mark of courtesy and except under circumstances in which refusal of a gift of more than minimal value "would be likely to cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States." Decorations, including "any order, device, medal, insignia or emblem" from a foreign government, may be accepted, retained and worn only if "tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance" and only upon approval by the employee's agency head, with concurrence of the Secretary of State. These restrictions affect gifts and decorations received on or after October 14, 1966.

Gifts of more than minimal value which are accepted by employees under circumstances described in the preceding paragraph may not be retained, but rather become the property of the United States and must be deposited with the Chief of Protocol for disposal. It is emphasized that members of the families of employees are subject to the same standards and responsibilities under the Act and regulations as the employees themselves. A "member of the family and household" is defined as "a relative by blood, marriage or adoption who is a resident of the household." An adult son or daughter, living in his or her own household, and not individually covered by the Act, would, thus, not be subject to its requirements. Even if a gift is tendered by a foreign government or foreign official for basically personal, as opposed to official, reasons, it must be treated as property of the United States and so deposited.

Under certain circumstances, the Chief of Protocol may authorize the agency in which the donee is employed to retain the gift for official use (such as display in a public room); otherwise, the Chief of Protocol must forward it to the General Services Administration for disposal. All gifts which become property of the Government under the Act must be handled in this way. All

APPENDIX II

employees and family members covered by the law and regulations must deposit such gifts with the Chief of Protocol as quickly as possible.

In view of the importance of the matters described above, heads of agencies are encouraged to assist employees in familiarizing themselves with their individual responsibilities. The Department of State would be pleased to render further assistance in this effort and will respond to any inquiries which may be raised.

President Ford's New
Procedures for the Processing of Gifts Subject to the
Foreign Gifts and Decorations Act of 1966,
and other Gifts from Foreign Sources.

1. All gifts received by or on behalf of the President and his family are to be delivered to the White House Mail Room or the Gift Unit upon receipt.
2. The White House Mail Room will:
 - (a) Assign identity numbers to each item;
 - (b) For each gift from a foreign source, prepare a pink card in sextuplicate, containing all pertinent information about the gift;
 - (c) Affix identify number to gift item or its container, and original and all copies of the pink card;
 - (d) Send gift, along with original and three copies of the pink card, to the Gift Unit; and
 - (e) Retain two copies of the pink card for appropriate filing in the Mail Room.
3. Gifts received directly by the Gift Unit will be logged in coordination with the Mail Room, i.e., identity number assigned by the Mail Room, two copies for the Mail Room files, etc.
4. Gift Unit will segregate cards and gifts into the following categories:
 - (a) Gifts clearly worth less than \$50.00 (Smithsonian will make available appraisers where necessary to assist in this determination);
 - (b) Gifts over \$50.00;
 - (c) Gifts of jewelry and other items of great value, requiring special handling for safekeeping;
 - (d) Gifts of consumables and perishables.

Following this initial segregation, the Gift Unit will arrange for photographing all gifts falling into categories 4(b) and (c).

APPENDIX III

5. After segregation, the Gift Unit will send a copy of each pink card to the Chief of Protocol for review prior to the inspection required in 6(b), infra.
- 6 a. When immediate use of a gift is anticipated at the time of its receipt in the Gift Unit, the Gift Unit will prepare a request for that use which will be promptly sent to the Chief of Protocol (along with a copy of the pink card) for his approval. When there is insufficient time to request such approval in writing, telephonic approval may be sought from the Office of the Chief of Protocol. However, this is to be followed by a written request and response approving this use. As soon as practicable, the gift shall be photographed and a copy sent to the Office of the Chief of Protocol. These gifts shall be available for inspection by the Chief of Protocol or his designee. Once this particular official use has ceased, the Gift Unit shall notify the Office of the Chief of Protocol in order that the normal procedures for reporting the item to GSA can be completed (see 6b, infra).
- b. Every two weeks the Chief of Protocol or his designee will visit the Gift Unit to inspect all gifts from foreign sources (and the pink cards for these gifts) received since the last inspection (with exception for items described in 4(d), supra, for which the Gift Unit shall be given authority to dispose of on receipt (see Attachment A)). The Chief of Protocol or his designee will examine the gift and classification tentatively made by the Gift Unit and will determine and/or concur with the appropriate classification as to statutory or non-statutory gift, indicate such on the pink card, and initial and date all pink cards for gifts from foreign sources.
7. The Gift Unit will prepare a declaration card (furnished by the Chief of Protocol) on all items determined to fall under the Act and forward the card, with a photograph of the gift attached, to the Chief of Protocol within forty-eight (48) hours after inspection.
8. The Chief of Protocol will then prepare a Form 120 reporting gifts under the Act to the General Services Administration (GSA) with instructions that they be deposited in the National Archives for eventual inclusion in a Presidential Library or other appropriate location as determined by the Archivist, and authorizing their use, in the interim, for display and other uses consistent with instructions from the Chief of Protocol to GSA at the time of reporting (see Attachment B).

9. The Chief of Protocol shall forward to the Gift Unit a copy of the Form 120 which will serve as authorization for the Gift Unit to turn over those gifts listed thereon to GSA. GSA (National Archives) in cooperation with the Gift Unit will pack the gifts. Specific procedures will be developed between Archives and the Gift Unit for the following:
 - (a) inventory of boxes,
 - (b) standardization of box sizes,
 - (c) packing of boxes,
 - (d) segregation of items by value,
 - (e) continuing records maintenance, preparation of receipts for loaned items and availability for inspection by the Chief of Protocol, his designee or the public.
10. If at any time a request is made to utilize a gift under the Act in a manner not specified in Attachment B, the Archivist must forward the request to the Chief of Protocol and receive his written approval.

THE WHITE HOUSE

WASHINGTON

January 29, 1975

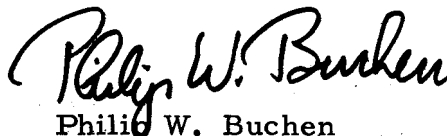
Dear Mr. Hunter:

Thank you for the opportunity to review and comment on the draft GAO report entitled "Proposals to Strengthen the Foreign Gifts and Decorations Act of 1966." I have limited this review to the factual portions of the report, and will defer, for the present time, commenting on the legislative proposals that are made therein.

As a member of my staff has already related to your representatives, our only comment is with respect to the recording process for gifts that is described on page 7 of the report. Rather than the four cards discussed in the second full paragraph on this page, an original card and five copies are prepared for each gift received by the White House. Two copies are maintained in the mail room files, while the remainder are maintained as described in the report.

I trust that this information has been helpful to you. Please do not hesitate to call upon my office should further assistance be required.

Sincerely,



Philip W. Buchen
Counsel to the President

Mr. Louis W. Hunter
Associate Director of the
International Division
United States General Accounting Office
Washington, D.C. 20548

GAO Note: Page number references in this appendix may not correspond to the pages in this report.



SMITHSONIAN INSTITUTION

Washington, D.C. 20560
U.S.A.

16 January 1975

The Honorable Elmer B. Staats
Comptroller General of the United States
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Staats:

Thank you for sending me a copy of your draft audit report titled "Proposals to Strengthen the Foreign Gifts and Decorations Act of 1966."

My review of this report indicates that the comments on Page 34, as they relate to the Smithsonian, could give an incorrect impression. The report states that you selected for audit 30 gifts and found that 27 of these 30 gifts were exchanged or sold. This gives the impression that a large percentage of the total gifts acquired by the Smithsonian (131) were exchanged or sold.

I have been advised that the 30 gifts which you selected for audit, were acquired by the Smithsonian from GSA on four transfer orders (OU-282, dated September 22, 1969; OU-841B, dated March 10, 1970; 1U-638, dated March 23, 1971; and 1U-682, dated April 12, 1971). There were 59 gifts acquired on these four transfer orders. The 30 gifts which you selected for audit all were acquired by the Smithsonian Department of Mineral Sciences. The other 29 gifts on these four transfer orders were acquired by other Smithsonian offices.

Only 26 of the 59 gifts acquired on these four orders were exchanged or sold (all by the Department of Mineral Sciences). The remaining 33 gifts either are in the National

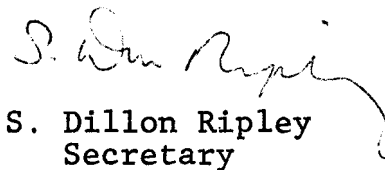
APPENDIX IV

Collections, on loan, or otherwise accounted for. Also, the State Department valued the 59 gifts acquired on these four transfer orders at \$26,789. The value of the 26 gifts exchanged was \$4,894.

I believe that the figures I have reported above give a more representative picture of how the Smithsonian has used and controlled foreign gifts, as well as the dollar values involved. We would like to meet with your auditors to discuss this matter further.

In 1972, the Smithsonian recognized the need to review its policy for exchanging foreign gifts. Accordingly, as you reported, we have halted such exchanges.

Sincerely yours,


S. Dillon Ripley
Secretary

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405



1/27/75

Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
Washington, DC 20548

Dear Mr. Staats:

Thank you for the opportunity to review and comment on your draft report to the Committee on Foreign Relations, United States Senate, entitled "Proposals to Strengthen the Foreign Gifts and Decorations Act of 1966" which was forwarded by your letter of January 6, 1975.

