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*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

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

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CL  
R The Honorable John J. Sparkman  
Chairman, Committee on Foreign Relations S. 01300  
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 cursive script that reads "James B. Stacks".

Comptroller General  
of the United States

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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 <sup>32</sup> 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.

	<u>Number reporting gifts</u>	<u>Number of gifts 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

GIFT ACKNOWLEDGED BY POST (COPY OF LETTER ATTACHED)  
 TO BE ACKNOWLEDGED BY

*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.*

NOTE: FIVE COPIES OF THIS FORM SHOULD BE PREPARED AND DISTRIBUTED AS FOLLOWS:

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.

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

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.

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.
- Reticence 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

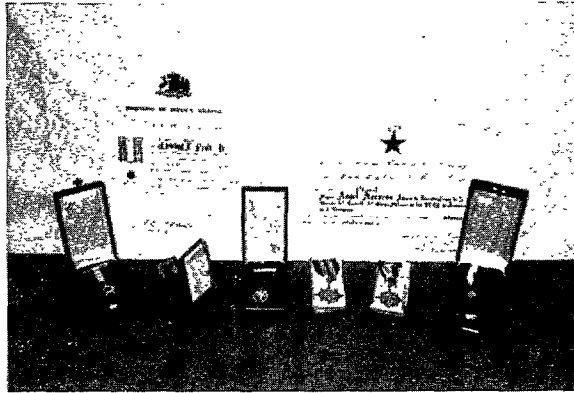
Whenever a U.S. Government employee receives a decoration from a foreign government he is required to obtain the approval of his agency and the concurrence of the Chief of Protocol to retain it. Should the agency disapprove or the Chief of Protocol not concur in its retention, it is to be deposited with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

BEST DOCUMENT AVAILABLE



## DEPARTMENT OF STATE

Washington, D.C. 20520

July 1, 1974

MEMORANDUM

TO : HEADS OF ALL FEDERAL AGENCIES

FROM : The Chief of Protocol *QWR*

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

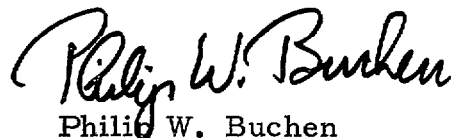
Dear Mr. Hunter:

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

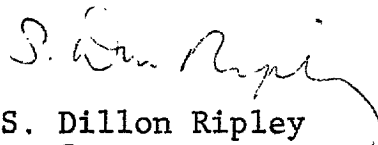
APPENDIX IV

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



1/13/75

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.

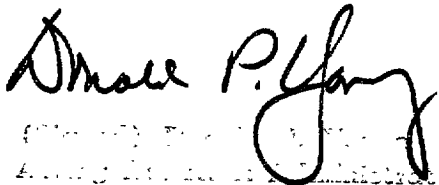
APPENDIX IV

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,

  
Donald P. Gandy  
Assistant to the 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

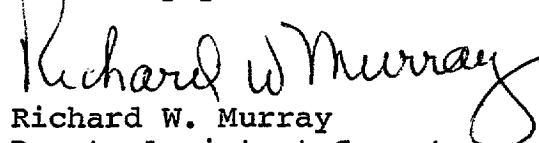
Dear Mr. Fasick:

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

APPENDIX IV

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

#### APPENDIX IV

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.

APPENDIX IV

-- 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.

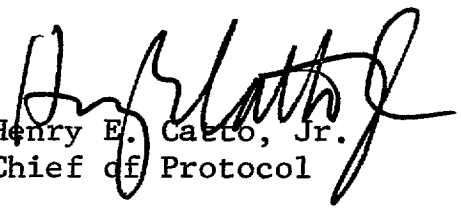
(Comments deleted refers to material which was omitted from the final report.)

(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. Caeto, 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;

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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.

APPENDIX V

(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.

APPENDIX V

(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/

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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

	<u>Tenure of office</u>	
	<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

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