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WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name WHITE HOUSE OFFICE OF RECORDS MANAGEMENT
(WHORM): SUBJECT FILE

Withdrawer

DLB 1/31/2011

File Folder FE010 (RECORDS & ARCHIVES) (606375-609999)

FOIA

S10-365

Box Number 27

SYSTEMATIC

6

ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
104263	MEMO	COLIN POWELL TO THE PRESIDENT, RE: PROPOSED NATIONAL SECURITY DECISION DIRECTIVE ON DISPOSITION OF PRE-REAGAN POLICY PAPERS	1	1/6/1989	B1
104264	LIST	DOCUMENTS	2	ND	B1

The above documents were not referred for declassification review at time of processing

Freedom of Information Act - [5 U.S.C. 552(b)]

- B-1 National security classified information [(b)(1) of the FOIA]
- B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
- B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

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104263 MEMO

1 1/6/1989 B1

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DIRECTIVE ON DISPOSITION OF PRE-REAGAN
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~~UNCLASSIFIED~~ with
~~TOP SECRET~~ attachment

~~TOP SECRET~~

System II
90942

THE WHITE HOUSE
WASHINGTON

Disposition of Pre-Reagan Policy Papers (U)

After NSC interagency review of the presidential policy papers issued prior to my Administration, I have directed that the following disposition be made:

1. Those policy papers listed at Tab 1 are still active.
2. Those policy papers listed at Tab 2 have been implemented.
3. Those policy papers listed at Tab 3 have been superseded. (U)

Attachments

Tab 1	Active Pre-Reagan Policy Papers
Tab 2	Implemented Pre-Reagan Policy Papers
Tab 3	Superseded Pre-Reagan Policy Papers

~~UNCLASSIFIED~~ with
~~TOP SECRET~~ attachment
Declassify on: OADR

~~TOP SECRET~~

~~TOP SECRET~~

~~TOP SECRET~~

(as of 30 December 1988)

PRE-REAGAN ACTIVE POLICY DOCUMENTS

<u>PD</u>	<u>DOCUMENT DATE</u>	<u>TITLE</u>
9	30 Mar 77	Army Special Operations Field Office in Berlin (C)
25	14 December 77	Adverse Environmental Effects & Launch of Nuclear Systems into Space (C)
27	19 January 78	Procedures for Dealing with non-Military Incidents (U)
30	17 February 78	Micronesian Status Negotiations (U)
47	27 March 79	US/Foreign Programs of Cooperation Involving Nuclear Weapons (C)
48	4 April 79	Ballistic Missile Submarine Commitments to NATO (U)
<u>NSDM</u>		
50	6 April 70	Release of Public Information concerning Foreign Nuclear Tests (S)
119	20 July 71	Disclosure of Classified US Military Information to Foreign Governments & International Organizations (C)
163	6 April 72	Statement of US Policy re Unprovoked Communist Attacks on US Aircraft & Vessels (TS/EO)
219	4 June 73	Implementation Procedure for Agreement on Measures to Reduce the Risk of Outbreak of Nuclear War between the USA and USSR (S)
222	11 June 73	COCOM ("Coordinating Committee for Multilateral Exports") (C)
238	19 November 73	Implementation Procedures for Agreement on Measures to Reduce Risk of Outbreak of Nuclear War between US & USSR (S)
262	29 July 74	Use of US Bases in Japan in the Event of Aggression against South Korea (TS/SN)
275	10 October 74	COCOM Position on the Return of Depleted Uranium (Tails) from the USSR (S)
289	24 Mar 75	US Military Supply to Pakistan and India (S)

Superseded in part by NSDD 147

~~TOP SECRET~~

Declassify on: OADR

~~TOP SECRET~~

dy

1/15/11

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PRE-REAGAN ACTIVE POLICY DOCUMENTS

(continued)