Thank you for your words of encouragement in our efforts to develop improved methods, procedures, and documentation to ensure more effective control, accountability, and utilization of foreign gifts. We have prepared a GSA Order (copy attached) which implements the actions recommended by the GSA Office of Audits, to which you refer on page 35 of the subject report. We believe that this order will effectively regulate GSA's responsibilities in the receipt, storage, and ultimate disposition of foreign gift items. This order has been coordinated with the Department of State and will be implemented in the near future.

Under existing procedures, gifts are being forwarded to GSA by the Chief of Protocol for transfer, donation or other disposal in accordance with such instructions as may be furnished by that officer. As your report indicates, it is our view that the Foreign Gifts and Decorations Act of 1966, as amended, provides independent disposal authority to the President and by delegation, to the State Department. The present procedures provide that after the property has been screened for Federal needs, it may be made available for donation to public museums.

If the property is not transferred to a Federal agency or donated to a public museum, it may be held indefinitely or offered for sale. We believe that if legislation is considered necessary, Congress should address the question of whether a sale should be made under a public offering or whether a negotiated sale would better serve the overall interest of the United States.

Keep Freedom in Your Future With U.S. Savings Bonds

GAO Note: GSA Order not included.



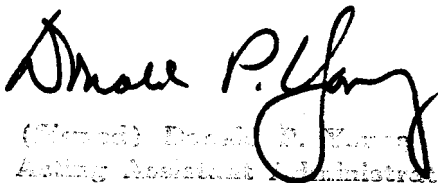
APPENDIX IV

While GAO has raised the question concerning the latitude of the authority of the President in the disposal of foreign gifts, and while foreign policy is a matter outside the purview of the General Services Administration, we believe that public sales aimed at generating the highest proceeds may be inappropriate in this area. If statutory changes are to be made in the act, we recommend that authority to negotiate be specifically provided under such circumstances as the Congress may deem appropriate, including negotiations with recipients subject to appraisal and appropriate safeguards. We believe it can be validly argued that if the acceptance of a gift is necessary so as to not offend a foreign state, then a public sale of such a gift may be equally offensive. Also, the statute should authorize donating to public museums consistent with the program now under existence pursuant to instructions of the Chief of Protocol.

With respect to other aspects of any proposed legislation, we would suggest a definition of "items of minimal value." This definition should state whether the dollar amount applies to wholesale or retail value and whether it relates to the value at purchase or to the present replacement value in the United States.

We are confident that the actions we are taking will provide GSA with greater control over the disposition of foreign gift items.

Sincerely,


(Signed) Donald P. Murray
Acting Assistant Administrator

Enclosures



DEPARTMENT OF STATE

Washington, D.C. 20520

January 29, 1975

Mr. J. Kenneth Fasick
Director
International Division
U.S. General Accounting Office
Washington, D. C. 20548

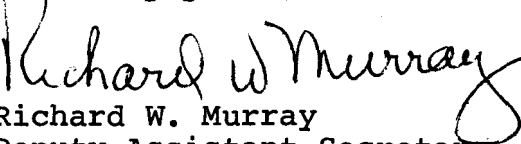
Dear Mr. Fasick:

I am replying to your letter of January 6, 1975, which forwarded copies of the Draft Report: "Proposals to Strengthen the Foreign Gifts and Decorations Act of 1966" and requested the Department's comments.

The enclosed comments have been prepared by the Chief of Protocol, Ambassador Catto.

We appreciate having had the opportunity to review and comment upon the draft report.

Sincerely yours,


Richard W. Murray
Deputy Assistant Secretary
for Budget and Finance

Enclosure

Department of State Comments on GAO Draft Report
"Proposals to Strengthen the Foreign Gifts
and Decorations Act of 1966"

The Department of State finds this draft report to be a comprehensive and useful review of the administration of the Act and its attendant problems insofar as it concerns the Department's role and functions. The following comments are basically factual, since the Department prefers not to comment on the substantive changes in the Act recommended for the Congress' consideration until such time as draft legislation may be prepared and circulated for agency comments.

Preliminarily, the Department would like to make general comments on two issues which are raised at several points in the report. The first of these concerns sanctions for violations of the Act. The Department believes that the statute and implementing regulations make it clear that gifts of over \$50 value at retail in the United States, as determined by the recipient, become U.S. property at the moment of their acceptance. As U.S. property, such gifts are covered by various laws and regulations related to the control, use, and the disposal of Federal property. For the most part, these laws and regulations, including the 1966 Gift Act, make each employee individually responsible for his actions relating to Federal property. Executive Order 11222 concerning employee conduct succinctly states an essential premise as follows: "An employee shall not use Federal property of any kind other than for officially approved activities. He must protect and conserve all Federal property, including equipment and supplies entrusted or issued to him." (Sec. 204) There are criminal, civil, and administrative sanctions attached to improper control, misuse, or conversion of Federal property; under appropriate circumstances, the Executive Branch, and particularly the Justice Department has the authority to investigate and prosecute individuals believed to have failed to comply with this statute. While a specific reference in any new legislation as to

the applicability of these sanctions to violations of the Gifts Act would be helpful, it would be incorrect, in our opinion, to conclude that the present statute is without sanctions.

The second general comment concerns investigations of possible violations of the Act by the Chief of Protocol. At several points in the GAO report, comments are made concerning what the Chief of Protocol and the Department of State could or should have done to investigate or recover property covered by the statute. The Department finds that neither the Act nor the implementing regulations confer any investigative, recovery, or enforcement powers on either the Secretary of State or the Chief of Protocol. The role of the Department and the Chief of Protocol is that of receiving U.S. property deposited by persons complying with the statute and regulations. The Department does not view its role as being expanded in any way by either inference or other general agency responsibilities beyond the limited functions set forth in the statute and implementing regulations. Further, we believe that any such investigative functions as envisioned by the GAO report should be the responsibility of the Justice Department or other agency normally charged with such enforcement functions. The Chief of Protocol has neither the authority, staff, nor competence to perform investigations and enforcement of the statute; indeed such functions would be wholly out of character for the Office of Protocol. The Department of State would, however, like to see provisions for enforcement of the statute specifically included in any revised legislation as recommended by the GAO report.

Our detailed comments follow:

-- Page v and Page 24: GAO comment that regulations fail to explain that all gifts given by foreign government

officials, whether or not a state gift or personal gift, are covered by the Gifts Act is gratuitous in view of the language of the Act itself and past practice in implementing it.

-- Page v and Page 20: The recommendation that there be an independent appraisal of foreign gifts, if accepted, would create a variety of new problems: who would perform the appraisal, where, and at whose expense? Would several appraisals be required for certain art works? A potentially heavy administrative burden as well as a new expense might be created by such a requirement. It would be useful to have included in the report the GAO views on how best to handle or fund such an appraisal system.

-- Page ix: It is unclear what public disclosure requirements respecting gifts and their appraisal are envisioned. State has already taken the position that records relating to acceptance and disposition of foreign gifts are accessible to the public under the Freedom of Information Act. What purpose would be served by requiring mandatory publication of the appraisal of all gifts?

-- Page ix and 20: Although "multinational organizations" are not specifically included in the statute, any gift made by them could be considered as a foreign gift under the statute because of the nature of the organization or because of the function that organization serves in making the gift as the agent of a foreign government. Contrary to the statement on page 20, the Office of Protocol is not aware of having made such an interpretation in concrete cases.

-- Page 2, 3, and 28: The suggestion that the setting of "minimal value" be transferred from the regulations to the statute and raised from \$50 to \$100 is not one which the Department feels is in accordance with the intent of

Congress, as expressed in the Committee Report on the 1966 legislation. Unless the Congress now has a different view, the Department feels that inflation has actually helped to bring the regulation \$50 limit more in keeping with the spirit of the legislative intent, which was to authorize the retention of "small things, trivial things, marks of courtesy and respect."

If the limit were to be raised to \$100, it would be a fundamental change in the purpose and character of the legislation. Further, inclusion of a specific dollar amount in the statute would require legislative action rather than simpler administrative action to adjust the dollar amount, should any further change be required as a result of either inflation or deflation.

-- Page 6: The GAO conclusion that the regulation on the deposit of foreign gifts with the Chief of Protocol merely sets forth internal government procedures and is not for the purpose of protecting U.S. Government (property) interests is inappropriate given the focus of the Gifts Act. In the Department's view, establishment of a uniform and centralized system for processing those foreign gifts which must be accepted under special circumstances was a key aim of the legislation. The Department strongly disagrees that variance with that procedure may not lead to failure to comply with the Act's requirements. Inclusion in the GAO report of the present language could lead to the inference that alternate modes of depositing or handling foreign gifts--at the option of the donee--are permissible and in compliance with the Act.

-- Page 13: Although the GAO comment that U.S. missions in ten countries had no system for reporting gifts made to mission employees is correct, this is due to the absence of a statutory and regulatory authorization to

U.S. missions to report the gifts received by its employees or other U.S. officials traveling abroad. It is noted in this regard, however, that all U.S. missions were sent the July 1, 1974, memorandum to all employees on their obligations under the Foreign Gifts and Decorations Act, and heads were encouraged at that time to acquaint their personnel and official visitors with the contents of the memorandum and the requirements of the law.