<u>NSDM</u>	<u>DOCUMENT DATE</u>	<u>TITLE</u>
312	1 November 75	Nuclear Weapons Recovery Policy (TS/NO)
325	20 April 76	US Policy towards Svalbard (S)
 <u>NSAM</u>		
299	12 May 64	Evacuation and Protection of US Citizens in Danger Areas Abroad (C)
316	12 November 64	Military Exercises (C)

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~~TOP SECRET~~

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SUPERSEDED

<u>PD</u>	<u>DOCUMENT DATE</u>	<u>TITLE</u>
21	13 November 77	Policy toward Eastern Europe (C)
24	16 November 77	Telecommunications Protection Policy (U)
55	10 January 80	Intelligence Special Access Programs / Establishment of Apex Program (U)
 <u>NSDM</u>		
3	20 January 69	Direction, Coordination & Supervision of Interdepartmental Activities Overseas (C)
55	17 April 70	South West Africa re Review and Report of NSSM 89 (S)
92	7 November 70	US Policy towards Persian Gulf (S)
186	18 August 72	US Military Supply Policy for Lower Persian Gulf States & Oman (S)
247	14 March 74	US Policy on the Export of Computers to Communist Countries (S)
254	27 April 74	Domestic Safeguards (S)
263	29 July 74	US Policy on Antarctic Mineral Resources (C)
289	24 March 75	US Military Supply Policy to Pakistan and India (S) Superseded in part by NSDD 147
318	25 February 76	US Policy for Antarctica (U)
330	6 May 76	US Policy on Exim Bank Loans to South Africa (S)
337	23 August 76	Strategic & Critical Materials Stockpile (S)

dlb

1.18.11

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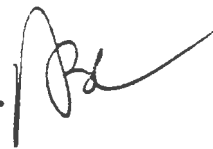
THE WHITE HOUSE

WASHINGTON

December 1, 1988

1606685
FEDID
FG006-01

MEMORANDUM FOR WHITE HOUSE STAFF

FROM: ARTHUR B. CULVAHOUSE, JR. 
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Records Act Obligations
of Departing White House Staff

As President Reagan's term begins to draw to a close, increasing numbers of White House staff members are requesting advice with respect to the disposition of the records they have accumulated during their tenure. While guidance on the disposition of White House records is contained in the White House Staff Manual, this appears to be an appropriate time to remind you of your obligations under the Presidential Records Act, and to provide you with a timetable for the transfer of records to the Office of Records Management.

In addition, Counsel's Office is planning on holding one or more briefings in the next month to provide further guidance on the disposition of Presidential records for interested staff members. In the interim, any questions that you have about the requirements of the Presidential Records Act should be addressed to Counsel's Office. Questions concerning the logistics of transferring your records to White House Central Files should be addressed to the Office of Records Management.

Presidential Records Act Obligations

As discussed at greater length in the White House Staff Manual the ownership, maintenance and disposition of Presidential documents are governed by the Presidential Records Act. The requirements of that Act apply to all records of the White House Office, the Office of Policy Development, the Council of Economic Advisers, the President's Foreign Intelligence Advisory Board and the President's Intelligence Oversight Board. Those requirements also apply to certain records of the National Security Council and to records produced or received by the Director of the Office of Science and Technology Policy in his role as science adviser to the President.

The Presidential Records Act requires that staff members adequately document the performance of the President's constitutional, statutory and ceremonial duties; the decision as to whether information should be memorialized in the first instance rests with each staff member. In general, papers and similar

materials found in the White House fall into one of three categories, */ each of which are subject to different treatment:

1. Presidential Records: Presidential records are the official documents written and received not only by the President but also by his staff. These records encompass any form of memorializing information concerning the President's constitutional, statutory and ceremonial duties, including but not limited to written documents, models, pictures, films and audio and electronic recordings. Presidential records are the property of the United States and when you leave the White House, you should deliver all Presidential records to the Office of Records Management at the White House. To ensure that the President maintains the maximum controls permitted by law, staff members may not retain copies of Presidential records upon departure from the White House.
2. Personal Records: Personal records are the private papers that staff members might keep in their offices. Examples of such papers include insurance claim forms, purely personal correspondence, or personal diaries or journals. Personal documents and files, as indicated in the White House Staff Manual, should have been stored separately from official records. They are your personal property and may be removed by you upon your departure from the White House, or handled in any other manner you so desire.
3. Nonrecord Materials: These are materials that do not rise to the level of a record, meaning that the material (1) does not contain information that either must be memorialized or is not available in a later version of the same document and (2) has been kept by you exclusively for your own use and reference and not made accessible to others on the staff. Examples of nonrecord materials include preliminary drafts of memoranda that are modified before being forwarded to another individual, unimportant notes to your secretary, notes of meetings taken solely for your convenience, and certain telephone and visitor logs. While staff members are free to dispose of materials that are truly nonrecord, because such materials contain official information, you may not remove them from the White House.

*/ The NSC and OSTP have a fourth category of records, federal records, which are official government records not subject to the Presidential Records Act. A staff member departing from these offices is required to leave the originals of his federal records with his office. Staff members may take copies of their federal records as authorized by the Freedom of Information Act and the guidelines of their respective offices.

Preparation of Presidential Records for Delivery to ORM

Prior to transferring files to ORM, staff members should ensure that they have gathered together all Presidential records and appropriately filed them. While the vast bulk of your records should already appear in well-organized files, you should take care to review your word-processing and/or PROFS computer memory to ensure that you have made a hard copy of all "record" material appearing there which can be transferred to ORM. Users of the EOP Electronic Mail system should be aware that while many electronic mail messages may be the equivalent of telephone calls and not rise to the level of record materials, some of them may contain information concerning the President's constitutional, statutory and ceremonial duties that you are required, under the terms of the Presidential Records Act, to memorialize. Those messages that do contain that information should be converted into hard copy for transfer to ORM.

In addition, staff members should, to the extent possible, ensure that any files that they have which contain particularly sensitive information should be clearly labelled to reflect that fact. Under the terms of the Presidential Records Act, as well as available constitutional and common law privileges, most of the sensitive Presidential records can be protected, at least for a specified time period, from public access. While Archives personnel, in consultation with President Reagan or his designees, will review all Presidential records and segregate out at least those records that are to be protected under the Presidential Records Act, to avoid inadvertent release of sensitive information it is useful for those who created them, to the extent possible, to mark those files. Possible file labels may include:

- (1) This file contains classified information (in general, this label should be unnecessary as classified files should already be clearly marked).
- (2) This file contains information the release of which may be prejudicial to the maintenance of good relations with foreign nations (the vast bulk of such information should be classified and therefore would fall within category Number 1 above).
- (3) This file contains sensitive personal information the release of which may be embarrassing to the individuals mentioned or to their families.
- (4) This file contains sensitive information involving the confidential advice requested by or provided to the President or his advisers.
- (5) This file contains sensitive law enforcement materials.

- (6) This file contains trade secrets or sensitive commercial or financial information.

Delivery of Presidential Records to ORM

As noted above, departing staff members are responsible for ensuring that their Presidential Records are appropriately filed and transferred to ORM. In fact, as part of the official check-out procedures, departing staff members must certify that they have transferred their Presidential records to ORM. Under the Presidential Records Act, the United States Archivist will, upon the completion of the Administration, assume custody of the official records of President Reagan and his staff and will transport them to California where they eventually will be housed in the Ronald Reagan Presidential Library. While, as a general matter, staff members should transfer their files to ORM as they depart from the White House, in order to complete in a timely manner the logistical arrangements for moving these records to California, staff members who are staying on until or through January 20, 1989 **/ should comply with the following timetables:

1. Staff members should deposit in Central Files no later than Monday, January 10, all of their Presidential records, with the exception of those records which are essential for the President to carry out his official duties.
2. Those essential records not deposited on or before January 10, along with other records generated after January 10, must be deposited with Central Files by 5:00 p.m. on January 19. (Failure to transfer these records to ORM by January 19 may result in providing members of the new Administration with sensitive information to which they would otherwise not have access.)

To further aid in efforts to prepare these records for shipping to California, each staff member should, as soon as possible, deposit those of his or her Presidential records that are not needed for ongoing business with White House Central Files. Those records can, of course, be returned to the staff member from Central Files if they later become needed.

Archives' Assessments of Records Volume

Finally, staff members should be aware that as part of the preparations for transporting President Reagan's records to California, representatives of the Archivist will, beginning next

**/ It is important for those members of the White House staff who may be remaining at the White House after January 20 to realize that you must nevertheless transfer all of your official records of the Reagan Administration to ORM in accordance with the timetables specified in this memorandum.

week, visit individual offices solely for the purpose of ascertaining the volume of records stored there. White House staff members should cooperate fully with the efforts of Archives personnel to make these assessments.

December 22, 1988

606685
FEO10

MEMO FOR THE PRESS OFFICE

FROM BEN

Ben

SUBJECT: Summary of Presidential Records Act

1) White House staffers are governed by the Presidential Records Act and are obligated to transfer Press Office records to the Office of Records Management (ORM). See A.B. Culvahouse's memo for full explanations. There are three categories to consider:

-- Presidential Records: Official documents by the staff and President in support of presidential activities. These records are U.S. Government property and staff may not retain copies upon departure. Messages on PROFS or in IBM computers are considered presidential; make a paper copy and send to ORM as well. Computers will be wiped clean for January 20th.

-- Personal Records: Private records and papers that staff members keep in your offices. These records that pertain to you may be removed from the White House at any time.

-- Non-record Materials: Documents kept exclusively for your own use, and not accessible to others on WH staff. Examples: drafts of memos, unimportant notes of meetings, and certain phone logs. Staff members may destroy this material, but may not remove such items from the White House.

2) Each box needs to be properly labeled with a list containing the following information: type of file (briefings, etc), dates of material, and classification (classified; sensitive/personal information; financial or trade secrets; or for release to public). An Archivist will review all records. Originals of all memos must be sent to ORM. NOTE: Classified or sensitive files should be separated from public information and boxed together. ORM will handle this classified material separate from other information.

3) The Press Office needs to send all boxes to ORM by January 10th, with the exception of records which are essential to maintain the performance of the office. The final deadline for additional information is January 19th. The sooner the better.

4) All White House staffers remaining in the Bush Administration still must transfer all official Reagan documents to ORM. These files do not automatically carry over to the next Administration.

5) OUTSTANDING ISSUE: Legal Counsel is going to get authorization from the President to allow each Agency head to determine which files may be left for the next Administration. Originals must be sent to ORM for the Reagan record, but copies may be left for the next Press Office. In our case, Marlin will eventually determine what files, paperwork and outstanding issue papers should be photocopied and left for the Bush Press Office.

#

Done
2/2/88
1/1/88

THE WHITE HOUSE

WASHINGTON

December 1, 1988

MEMORANDUM FOR WHITE HOUSE STAFF

FROM: ARTHUR B. CULVAHOUSE, JR. *AC*
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Records Act Obligations
of Departing White House Staff

As President Reagan's term begins to draw to a close, increasing numbers of White House staff members are requesting advice with respect to the disposition of the records they have accumulated during their tenure. While guidance on the disposition of White House records is contained in the White House Staff Manual, this appears to be an appropriate time to remind you of your obligations under the Presidential Records Act, and to provide you with a timetable for the transfer of records to the Office of Records Management.

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week, visit individual offices solely for the purpose of ascertaining the volume of records stored there. White House staff members should cooperate fully with the efforts of Archives personnel to make these assessments.