-- Page 18: (a) Definitive procedures have already been developed by the Office of Protocol for handling gifts received by the First Family, the Vice President, the Secretary of State, and members of their families. These procedures are unique in that they deal with persons in high office, who tend to receive large numbers of gifts; however, these individuals have the same obligation as all other Government employees to report the gifts which they receive while Government employees.

(b) Neither Federal agencies nor U.S. missions have the obligation to report gifts received by their employees and no such obligation should be imposed upon them other than to acquaint employees with their individual obligations.

(c) The Chief of Protocol should not be burdened with the obligation to disclose to the public gifts which have been reported to him, nor should he bear the additional burden of requesting any formal periodic accounting of gifts received by the Vice President and the Secretary of State. Existing procedures are sufficient to satisfy such a requirement, and the records of the Chief of Protocol respecting foreign gifts which have been reported to him are open to the public. Further, the Act confers no investigative powers upon the Chief of Protocol, and he is not authorized to make such demands either upon agencies or individual employees.

-- Page 19: The basis upon which Protocol asserts its inability to police the Act is entirely unrelated to any positions which the individual gift recipients may hold. Regardless of the status of the individuals involved, the Protocol Office has no specific or general authority to compel compliance with the Act, which as of now remains an individual responsibility.

-- Page 21: The criticism of the Office of Protocol respecting the action that it could have taken ignores the basic consideration in this area--namely, the total absence of enforcement and compliance authority. The Office of Protocol has carried out its delegated functions under the Act, and could not have taken any action respecting individual donees or agencies which would have led to broader compliance with the Act.

Any reticence on the part of the Office of Protocol in advising the Congress of difficulties encountered in administering the Act stemmed from its inability to effect compliance in a general way, rather than its sensitivity toward individual donees who may or may not have reported gifts.

-- Page 20: See also comments on Page v and Page ix.

-- Page 22: With regard to the comment on the retention of records made on trips abroad, it should be noted that these records are prepared to assist an individual in identifying and acknowledging gifts. There is no statutory or regulatory obligation imposed on the State Department and the Office of Protocol to use the information contained on such sheets for the purpose of enforcing provisions of the Act. It is the recipient of the gift who must make a determination of its value and act in accordance with the regulations.

-- Page 24: See comments on page v.

(See GAO Note)

-- Page 25, 26, and 27: The exact basis for the categorical legal conclusion by the GAO that the Foreign Gifts Act does not apply to intangible items is unclear.

(See GAO Note)

-- Page 27: The Department is unaware of what more detailed guidance could be provided to Federal agencies.

GAO note: Comments deleted referred to material which was omitted from the final report.

in addition to factual data already provided them, unless the present statute or regulations were amended or modified.

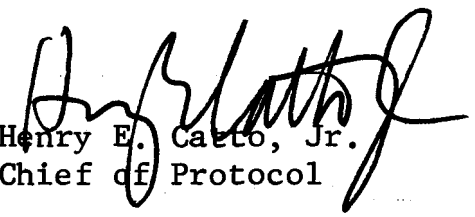
(Comments deleted refers to material which was omitted from the final report.)

(GAO Note: refer to prior comments)

-- Page 28: See comments on page 2 - 3.

-- Page 36: With regard to control by the Chief of Protocol over items permitted to be retained by an agency for official use, it seems clear that in any effective property control and inventory system responsibility for property must rest with the user possessing physical control of an item. In the past it appears that the Office of Protocol has not made it clear to an agency requesting retention of property for official use that such property should be controlled and accounted for at all times like other Federal property within the agency's jurisdiction. New criteria have been developed for passing upon such agency requests, and subsequent correspondence with agencies will state agency responsibilities concerning the safeguarding of this property.

-- Page 39: The GAO comment concerning the desirability of reducing the administrative burden of processing routine decorations requests is an excellent one. As the report recommends, a review of recurring requests will be undertaken with a view to providing blanket concurrence where it is determined to be appropriate.



Henry E. Catto, Jr.
Chief of Protocol

REVISED STATUTE

A BILL

To amend and improve 5 U.S.C. §7342 (Public Law 90-83).

Be it enacted by the Senate and House of Representatives
of the United States of America in Congress assembled,
That 5 U.S.C. §7342 (Public Law 90-83) is hereby repealed and
the following new section is substituted therefor:
§7342. Receipt and disposition of foreign gifts and decorations.

(a) For the purpose of this section--

(1) "employee" means--

(A) an employee as defined by section 2105
of this title;

(B) an expert or consultant while under
contract with the United States or any agency,
department, or establishment thereof pursuant
to section 3109 of this title;

(C) an individual employed by, or occupying
an office or position in, the government of a
territory or possession of the United States or
the District of Columbia;

(D) a member of a uniformed service;

(E) the President;

(F) a Member of Congress as defined by
section 2106 of this title; and

(G) a member of the family and household of an individual described in subparagraphs

, (A)-(F) of this paragraph; 1/

(2) "foreign government" means--

(A) all units of foreign governmental authority, including foreign national, state, local, and municipal governments;

(B) international and multinational organizations whose membership is composed, in whole or in part, of foreign governments as defined in subparagraph (A) of this paragraph; 2/ and

(C) an agent or representatives of a foreign government as defined in subparagraph (A) and (B) of this paragraph, whether acting in an official or private capacity;

(3) "gift" means a present or thing, other than a decoration, tendered by or received from a foreign government;

(4) "decoration" means an order, device, medal, badge, insignia, or emblem tendered by or received from a foreign government;

1/ This provision would re-enact subsection (a)(1)(F) of the existing Act. For discussion of problems created by this provision and the countervailing considerations, see p. 16 of this report.

2/ It is unclear under the existing Act whether gifts from such organizations are subject to the Act.

(5) "minimal value" means a retail value at time of acceptance not in excess of \$100 in the United States; provided that every three years from the date of enactment of this section, "minimal value" shall be redefined in regulations prescribed by the President or his delegate to reflect changes in the consumer price index for the prior three-year period; provided further that regulations of agencies, offices, and other entities may define "minimal value" for their employees to be less than the value prescribed under this paragraph;

(6) "appropriate agency of the Government" means the President or his delegate for executive branch employees, the Committee on Official Conduct for Members and employees of the House of Representatives the Senate Select Committee on Standards and Conduct for Senators and all other legislative branch employees, and the Administrative Office of the U.S. Courts for judicial branch employees.

(b) An employee may not request or otherwise encourage the tender of a gift or decoration.

(c) (1) Congress consents to--

(A) the accepting and retaining by an employee of a gift of minimal value tendered or received as a souvenir or mark of courtesy; and

(B) the accepting by an employee of a gift of more than minimal value when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States; provided, however, that a gift of more than minimal value is deemed to have been accepted on behalf of the United States and, upon acceptance, shall become the property of the United States; provided further, that an employee may accept gifts of travel expenses such as transportation, food, and lodging of more than minimal value from a foreign government only when on official business and where (1) the expenses would otherwise be reimbursible by the United States; (2) where it is determined that circumstances and conditions make acceptance of such expenses necessary; and (3) the official nature of the business and the existence of such circumstances and conditions is certified by _____ for the legislative branch, _____ for the judicial branch, or the agency head and the Secretary of State for the executive branch, as appropriate. The Secretary of State in consultation with _____ shall promulgate uniform guidelines for the use of the Government to implement this proviso.

(2) Within 60 days of acceptance of a gift of more than minimal value, the donee shall--

(A) deposit the gift for disposal with the appropriate agency of the Government; or

(B) subject to the approval of the agency, office or entity in which the donee is employed and the concurrence of the appropriate agency of the Government, deposit the gift for official use with the agency, office or entity in which the donee is employed. Within 30 days of termination of the official use, the agency, office or other entity that has retained the gift for official use shall deposit the gift for disposal with the appropriate agency of the Government.

(3) When a donee deposits a gift of more than minimal value for disposal or for official use under subsection (c)(2), or within 30 days of acceptance of travel expenses as provided in subsection (c)(1)(B), the donee shall file a statement with the appropriate agency of the Government containing the information prescribed in subsection (f) of this section for that gift.

(d) Congress consents to the accepting, retaining, and wearing by an employee of a decoration tendered in recognition of active field service in time of combat

operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the agency, office or other entity in which the employee is employed and the concurrence of the Secretary of State. Without this approval and concurrence, the decoration is deemed to have been accepted on behalf of the United States, shall become the property of the United States, and shall be deposited by the donee, within 60 days of acceptance, with the appropriate agency of the Government for official use or disposal.

(e) Gifts and decorations that have been deposited with the appropriate agency of the Government for disposal shall be transferred, donated or otherwise disposed of in accordance with the Federal Property and Administrative Services Act of 1949 (63 Stat. 377). However, no gift or decoration that has been deposited for disposal shall be sold except through a negotiated sale approved by the Secretary of State or his delegate after determining that the sale will not adversely affect the foreign relations of the United States. 3/

3/ If enacted, subsection (e) would reverse the view of the State Department and General Services Administration that the Foreign Gifts and Decorations Act contains an independent grant of authority to dispose of U.S. property. If not enacted, Congress may consider placing some restrictions on the types of disposition that the appropriate agency of the Government may authorize, such as sales at public auctions.

APPENDIX V

(f) As soon as practicable after December 31 of a calendar year, the appropriate agency of the Government shall compile a listing of all statements filed in accordance with subsection (c)(3). The listing shall include the following information for each gift reported:

- (1) the name and position of the employee;
- (2) a brief description of each gift accepted;
- (3) the foreign government and the name and position of the individual who presented each gift;
- (4) the date of acceptance of each gift;
- (5) the estimated retail value in the United States of each gift at the time of acceptance; and
- (6) disposition or current location.

The appropriate agency of the Government shall cause the listing to be published in the Federal Register not later than January 31 of the succeeding calendar year.

(g) (1) The appropriate agencies of the Government may prescribe joint regulations to carry out the purpose of this section. These regulations shall be implemented by each of the appropriate agencies of the Government for their employees.

(2) The appropriate agency of the Government shall document cases in which there is reason to believe that an employee has violated this section and refer such cases to the Department of Justice or

other appropriate officials; obtain an independent appraisal of gifts when necessary; and take other similar actions necessary to carry out the purpose of this section.

(h) (1) Any employee who fails to deposit a gift of more than minimal value as required under subsections (c)(2)(A) or (B) of this section shall, upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment for not more than twelve months, or by both such fine and imprisonment.

(2) The penalty authorized in 18 U.S.C. §641 for unlawfully converting property of the United States shall apply to the unlawful retention of gifts of more than minimal value.

APPENDIX VI

PRINCIPAL OFFICIALS OF THE DEPARTMENT OF STATE RESPONSIBLE FOR ADMINISTERING ACTIVITIES DISCUSSED IN THIS REPORT

	Tenure of office	
	<u>From</u>	<u>To</u>
SECRETARY OF STATE:		
Henry A. Kissinger	Sept. 1973	Present
William P. Rogers	Jan. 1969	Sept. 1973
Dean Rusk	Jan. 1961	Jan. 1969
CHIEF OF PROTOCOL:		
Henry E. Catto, Jr.	Apr. 1974	Present
Marion H. Smoak	Mar. 1974	Mar. 1974
Marion H. Smoak (Acting)	Jul. 1972	Mar. 1974
Emil Mosbacher, Jr.	Jan. 1969	Jun. 1972
Tyler Able	Sept. 1968	Jan. 1969
Angier Biddle Duke	Apr. 1968	Sept. 1968
James W. Symington	Mar. 1966	Mar. 1968

Copies of GAO reports are available to the general public at a cost of \$1.00 a copy. There is no charge for reports furnished to Members of Congress and congressional committee staff members; officials of Federal, State, local, and foreign governments; members of the press; college libraries, faculty members, and students; and non-profit organizations.

Requesters entitled to reports without charge should address their requests to:

U.S. General Accounting Office
Distribution Section, Room 4522
441 G Street, NW.
Washington, D.C. 20548

Requesters who are required to pay for reports should send their requests with checks or money orders to:

U.S. General Accounting Office
Distribution Section
P.O. Box 1020
Washington, D.C. 20013

Checks or money orders should be made payable to the U.S. General Accounting Office. Stamps or Superintendent of Documents coupons will not be accepted. Please do not send cash.

To expedite filling your order, use the report number in the lower left corner of the front cover.

AN EQUAL OPPORTUNITY EMPLOYER

UNITED STATES
GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

POSTAGE AND FEES PAID
U. S. GENERAL ACCOUNTING OFFICE



**SPECIAL FOURTH CLASS RATE
BOOK**

THE WHITE HOUSE
WASHINGTON

April 1, 1975

MEMORANDUM FOR: Phil Buchen

FROM:

Bill Casselman



With regard to the attached, as far as I know the President has not yet established a policy regarding the acceptance of so-called "non-official" gifts. However, Maxine Cheshire has renewed her request with the Press Office. Sooner or later a policy determination will have to be made. Therefore, it would seem the wiser course of action to set such a policy prior to Maxine taking a swipe at us for refusing to permit her access or failing to develop a cohesive policy regarding "non-official" gifts.

Bill:
Is there anything more you would like me to do on this?
R.

THE WHITE HOUSE
WASHINGTON

Dezile
ed
1/10

March 12, 1975

MEMORANDUM FOR: Phil Buchen
FROM: Bill Casselman *WC*
SUBJECT: Request to see Gift Files

As I mentioned to you today, Maxine Cheshire of the WASHINGTON POST has made a request to inspect the card file of non-official gifts, both foreign and domestic. She indicated in her discussion with the Press Office that she would like "to establish a precedent" that these files are open for inspection.

As you will recall, ^{the} question of public access to non-official gift files was addressed in a joint memorandum from you and Don Rumsfeld to the President. Perhaps Mrs. Cheshire's request could be used as a *raison d'etre* for bringing your memorandum to the President's attention. In addition, as we discussed, the East Wing Press Office has been encountering questions regarding members of the First Family accepting compensation for writing--a subject which was also covered in the memorandum to the President.

THE WHITE HOUSE

WASHINGTON

December 1, 1975

MEMORANDUM FOR THE WHITE HOUSE STAFF

FROM:

PHILIP W. BUCHEN

P.W.B.

SUBJECT:

Acceptance of Christmas Presents

The approach of the Christmas season raises anew questions of presents -- those to be given and those which may be received. With no intention of detracting from the joys of the season, I remind everyone on the White House Staff of the limitations imposed by statutes and regulations on acceptance of gifts.

Gifts between Staff Members

Federal statutes prohibit the acceptance of gifts from fellow employees of a lesser pay status. The solicitation of contributions for a Christmas gift for an employee in a superior official position is also prohibited by statute, as is the giving of such a gift or donation. However, these laws have not been interpreted to preclude the traditional exchange of gifts of nominal value between co-workers within an office.

Acceptance of Other Gifts

As a member of the White House Staff you are expressly prohibited from soliciting or accepting gifts from corporations or persons (1) who have or are seeking contractual agreements with any Executive department or agency, (2) who engage in activities regulated by Executive departments or agencies, or (3) who have any interests which may be substantially affected by the performance of your job. This latter group includes federal employees as well as persons in the private sector.

The foregoing does not preclude your acceptance of unsolicited advertising or promotional items such as pens, note pads, calendars, etc., so long as they are of nominal value (\$10 or less). Similarly,

you are not prohibited from accepting reasonable gifts, promotional or otherwise, from close personal friends or relatives who have dealings with the government, when it is clear that the motivation for the gift is the personal relationship and acceptance would not give rise to the appearance of a conflict of interest.

In addition, the law prohibits the acceptance of gifts in excess of \$50 (retail value in U.S.) from representatives of foreign governments except with the express consent of Congress.

Procedures for Disposition of Prohibited Gifts

Any prohibited gift should be returned to the donor along with a letter, a copy of which should be retained for your files, stating the reasons for its return. If for any reason it is not possible to return the gift, please forward it to the Counsel's office (Room 106, OEOB) along with a letter of explanation. The gift will then be turned over to a public charity or charitable institution, or if it is from a representative of a foreign government, to the State Department for disposition in accordance with its regulations.

The rationale for the foregoing restrictions is two-fold. First, as between members of the Staff, they avoid any appearance that a person is attempting to gain favor with a superior by the giving of a gift or that any gift is expected by the superior. Second, as to gifts that might be offered from those outside the White House, they protect you as a member of the Staff from being exposed to even the appearance of a conflict of interest.

THE WHITE HOUSE

WASHINGTON

January 30, 1975

MEMORANDUM FOR THE PRESIDENT

THROUGH: DONALD RUMSFELD
PHILIP BUCHEN

FROM: KENNETH LAZARUS

SUBJECT: Non-Statutory Gifts to Members
of the First Family

As you will recall, you recently approved guidelines governing the acceptance, use and disposition of gifts to members of the First Family from representatives of foreign governments which are subject to the constraints imposed by the Constitution, the Foreign Gifts and Decorations Act of 1966 and supporting regulations.

The purpose of this memorandum is to recommend guidelines governing non-statutory gifts (gifts from foreign sources not under the Foreign Gifts Act and all gifts from domestic sources) to members of the First Family.

Considerations

A. Legal. There are no direct legal restrictions on the acceptance of non-statutory gifts by the President or other members of the First Family. Nonetheless, certain conflict of interest provisions should be central to any analysis of policy alternatives in this area.

Executive Order 11222 of May 8, 1965 (not technically applicable to the President) prescribes comprehensive guidelines applicable to gifts to Executive branch officers and employees from private sources. Generally, these prohibit the solicitation or acceptance of any gift or any other thing of monetary value from any person, corporation or group which --

(1) has, or is seeking to obtain, contractual or other business or financial relationships with an employee's agency;

(2) conducts operations or activities which are regulated by an employee's agency;

(3) has interests which may be substantially affected by the performance of an employee's official duties; or

(4) presents even the appearance of misconduct by using public office for private gain.

This Executive Order and implementing regulations (3 CFR Part 100) effectively preclude the acceptance of almost any gift by any officer or employee of the Executive branch, including members of the White House staff.

It should also be noted with respect to the acceptance of honoraria, that the Federal Election Campaign Act Amendments of 1974 now make it illegal for any Federal officer or employee to accept an honorarium in excess of \$1,000 for a particular speech or appearance or more than \$15,000 cumulatively in any one year (18 U.S.C. 616). The acceptance of honoraria for charity would also fall within the purview of this section.

B. Political. As you will recall, at your first press conference upon assuming the Presidency, you indicated that you intended to set the example for ethical conduct within the Executive branch.