608865
FEDID
CDD74
PRDD701
PRD10

July 29, 1988

MEMORANDUM FOR: PATTI ARONSSON

FROM: TERRY GOOD

RE: PRESIDENTIAL CONTACTS WITH ISRAELI REPRESENTATIVES

Attached are printouts of records in ORM custody relating to Presidential contacts with Israeli representatives during the period June 30, 1983 to December 31, 1986.

We have searched for any records involving meetings, telephone calls and/or social events whether at or away from the White House. We excluded contacts with Jewish-Americans.

Let me reiterate that briefing papers prepared by NSC for events with foreign representatives do not always find their way to ORM. I strongly recommend that NSC and even the Country Desk at State be queried on this matter.

file copy

Printouts provided:

145244

145269

150707

155112

157972

189601

189605

282434

296988

362346

362430

420234

446015

36619955

121717

**WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

FEDID

anne

- ☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
 Date Correspondence Received (YY/MM/DD) 1/1

Name of Correspondent: Sandra Bennett

☐ MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Assistance in obtaining copy of IG report from Dept. of Agriculture

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>cu hall</u>	ORIGINATOR	<u>88108119</u>			<u>1/1</u>
<u>cuat 30</u>	Referral Note:	<u>for PDB</u>			
		<u>88108122</u>			<u>88109102</u>
	Referral Note:				
		<u>1/1</u>			<u>1/1</u>
	Referral Note:				
		<u>1/1</u>			<u>1/1</u>
	Referral Note:				
		<u>1/1</u>			<u>1/1</u>
	Referral Note:				

ACTION CODES:

A - Appropriate Action
 C - Comment/Recommendation
 D - Draft Response
 F - Furnish Fact Sheet
 to be used as Enclosure

I - Info Copy Only/No Action Necessary
 R - Direct Reply w/Copy
 S - For Signature
 X - Interim Reply

DISPOSITION CODES:

A - Answered C - Completed
 B - Non-Special Referral S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
 Code = "A"
 Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEOB).
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No. of Additional Correspondents: _____ Media: L Individual Codes: 4200 _____

Prime Subject Code: FE 010 Secondary Subject Codes: FG 019 _____
RS _____

PRESIDENTIAL REPLY

Code	Date	Comment	Form
C	_____	Time: _____	P- _____
DSP	_____	Time: _____	Media: _____

SIGNATURE CODES:

CPn - Presidential Correspondence
n - 0 - Unknown
n - 1 - Ronald Wilson Reagan
n - 2 - Ronald Reagan
n - 3 - Ron
n - 4 - Dutch
n - 5 - Ron Reagan
n - 6 - Ronald
n - 7 - Ronnie

CLn - First Lady's Correspondence
n - 0 - Unknown
n - 1 - Nancy Reagan
n - 2 - Nancy
n - 3 - Mrs. Ronald Reagan

CBn - Presidential & First Lady's Correspondence
n - 1 - Ronald Reagan - Nancy Reagan
n - 2 - Ron - Nancy

MEDIA CODES:

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C - Copy
D - Official document
G - Message
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M - Mailgram
O - Memo
P - Photo
R - Report
S - Sealed
T - Telegram
V - Telephone
X - Miscellaneous
Y - Study

SANDY'S

RABBITS

FRESH • QUALITY • DELIVERED

August 13, 1988

Arthur B. Culvahouse, Jr.
Counsel to the President
The Office of General Counsel
The White House
Washington, D. C. 20500

Dear Mr. Culvahouse,

We have been referred to your office by the White House Department of Agency Liaison, who has assured us that your office has reviewed our case on an earlier occasion.

Recently, we have requested, and received a copy of an OIG report whose substance lacks credibility...due to the fact that it does not contain any of the critical material offered for investigation...Namely, missing and altered documents.