Notwithstanding the conclusion that neither Executive Order 11222 nor the regulations issued pursuant to it legally bind the President, it could give rise to political controversy for the President to engage in conduct proscribed by the Order or regulations, where no special reason exists for exemption from the generally applicable standards. Failure to observe these standards will furnish a simple basis for damaging criticism, whether or not they technically apply.



Recommendation

The attached proposed procedures for the handling of non-statutory gifts are generally consistent with the spirit of the restrictions placed on White House personnel in this area. They would authorize acceptance for personal use of only the following:

(1) Sentimental Gifts -- tangible gifts of reasonable value which represent a personal work product or other display of emotion or sentiment.

(2) Awards -- awards of reasonable value for meritorious achievement.

(3) Personal Gifts -- reasonable gifts from close personal friends.

(4) Miscellaneous Items -- unsolicited advertising or promotional items of a nominal value.

Permanent gifts to the White House or to a Presidential library would be permitted but the use of such gifts would be restricted to official purposes.

The proposed guidelines would also allow for the public disclosure of all non-statutory gifts.



ACTION

1. The proposed guidelines should be implemented.

Approve _____

Disapprove _____

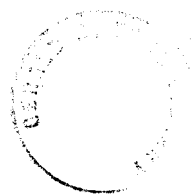
See me _____

2. Take such steps as are necessary to bring the First Family into compliance with the proposed guidelines but hold up announcement.

Approve _____

Disapprove _____

See me _____



GUIDELINES GOVERNING GIFTS TO THE
FIRST FAMILY THAT ARE NOT SUBJECT
TO THE CONSTITUTIONAL AND STATUTORY
RESTRICTIONS ON GIFTS FROM
FOREIGN HEADS OF STATE

1. Scope of Coverage. These guidelines shall be applicable to all gifts which are not subject to the Foreign Gifts and Decorations Act of 1966.
2. Ban on Solicitation. Gifts will not be solicited or otherwise encouraged by or on behalf of the President or any other member of the First Family.
3. Standards. Gifts to the President or other members of the First Family which are received should be returned to the donor, accompanied by a written explanation of the reasons for its necessary return, subject only to the following exceptions:
 - (a) Gifts to the White House. The offer of a gift which shall become a permanent addition to the White House may be accepted by the President or the First Family on behalf of the United States when no question arises as to the propriety of the gift. Such gifts shall thereafter be treated as public property. Some gifts that require expenditures of public funds for maintenance require Congressional approval. Counsel should therefore be advised of proposed acceptances in all cases.
 - (b) Presidential Library. Gifts appropriate for eventual inclusion in a Presidential Library or other similar museum due to their identification with the President may be accepted by the First Family when no question as to their propriety arises. Such gifts shall thereafter be treated as public property.
 - (c) Sentimental Gifts. The offer from an individual or group of a tangible gift of reasonable value which represents a personal work product, or other display of emotion

- or sentiment, may be accepted if the offer does not appear to constitute the endorsement of a commercial item.
 - (d) Awards. The offer of an award of reasonable value for a meritorious public contribution or achievement given by a charitable, professional, religious, social, fraternal, recreational, non-profit, educational, civic or similar organization may be accepted.
 - (e) Items of unknown origin. Gifts of unknown origin may be retained to be turned over anonymously and as soon as practicable to an organization qualifying under Section 501(c)(3) of the Internal Revenue Code of 1954. No tax deduction by the First Family will be claimed for any such gifts.
 - (f) Personal gifts. Gifts from close personal friends or relatives, when it is clear that the only motivation for the gift is the personal relationship, even though such individuals may have dealings with the government, may be retained.
 - (g) Miscellaneous items. Unsolicited advertising or promotional items of a nominal value such as pens, calendars, etc., may be retained if the retention could not be reasonably construed to constitute the endorsement of a commercial product.
4. Use of gifts treated as public property include, but are not necessarily limited to:
- (a) Display or use within the White House complex or at any other location on Federal property in connection with Presidential activity;
 - (b) Uses incident to official Presidential functions regardless of location; and
 - (c) Temporary display in a museum, university or other institutional facility of general availability to the public.

In instances not covered by the above situations, specific advance approval by the Office of the Counsel to the President shall be obtained by the Gift Unit. Additionally, the Gift Unit is responsible for assuring that all such items of public property are carefully accounted for at all times.

5. Honoraria. During his tenure in office, the President will not accept any honorarium or compensation for any appearance, speech, teaching or writing.

Other members of the First Family will not accept any honorarium or other compensation for speeches, lectures, teaching or writing which in any way relate to official activities on their part, or which were in any way assisted by other federal employees as part of their official activities.

6. Travel and accommodations. The President or any other member of the First Family will not accept payment or reimbursement for air travel, lodging or related expenses from any person or non-governmental organization when traveling on official business. If the trip is not "official" but "political" in nature, payment will be made from appropriate and available political funds. If the trip is not "official" or "political" in nature, payment will be made from the personal funds of the First Family.
7. Loans. The President or any other member of the First Family will only accept loans on customary terms for use in financing the purchase of realty or personalty.
8. Disclosure. Information relating to the acceptance of domestic gifts shall be available to the public.
9. Procedures.
 - (a) As with foreign gifts, all presentations of gifts received by or on behalf of the President should be sent to the Gift Unit or to the Mail Room. All offers of gifts shall also be referred to the Gift Unit.

- (b) The Mail Room will log all gifts on appropriate colored cards (pink for all foreign gifts, white for domestic gifts to the President, yellow for domestic gifts to the First Lady or the children).
- (c) Any questions regarding the propriety or legality of a gift or offer of a gift shall be referred to the Counsel to the President for his determination.
- (d) In instances involving offers of gifts to the White House the Gift Unit shall seek the guidance of the White House Historical Association, the National Park Foundation or other appropriate organization.
- (e) The responsibility for the acknowledgement or acceptance and appropriate use of gifts should be undertaken by the White House Gift Unit in accordance with the guidelines set forth in the preceding sections.

THE WHITE HOUSE

WASHINGTON

April 13, 1976

MEMORANDUM FOR: PHIL BUCHEN
FROM: KEN LAZARUS *for*
SUBJECT: Gifts to Foreign Officials

Pursuant to your phone call this morning, I raised with Nino Scalia the question of the propriety of gifts by U. S. citizens for eventual presentation to foreign officials. Nino has provided the following guidance:

- (1) Although neither the President nor the White House has authority to accept gifts on behalf of the United States, the Department of State clearly does have such authority (see 22 U.S.C. 809 (a), copy attached).
- (2) Nino believes the Secretary's authority to accept unconditional gifts for this purpose is questionable. Thus, he advises that we rely on the Secretary's discretionary authority to accept conditional gifts.
- (3) The deed of gift should be made to the Secretary of State on behalf of the United States. In this regard, Nino suggests that we refrain from using individual names, i. e. Kissinger, and rely on references to the office.
- (4) The deed of gift should specify whether the gift is provided for general purpose, i. e. in furtherance of the interests of the United States, or for any specified purpose.
- (5) Although the deed of gift should be made to the Secretary of State, all of his administrative functions under Section 809 would clearly appear to be delegable to the Office of the Chief of Protocol.

Nino is preparing a more detailed memorandum on this inquiry which should be available tomorrow.

duties of
him, or
employee
of law,
the prin-
ditioned
ties for
d. The
ed to be
of such
or com-
or other
shall be
ained in
nishing
s of the
c. 957,

da. Sec-
provided
Act [this
mpair the
furnished
Service."

newed at
nds.
maifea-

til some
11898, 18
767.

eral who
alling to
commis-
was not
on or to
fice, and
pay as
3, 18 Op.

ot bound
foreign
st, until
e of the

office and his ability to comply with the conditions precedent by the giving of a bond. *Williams v. U. S.*, 1888, 23 Ct.Cl. 46.

A consul or vice consul was not invested with the office until he gave the bond required by law, nor could he recover the salary of the office where he had neglected to give the bond. *Dainese v. U. S.*, 1879, 15 Ct.Cl. 64.

2. Form of bond

Where the form of the bond was not prescribed by statute, its form might be determined by the officer whose duty it was to approve the same. 1885, 18 Op. Atty.Gen. 274.

3. Attestation of bond

It was not essential to the validity of a consular bond that it should be attested. 1820, 1 Op. Atty.Gen. 378.

4. Time of taking effect of bond

A consul's bond spoke and took effect, not from its date, but from the time of its approval by the Secretary of State. 1872, 14 Op. Atty.Gen. 7.

Where an appointee to a consulship was commissioned on the 18th of January, and his bond, though dated on the 13th of same month, was not approved by the Secretary until the 27th, the bond was valid and sufficient. *Id.*

5. Corporation sureties

It was competent for the Secretary of State, under former section 11 of this title to accept as sureties upon official bonds of United States consular officers, corporations organized under state or United States laws as surety or guaranty companies authorized by their charter to undertake such obligations. 1891, 20 Op. Atty.Gen. 16.

6. Liability of sureties

The surety of a consular officer could not be liable for the statutory penalty incurred by the principal under section 1189 of this title, for charging excessive

fees, where such fees, including the excess, had been charged against him in his account, and paid to the Treasury Department. *U. S. v. Ballantine*, N.Y. 1905, 138 F. 312, 70 C.C.A. 602.