It is difficult for us to believe that Robert Beuley, Inspector General, Department of Agriculture would allow this report to be submitted without an accounting of the numerous...at this point in time more than nine missing documents...and as we review the files and the OIG report, the number of missing documents continues to grow. We have recently questioned two additional missing documents and have several more to research.

The entire basis of the OIG report is questionable...as it faults a "computer error" for our difficulties...which is the weakest argument that can be offered, as it was totally unrelated to the true circumstances of our case. All of our loan papers were rescheduled at the same time in 1985...all of the notes were signed in 1985, thereby eliminating any possibility of a 1986 delinquency.

The Finance Office Status Report Code 540 Instructions were explicit...the computer list was to be used in conjunction with the local office records.

There were other complaints which were not investigated...the issues were totally ignored...most obviously missing is the complaint against Darrel Zerger, Chief of Farmer Programs, CA, who recommended against rescheduling and/or deferral of our

Page 2

Arthur B. Culvahouse, Jr.
Counsel to the President
August 13, 1988

loans in 1987, even though we were eligible (as evidenced by notations in the State Office file records).

Further, Mr. Zerger attempts to justify his original decision in 1986...to send us an "Adverse Action Notice" because he "remembers" that it was a "word of mouth" decision to so...This was not backed up by printed Regulations.

Can you tell us how any of this can be justified? Can you tell us how the OIG can justify ignoring the very complaints which we requested them to investigate? We were assured (in writing) that these matters would be looked into! This assurance gave us hope that we could reach a satisfactory conclusion to the problems which we have been attempting to resolve for almost three years without success.

It has always been our belief that somewhere, someone would realize that good government is more important than "protecting" an inadequately run agency. No one has the right to deliberately curtail, or disrupt an individual's life, because of a whim, or a belief that "the system" will protect them.

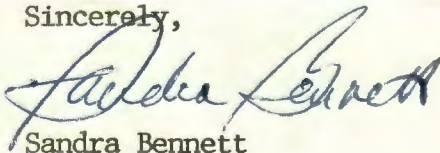
We have suffered a great deal at the hands of this agency and its defenders. We hope that your interest is not limited to protecting the Department of Agriculture..and as such, we are asking for your intervention on our behalf.

If you can help us, we will send you our documentation, several of our national articles which capsule our problems, as well as any other information you may need.

We do not wish this letter to be referred to the Department of Agriculture, as we know, through past experience, as evidenced by their OIG report, that they have no intention of treating us fairly.

Your earliest reply will be greatly appreciated.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sandra Bennett", written over a horizontal line.

Sandra Bennett

enc:

8/10/88 letter to R.Beuley, Inspector General,
OIG, Dept. of AG.

SANDY'S

RABBITS

FRESH • QUALITY • DELIVERED

August 10, 1988

Robert Beuley, Inspector General
U.S. Department of Agriculture
Room 247-E
14th & Independence Avenue, S.W.
Washington, D. C. 20250

Dear Mr. Beuley,

Thank you for having your staff forward the OIG report which was submitted recently, concerning our problems with the Farmers Home Administration (FmHA).

We have always felt that the OIG would not incriminate or overtly implicate anyone within the FmHA, nor would they "prove" our case, nor were we asking for a "court-proof" case.

Although we appreciate your efforts in having the OIG "review" our case, you must realize that the integrity of this report is at stake due to the fact that critical material, which was submitted to the OIG for investigation, was totally ignored!

At no point can this "review" be considered an investigation, as too many questions are left unanswered...too many "assumptions" have been made without attempting to prove whether or not they were true. We are aware that many individuals participated in this "review"...including your agents and legal counsel. Considering the 5 months which were required to complete the "review" which we received, it leaves us open to speculation that there may perhaps be another report which we are not privy to.

How else can we account for the fact that this "review" was completed and submitted prior to completion of an analysis by the FBI of the tape recording made of our illegal foreclosure appeal hearing on August 8, 1986, and which we strongly believe to have been altered.