A bond given by a public officer, as a consul general of the United States, conditioned that he would faithfully discharge the duties of his office, and faithfully account for and pay over all moneys which should come into his hands under any law, had to be construed strictly, in favor of the sureties, with respect to the duties and obligations secured, and it was not a breach of such bond that he failed to return to the Treasury a sum overpaid him on his salary through mistake. *U. S. v. Boyd*, C.C.Mo.1902, 118 F. 89.

The neglect of the Treasury Department in claiming moneys paid to a consul in excess of his salary did not discharge the sureties on his bond from liability therefor, though such neglect continued long enough to afford the sureties a good defense against any but the Government. *U. S. v. Bee*, Cal.1893, 54 F. 112, 4 C.C.A. 219.

In an action on the official bond of a United States consul, the condition of which required him to deliver up all fees and moneys which should come to his hands, as provided by former section 11 of this title, he was not liable for money paid, under the direction of the State Department, to a clerk appointed by the president, although R.S. § 1696, former section 58 of this title, provided that the only allowance to any vice consulate or consular agency for expenses should be an amount sufficient to pay for stationery and postage on official letters. *U. S. v. Owen*, D.C.Vt.1891, 47 F. 797.

The surety of a consul under Act Apr. 14, 1792, 1 Stat. 254, was not responsible on account of moneys remitted to him for purposes not comprehended within his consular duties, as prescribed by such Act. *U. S. v. Bell*, D.C.Pa.1829, Fed. Cas.No.14,565.

§ 809. Acceptance of gifts on behalf of the United States; disposition; use; taxation

(a) The Secretary may accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Department including the Service or for the carrying out of any of its



functions. Conditional gifts may be so accepted at the discretion of the Secretary, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, but no gift shall be accepted which is conditioned upon any expenditure not to be met therefrom or from the income thereof unless such expenditure has been approved by Act of Congress.

(b) Any unconditional gift of money accepted pursuant to the authority granted in subsection (a) of this section, the net proceeds from the liquidation (pursuant to subsection (c) or subsection (d) of this section) of any other property so accepted, and the proceeds of insurance on any such gift property not used for its restoration, shall be deposited in the Treasury of the United States and are appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of the Department including the Service, and he may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Such gifts and the income from such investments shall be available for expenditure in the operation of the Department including the Service and the performance of its functions, subject to the same examination and audit as is provided for appropriations made for the Department including the Service by Congress.

(c) The evidences of any unconditional gift of intangible personal property, other than money, accepted pursuant to the authority granted in subsection (a) of this section, shall be deposited with the Secretary of the Treasury and he, in his discretion, may hold them, or liquidate them except that they shall be liquidated upon the request of the Secretary whenever necessary to meet payments required in the operation of the Department including the Service or the performance of its functions. The proceeds and income from any such property held by the Secretary of the Treasury shall be available for expenditure as is provided in subsection (b) of this section.

(d) The Secretary shall hold any real property or any tangible personal property accepted unconditionally pursuant to the authority granted in subsection (a) of this section and he shall permit such property to be used for the operation of the Department including the Service and the performance of its functions or he may lease or hire such property, and may insure such property, and deposit the income thereof with the Secretary of the Treasury to be available for expenditure as provided in subsection (b) of this section. The income from any such real property or tangible personal property shall be available for expenditure in the discretion of the Secretary for the maintenance, preservation, or repair and insurance of such property and

any proceeds from the liquidation of such property. Any such proceeds shall be deposited with the Secretary of the Treasury and shall be used for the purposes of the Department.

(e) For the purpose of this section, the gift, devise, or bequest of property shall be deemed to be made for the use of the United States if the gift, devise, or bequest is made under the provisions of 60 Stat. 1031; S.

Library references

1960 Amendment.
(a), inserted "the Department" preceding "the Service" and "the Secretary" preceding "the Service".

Subsec. (a). The word "property" substituted "at the discretion of the Secretary" for "if received by the Secretary General".

Effective Date
Section 56 of the Act of 1944, as amended, that:

"(a) The provisions of this Act shall be effective as of the first day of the pay period which begins more than 60 days after the date of this Act [September 1, 1944] provided in paragraph (e) of this section, otherwise provided in this Act."

"(b) (1) The provisions of section 31(b) of the Foreign Service Act of 1944, as amended, shall be effective as of the first day of the pay period which begins more than 60 days after the date of enactment of this Act [September 1, 1944], except that the provisions of this Act [see Short Title] shall become effective as of the first day of the pay period for participation in the Civil Service Retirement System before the provisions of this Act become effective. The provisions of this Act shall become effective for participants effective the second month after the first day of the pay period for participation in the Civil Service Retirement System before the provisions of this Act become effective."



any proceeds from insurance may be used to restore the property insured. Any such property when not required for the operation of the Department including the Service or the performance of its functions may be liquidated by the Secretary, and the proceeds thereof deposited with the Secretary of the Treasury, whenever in his judgment the purpose of the gifts will be served thereby.

(e) For the purpose of Federal income, estate, and gift taxes, any gift, devise, or bequest accepted by the Secretary under authority of this chapter shall be deemed to be a gift, devise, or bequest to or for the use of the United States. Aug. 13, 1946, c. 957, Title X, § 1021, 60 Stat. 1031; Sept. 8, 1960, Pub.L. 86-723, § 48, 74 Stat. 847.

Library references: United States § 40; C.J.S. United States §§ 38-40.

Historical Note

1960 Amendment. Pub.L. 86-723, § 48 (a), inserted "the Department including" preceding "the Service", wherever appearing.

Subsec. (a). Pub.L. 86-723, § 48(b), substituted "at the discretion of the Secretary" for "if recommended by the Director General".

Effective Date of 1960 Amendment. Section 56 of Pub.L. 86-723 provided that:

"(a) The provisions of this Act [see Short Title note hereunder] shall become effective as of the first day of the first pay period which begins more than thirty days after the date of enactment of this Act [Sept. 8, 1960], except as provided in paragraphs (b), (c), (d), and (e) of this section, and except as otherwise provided in the text of this Act.

"(b) (1) The provisions of paragraph (c) (1) of section 803 of the Foreign Service Act of 1946, as amended by section 31(b) of this Act [section 1063(c) (1) of this title], shall become effective on the first day of the first month which begins more than one year after the date of enactment of this Act [Sept. 8, 1960], except that any Foreign Service staff officer or employee, who at the time this Act [see Short Title note hereunder] becomes effective meets the requirements for participation in the Foreign Service Retirement and Disability System, may elect to become a participant in the System before the mandatory provisions become effective. Such Foreign Service staff officers and employees shall become participants effective on the first day of the second month following the date of

their application for earlier participation.

"(2) The provisions of paragraph (c) (2) of section 803 of the Foreign Service Act of 1946, as amended by section 31(b) of this Act [section 1063(c) (2) of this title], shall become effective on the first day of the first month which begins more than three years after the date of enactment of this Act [Sept. 8, 1960].

"(c) The amendment made by section 33 of this Act [to section 1071 of this title], with respect to a contribution to the Foreign Service Retirement and Disability Fund to be made by the Department, shall become effective July 1, 1961.

"(d) The amendment made by section 41 of this Act [adding section 1095 of this title] shall take effect on the first day of the first month which begins more than thirty days after the date of enactment of this Act [Sept. 8, 1960].

"(e) The amendment made by section 51 of this Act [to section 104(a) (4) of Title 26] shall be effective with respect to taxable years ending after the date of enactment of this Act [Sept. 8, 1960]."

Short Title. Section 1 of Pub.L. 86-723 provided that "This Act [which added sections 900, 968, 996, 1084, 1095 and 1112 of this title, amended this section and sections 295, 871, 872, 881, 886, 889, 911, 912, 915, 923, 936, 937, 961, 965, 995, 1001, 1002, 1004-1008, 1016, 1017, 1041, 1044, 1063, 1064, 1071, 1076, 1081, 1082, 1086, 1091, 1092, 1111, 1116, 1137 and 1138 of this title, section 170p of Title 5, Executive Departments and Government Officers and Employees, and section 104 of Title 26, Internal Revenue Code, repealed sections 887, 925, 966 and 967 of this



THE WHITE HOUSE

WASHINGTON

April 28, 1976

Dear Henry:

You will recall that I raised a question as to what practices are permissible in obtaining objects to be used by the President as gifts to other Heads of State.

Enclosed is a copy of a response which our office received from Antonin Scalia, Assistant Attorney General, which I trust you will find helpful.

On the basis of this memo, I am suggesting that if anyone on the White House staff has an idea for the source of a contribution that might be used to provide a gift for a foreign Head of State, then the prospective donor should be encouraged to make arrangements through you to provide the gifts on a conditional basis to the Secretary of State for the use intended.

Sincerely,




Philip W. Buchen
Counsel to the President

The Honorable Henry E. Catto, Jr.
Chief of Protocol
Department of State
2201 C Street, N. W.
Washington, D. C. 20520

Enclosure

cc: Maria Downs
Monroe Leigh



Department of Justice

Washington, D.C. 20530

APR 21 1976

MEMORANDUM FOR KENNETH A. LAZARUS
Associate Counsel to the President

Re: Acceptance by the United States of Gifts
from Private Parties upon the Condition
that the Gift shall be Again Given to a
Foreign Dignitary

This is to confirm the advice I gave you over the telephone. The question concerns the authority of the United States to accept a gift of personal property from a private donor on the condition that it be used as a "gift of state" to foreign dignitaries.

As a general rule, "the receipt of gifts, testamentary and nontestamentary, is within the ambit of federal powers, but gifts to the United States which involve any duty, burden, or condition or are made dependent on some future performance by the United States, are not accepted by the Government unless by express authority of Congress." Story v. Snyder, 184 F.2d 454, 456 (D.C. Cir. 1950), relying on United States v. Burnison, 339 U.S. 87 (1950). This rule accords with the position expressed by this department. See 30 Op. A.G. 527 (1916). See also 11 Comp. Gen. 355 (1932), to the same effect.

There is no statute of general application authorizing acceptance by the United States of conditional gifts. The Secretary of State, however, is given the following authority by 22 U.S.C. § 809:

"(a) The Secretary may accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Department including the Service or for the carrying out of any of its functions. Conditional gifts may be so accepted at the discretion of the Secretary, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions but no gift shall be accepted which is conditioned upon any expenditure not to be met therefrom or from the income thereof unless such expenditure has been approved by Act of Congress."



Although the second sentence of this subsection, relating to conditional gifts, does not expressly contain the limitation that the gift must be "for the benefit of the Department . . . or for the carrying out of any of its functions," we think such limitation is reasonably to be understood -- perhaps subsumed within the phrase "so accepted." In any case, it is our view that the making of gifts of state does qualify as a use "for the carrying out of [State Department] functions." We understand that it is a commonplace of diplomacy for gifts to be exchanged between heads of state or other senior dignitaries; 1/ that such gifts are considered tokens of the esteem of the nations involved and may sometimes play a significant role in the conduct of foreign relations. We conclude that gifts to the Secretary of State conditioned on their use as gifts of state can be accepted by the Secretary under 22 U.S.C. § 809(a) if they involve no further expenditure of moneys.

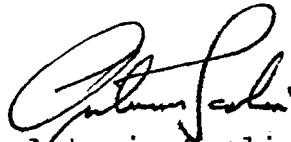
We may note our view that if gifts are to be used for the purpose described above, it is preferable, from a legal standpoint, that they be expressly conditioned upon such use. For unconditional gifts of realty or tangible personal property are further subject to the provisions of subsection 809(d), which include the following:

"(d) The Secretary shall hold any real property or any tangible personal property accepted unconditionally pursuant to the authority granted in subsection (a) of this section and he shall permit such property to be used for the operation of the Department including the Service and the performance of its functions or he may lease or hire such property, . . . Any such property when not required for the operation of the Department including the Service or the performance of its functions may be liquidated by the Secretary, and the proceeds thereof deposited with the Secretary of the Treasury, whenever in his judgment the purpose of the gifts will be served thereby."

1/ As you know, however, gifts to federal officers and employees from foreign governments and officials are regulated by 5 U.S.C. § 7342.

It could be argued that these provisions prevent alienation of realty or tangible personal property accepted unconditionally, except to the Secretary of the Treasury. (The counter-argument, of course, is that the "use" permitted by the second clause of the first sentence of § 809(d) should be read to include a use which terminates the "holding" -- as indeed must be the case with regard to gifts of consumables.) Conditional gifts are not subject to this provision, and are expressly permitted to be "used in accordance with [their] conditions," 22 U.S.C. § 809(a), presumably including the condition of alienation so long as that is in furtherance of the functions of the Department. To avoid any dispute on this point, it is obviously preferable to use conditional gifts for the stated purpose.

We presume that the discretion given to the Secretary will be exercised to guard against the risk of impropriety which the acceptance of certain conditions in certain circumstances might entail. This risk is of course reduced if the condition, while specifying use as a gift of state, does not specify the donee of the gift.



Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

THE WHITE HOUSE
WASHINGTON

Foreign gifts

September 27, 1976

MEMORANDUM FOR: MAX FRIEDERSDORF
FROM: PHIL BUCHEN *P.*
SUBJECT: Purchase of Foreign Gifts

In response to your memorandum of September 22, I suggest that before we act to take care of the interest expressed by Mr. Craft in regard to the watch presented by King Faisal to Senator Fannin, we should study the feasibility of opening foreign gifts to purchase by any interested party. We cannot make an exception for one person without developing a procedure which would be available to others having similar interests.

I suggest that Joe Jenckes tell Mr. Craft that we will look into the whole matter and report back to him prior to the end of the calendar year.

cc: Joe Jenckes
Barry Roth

THE WHITE HOUSE

WASHINGTON

September 24, 1976

MEMORANDUM FOR: PHILIP W. BUCHEN
FROM: BARRY N. ROTH *BR*
SUBJECT: Foreign Gifts

Joe Jenckes is correct that the law clearly permits the negotiated sale of items having a fair market value of less than \$1,000. I have discussed this in the past with Henry Catto who also had expressed an interest in purchasing a watch that had been given to him by representatives of the Saudi government. However, the career officials at State are afraid that people would question the valuation set on items, and accordingly have been reluctant to allow such negotiated sales. Catto apparently decided not to go ahead with such sales.

I believe that the current State Department policy is unnecessarily conservative and is wrong. It makes little sense that items whose value is primarily a commemorative one should simply sit in a store room, when they could be purchased by the donee at their fair market value. As long as the appraisal is done by an independent appraiser picked by State or GSA, there is no reason to be concerned that the valuation was unjustifiably low. Moreover, Fannin's staff is willing to pay for the appraisal so that the Government has nothing to lose if this request is approved.

Joe Jenckes has attached the State Department regulations (see Section 3.6) which apply to the disposal of foreign gifts of more than minimal value. I can call Mrs. Black if you wish or I can explain this to you in more detail if you feel it is necessary so that you can make the call.

372

THE WHITE HOUSE

WASHINGTON

September 22, 1976

MEMORANDUM FOR: PHILIP BUCHEN
THRU: MAX FRIEDERSDORF *llh. b.*
FROM: JOE JENCKES *J. S. F.*
SUBJECT: Purchase of Foreign Gift


Attached is a memo including applicable regulations regarding foreign gifts from Fred Craft, Minority Counsel of the Senate Interior Committee.

Mr. Craft is attempting to purchase a watch which was given to Senator Paul Fannin by King Faisal. Senator Fannin, in accordance with the law, deposited the watch with the Chief of Protocol.

Ambassador Black, through her counsel, a Mr. Davis, has refused Mr. Craft's request to purchase the watch -- even though the regulations provide for such purchase -- on the grounds that the purchase would establish a "precedent."

Senator Fannin is retiring this year and the watch has a sentimental value. Is there anything you can do to assist Mr. Craft.

Many thanks.



HENRY M. JACKSON, WASH., CHAIRMAN

FRANK CHURCH, IDAHO
LEE METCALF, MONT.
J. BENNETT JOHNSTON, LA.
JAMES ABOWREZK, S. DAK.
FLOYD K. HASKELL, COLO.
JOHN GLENN, OHIO
RICHARD STONE, FLA.
DALE BUMPERS, ARK.

PAUL J. FANNIN, ARIZ.
CLIFFORD P. HANSEN, WYO.
MARK O. HATFIELD, OREG.
JAMES A. MCCLURE, IDAHO
DEWEY F. BARTLETT, OKLA.

United States Senate

COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
WASHINGTON, D.C. 20510

GRENVILLE GARSIDE, SPECIAL COUNSEL AND STAFF DIRECTOR
WILLIAM J. VAN NESS, CHIEF COUNSEL

September 21, 1976

To: Joseph Jenckes

From: Winfred O. Craft, Jr. - Minority Counsel

The staff of the Senate Interior Committee, past and present, desire to purchase at fair market value plus the cost of appraisal a man's white gold Universal Geneve wrist watch inscribed with King Faisal's name, which was presented to Senator Fannin in 1975.

Department of State, Office of Chief of Protocol, has informed the GSA that they will not approve the disposal of the property. The Foreign Gifts and Decorations Act of 1966, P.L. 89-673, as amended, provides for the disposal of the property, so long as it is at fair market value plus cost of appraisal.

Mr. George I. Perryman, GSA, Office of Personal Property Disposal, was prepared to dispose of the property according to the law provided he received a letter of authorization from the Chief of Protocol. I was informed this date that Chief of Protocol, Ambassador Black, has refused to grant this request, even though she has the authority, because it would "set a precedent".

GSA has been negotiating with State for a blanket authorization to dispose of similar items, and the issue is pending decision by Ambassador Black. This specific request would not bear at all on the blanket authorization question.

Senator Fannin is not aware of these negotiations; the watch was to be presented to him upon his retirement from the United States Senate when the Senate adjourns sine die.

WOC:cs

Title 22—FOREIGN RELATIONS

Chapter I—Department of State

SUBCHAPTER A—GENERAL

[Dept. Reg. 108.556]

PART 3—ACCEPTANCE OF GIFTS AND DECORATIONS FROM FOREIGN GOVERNMENTS

Part 3 is added to Title 22 of the Code of Federal Regulations to read as set forth below.

Sec.