Why else was no explanation made for the altered documents from our file? Only a feeble comment that "However, Mrs. Bennett did in fact receive an unaltered copy of the same document (reference to altered document) from the FmHA State Office."

Page 2
Robert Beuley
August 10, 1988

To say nothing of the fact that numerous other documents which we identified and requested to be part of this investigation were completely ignored! Never even mentioned! Even though we were assured that they would be investigated.

Then there is the lame attempt to "shift blame" for our situation to me...concerning "insistance" on my part not to complete our loan papers! Isn't it convenient that the same technician making this allegation "forgot" to send a "note of explanation" which would have nullified the 1986 "Notice of Intent to Take Adverse Action" which was sent to us.

And more importantly...where is the sworn statement from Darryl Zerger, Chief of Farmer Programs, CA? Where is the investigation concerning the evidence we sent to the OIG regarding his denial of our rescheduling and deferral in 1987, even though we were eligible (according to FmHA records)? Where is the investigation concerning the cavalier attitude of this man who helped create our present circumstances? Where is the investigation of his statement that there were no "written" instructions regarding individuals who were "current" but shown as delinquent on the 1985 Status Report?

These are only a few of the reasons that we suspect the existence of a second report...and as such we are requesting, under the Freedom of Information Act, to be sent this report as well! If no such report exists...we wish an explanation as to why we did not receive an honest, legitimate investigation as you promised when you called my husband on February 23, 1988!

Your immediate response to our Freedom of Information request will be appreciated.

Sincerely,

Sandra Bennett

cc: A. Fisher, FOI Officer
Congressmen
President's Council on Integrity & Ethics

ID # 609980 **CU**FE010

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ **O - OUTGOING**☐ **H - INTERNAL**☐ **I - INCOMING**Date Correspondence
Received (YY/MM/DD) 1 / 1Name of Correspondent: Theodore B. Olson☐ **MI Mail Report**

User Codes: (A) _____ (B) _____ (C) _____

Subject: OLC Opinion re: History of Regulations
Formulated under Presidential Recordings and
Materials Preservation Act of 1974

ROUTE TO:**ACTION****DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Completion Date YY/MM/DD
<u>Cuholl</u>	ORIGINATOR	<u>83/11/15</u>		<u>C 83/11/15</u>
<u>Cufiel</u>	<u>P</u>	<u>83/11/15</u>		<u>C 83/11/15</u>
	Referral Note:	<u>1 / 1</u>		<u>1 / 1</u>
	Referral Note:	<u>1 / 1</u>		<u>1 / 1</u>
	Referral Note:	<u>1 / 1</u>		<u>1 / 1</u>
	Referral Note:	<u>1 / 1</u>		<u>1 / 1</u>

ACTION CODES:

A - Appropriate Action
 C - Comment/Recommendation
 D - Draft Response
 F - Furnish Fact Sheet
 to be used as Enclosure

I - Info Copy Only/No Action Necessary
 R - Direct Reply w/Copy
 S - For Signature
 X - Interim Reply

DISPOSITION CODES:

A - Answered
 B - Non-Special Referral
 C - Completed
 S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
 Code = "A"
 Completion Date = Date of Outgoing

Comments: _____

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Prime Subject Code: FE 010 Secondary Subject Codes: PC 011 _____
FE 017 _____

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 S - Sealed
 T - Telegram
 V - Telephone
 X - Miscellaneous
 Y - Study



6000000000

Office of the
Assistant Attorney General

Washington, D.C. 20530

NOV 15 1983

Memorandum for J. Paul McGrath
Assistant Attorney General
Civil Division

Re: History of Regulations Promulgated under Presidential
Recordings and Materials Preservation Act of 1974.