- 3.1 Purpose.
- 3.2 Applications of this part.
- 3.3 Definitions.
- 3.4 Release of gifts and decorations on deposit in the Department of State through October 14, 1966.
- 3.5 Gifts and decorations received by any person after October 14, 1966.
- 3.6 Use or disposal of gifts and decorations which become the property of the United States.
- 3.7 Revocation of previous regulations.

AUTHORITY: The provisions of this Part 3 issued under sec. 7, Foreign Gifts and Decorations Act of 1966, 80 Stat. 952; sec. 4, 63 Stat. 111, as amended; 22 U.S.C. 2626, 5 U.S.C. 151c; E.O. 11320, 31 F.R. 15789.

§ 3.1 Purpose.

The purpose of this part is to establish uniform basic standards for the acceptance of gifts and decorations from foreign governments by U.S. Government officers and employees, including members of the armed forces, and members of their families.

§ 3.2 Application of this part.

This part applies to all persons occupying an office or a position in the Executive, Legislative and Judicial branches of the Government of the United States.

§ 3.3 Definitions.

As used in this part—

(a) The term "person" includes every person who occupies an office or a position in the Government of the United States, its territories and possessions, the Canal Zone Government, and the Government of the District of Columbia, or is a member of the Armed Forces of the United States, or a member of the family and household of any such person. For the purpose of this part, "member of the family and household" means a relative by blood, marriage or adoption who is a resident of the household.

(b) The term "foreign government" includes every foreign government and every official, agent, or representative thereof.

(c) The term "gift" includes any present or thing, other than a decoration, tendered by or received from a foreign government.

(d) The term "decoration" includes any order, device, medal, badge, insignia, or emblem tendered by or received from a foreign government.

(e) The term "gift of minimal value" includes any present or other thing, other than a decoration, which has a retail value not in excess of \$50 in the United States.

(f) The term "outstanding or unusually meritorious performance" includes performance of duty by a person determined by the appropriate agency to have contributed to an unusually significant

degree to the furtherance of good relations between the United States and the foreign government tendering the decoration.

(g) The term "special or unusual circumstances" includes any circumstances which would appear to make it improper for the donee to receive a gift or decoration, and also includes, in some instances, the very nature of the gift itself.

(h) The term "appropriate agency" means the department, agency, office, or other entity in which a person is employed or enlisted, or to which he has been appointed or elected. If the donee is not so serving, but is a member of the family and household of such a person, then the "appropriate agency" is that in which the head of the household is serving.

(i) The term "approval by the appropriate agency" includes approval by such person or persons as are duly authorized by such agency to give the approval required by these regulations.

(j) The term "Chief of Protocol" means the Chief of Protocol of the Department of State.

§ 3.4 Release of gifts and decorations on deposit in the Department of State through October 14, 1966.

Any gift or decoration on deposit with the Department of State on the effective date of this part shall, following written application to the Chief of Protocol and subsequent approval by the Chief of Protocol and the appropriate agency, be released through the appropriate agency to the donee or his legal representative. Such donee may also, if authorized by the appropriate agency, wear any decoration so released. Approval for release will normally be given unless, from the special or unusual circumstances involved, it would appear to the Chief of Protocol to be improper to release the item. Any gifts or decorations not approved for release will become the property of the U.S. Government and will be used or disposed of in accordance with the provisions of § 3.6.

§ 3.5 Gifts and decorations received by any person after October 14, 1966.

(a) General policy. No person shall request or otherwise encourage the tender of a gift or decoration.

(b) Gifts of minimal value. Subject to individual agency regulations, table favors, mementos, remembrances, or other tokens bestowed at official functions, and other gifts of minimal value received as souvenirs or marks of courtesy from a foreign government may be accepted and retained by the donee. The burden of proof is upon the donee to establish that the gift is of minimal value as defined by this part.

(c) Gifts of more than minimal value. Where a gift of more than minimal value is tendered, the donor should be advised that it is contrary to the policy of the United States for persons in the service thereof to accept substantial gifts. If, however, the refusal of such a gift would be likely to cause offense or embarrassment to the donor, or would adversely affect the foreign relations of the United States, the gift may be accepted and shall be deposited with the Chief of Protocol for disposal in accordance with the provisions of § 3.6.

(d) Decorations. Decorations received which have been tendered in recognition of active field service in connection with combat operations, or which have been awarded for outstanding or unusually meritorious performance, may be accepted and worn by the donee with (1) the approval by the appropriate agency and (2) the concurrence of the Chief of Protocol. Within the Department of State, the decision as to whether a decoration has been awarded for outstanding or unusually meritorious performance will be the responsibility of the supervising Assistant Secretary of State or comparable officer for the person involved. In the absence of approval and concurrence under this paragraph, the decoration shall become the property of the United States and shall be deposited by the donee with the Chief of Protocol for use or disposal in accordance with the provisions of § 3.6. Notwithstanding the foregoing, decorations tendered to U.S. military personnel for service in Viet-Nam may be accepted and worn as provided by the Act of October 19, 1965, Public Law 89-257, 79 Stat. 982.

§ 3.6 Use or disposal of gifts and decorations which become the property of the United States.

Any gift or decoration which becomes the property of the United States under this part may be retained for official use by the appropriate agency with the approval of the Chief of Protocol. Gifts and decorations not so retained shall be forwarded to the General Services Administration by the Chief of Protocol for transfer, donation, or other disposal in accordance with such instructions as may be furnished by that officer. In the absence of such instructions, such property will be transferred or disposed of by the General Services Administration in accordance with the provisions of the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, and the Federal Property Management Regulations (41 CFR Ch. 101, Subchapter H). Standard Form 120, Report of Excess Personal Property, and Standard Form 120A, Continuation Sheet, shall be used in reporting such property, and the Foreign Gifts and Decorations Act of 1966 shall be cited on the reporting document. Such reports shall be submitted to General Services Administration, Region 3, Attention: Property Management and Disposal Service, Seventh and D Streets SW., Washington, D.C. 20407.

§ 3.7 Revocation of previous regulations.

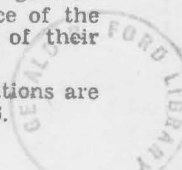
The regulations in this part shall supersede all regulations heretofore in effect concerning the acceptance of gifts and decorations from foreign governments to persons in the service of the United States or to members of their families.

Effective date. These regulations are effective as of October 15, 1966.

Dated: April 14, 1967.

[SEAL] NICHOLAS DEB KATZENBACH,
Acting Secretary of State.

[F.R. Doc. 67-4784; Filed, Apr. 27, 1967; 8:52 a.m.]



UNITED STATES CODE

TITLE 5

§ 7342. Receipt and disposition of foreign gifts and decorations

(a) For the purpose of this section—

(1) "employee" means—

- (A) an employee as defined by section 2105 of this title;
- (B) an individual employed by, or occupying an office or position in, the government of a territory or possession of the United States or of the District of Columbia;
- (C) a member of a uniformed service;
- (D) the President;
- (E) a Member of Congress as defined by section 2106 of this title; and

(F) a member of the family and household of an individual described in subparagraphs (A)–(E) of this paragraph;

(2) "foreign government" means a foreign government and an official agent, or representative thereof;

(3) "gift" means a present or thing, other than a decoration, tendered by or received from a foreign government; and

(4) "decoration" means an order, device, medal, badge, insignia, or emblem tendered by or received from a foreign government.

(b) An employee may not request or otherwise encourage the tender of a gift or decoration.

(c) Congress consents to—

(1) the accepting and retaining by an employee of a gift of minimal value tendered or received as a souvenir or mark of courtesy; and

(2) the accepting by an employee of a gift of more than minimal value when it appears that to refuse the gift would be likely to cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States.

However, a gift of more than minimal value is deemed to have been accepted on behalf of the United States and shall be deposited by the donee for use and disposal as the property of the United States under regulations prescribed under this section.

(d) Congress consents to the accepting, retaining, and wearing by an employee of a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the agency, office or other entity in which the employee is employed and the concurrence of the Secretary of State. Without this approval and concurrence, the decoration shall be deposited by the donee for use and disposal as the property of the United States under regulations prescribed under this section.

(e) The President may prescribe regulations to carry out the purpose of this section. Added Pub.L. 90-83 § 1(45) (C), Sept. 11, 1967, 81 Stat. 208.



NAME FANNIN, Sen. Paul J.		BOX S/CPR-23 #23
DEPARTMENT U.S. Senate		FROM King Faisal SAUDI ARABIA
<input checked="" type="checkbox"/> GIFT <input type="checkbox"/> MEDAL <input type="checkbox"/> INSIGNIA <input type="checkbox"/> DIPLOMA <input type="checkbox"/> RELATED DOC. <input type="checkbox"/>	DESCRIPTION Man's white gold UNIVERSAL GENEVE wristwatch inscribed with King Faisal's name on face of watch, Serial No. 366 010 2980 386 Ref: Letter of 5/9/75 from Donee	
DATE RECEIVED May 9, 1975		DATE DELIVERED to GSA 9/19/75
FORM 9-61 DS-681		DEPARTMENT OF STATE GIFT AND DECORATION CARD
		GPO 919148

Fannin rug listed in Report of Excess Personal
Property (SF 120) #S/CPR23 - Item 23 dated June 4, 1975
-- watch delivered to GSA Sept. 19, 1975

Mr. George I. Perryman Tel: 557-1798
General Services Administration
Office of Personal Property Disposal