On October 20, 1983 twenty-nine named plaintiffs, all members of the White House staff and Cabinet during the Nixon Administration, filed suit challenging the legality of regulations promulgated by the General Services Administration ("GSA") under the Presidential Recordings and Materials Preservation Act of 1974 ("Act"), Pub. L. No. 93-526, 88 Stat. 1695, codified at 44 U.S.C. § 2107 note.1/ Allen, et al. v. Carmen, et al., Civ. No. 83-3099 (D.D.C. filed Oct. 20, 1983). Plaintiffs claim that these regulations are impermissibly affected by unconstitutional congressional influence exerted pursuant to the Act's one-house veto provision, see Act, § 104(b). You have requested this Office to provide you with a brief history of the regulations issued under the Act, focusing particularly upon the extent of explicit or demonstrable congressional influence exerted as a consequence of the legislative veto provision. This memorandum provides that history, setting forth reference material pertinent thereto. This memorandum does not assess the legal or factual merit of plaintiffs' allegations in the Allen lawsuit, and is intended solely to provide relevant background information which may be helpful to you in handling that litigation.

I. First Set of Regulations

On March 19, 1975 GSA transmitted to Congress its first set of regulations pursuant to section 104 of the Act.2/ According to a study of these regulations conducted by two law professors in 1977, it appears that congressional involvement in the preparation of these regulations was substantial:

1/ The regulations appear at 41 C.F.R. Part 105-63.

2/ See GSA Regulations Implementing Presidential Recordings and Materials Preservation Act, Hearing Before the Senate Committee on Government Operations, 94th Cong., 1st Sess. 271-73 (1975).

that plaintiff's challenges to the facial constitutionality of the Act were without merit, but emphasized that regulations implementing the Act which had not yet taken effect might affect the constitutionality of the Act as applied.^{12/} Soon thereafter, former Assistant Attorney General (now Solicitor General) Rex Lee formally advised the Administrator to withdraw the second set of regulations from congressional consideration in order to permit a comprehensive reconsideration of those regulations in light of the court's decision.^{13/} On January 21, 1976 the Administrator notified Congress that he was withdrawing the second set of regulations upon advice of the Assistant Attorney General. The Administrator committed himself to resubmitting the regulations "with or without changes as necessitated by the decision in Nixon v. Administrator . . . on or before April 19, 1976."^{14/} The Senate Government Operations Committee, however, determined that the Administrator lacked legal authority to withdraw regulations once they were submitted to Congress.^{15/} On April 8, 1976 the Senate voted to disapprove seven of the proposed regulations.^{16/} These seven provisions concerned:

- (1) the composition of the Review Board;
- (2) the adequacy of notice to affected individuals;
- (3) the Administrator's consideration of petitions to protect legal and constitutional rights by limiting access to specific materials;

^{12/} 408 F.Supp. at 336.

^{13/} Assistant Attorney General Lee's correspondence with GSA is described in Memorandum for Barbara A. Babcock, Assistant Attorney General, Civil Division re: Challenge to GSA Regulations Governing Public Access to Papers of Former President Nixon, from John M. Harmon, Assistant Attorney General, Office of Legal Counsel, at 3-4 (April 12, 1978) ("Babcock Memorandum").

^{14/} S. Rep. No. 748, supra, at 3.

^{15/} Id. at 4-5. The letter informing the Administrator that his withdrawal was invalid was also signed by Chairman John Brademas of the House Subcommittee on Printing.

^{16/} 122 Cong. Rec. 10159-10160 (1976).

- (4) the reproduction of presidential tape recordings;
- (5) the restrictions on personal and defamatory material (two provisions); and
- (6) the restrictions upon disclosure of material of general historical interest.17/

This time, however, the Senate did not formally suggest alternative language for the vetoed provisions or specifically explain its objections to them. The Government Operations Committee report noted, however, that its staff had been working with GSA to resolve the disputed issues.18/

III. Third Set of Regulations

On April 13, 1976 GSA submitted to Congress a third revised set of regulations. It was the view of the Committee on House Administration, however, that because the Administrator had no authority to withdraw the second set of regulations submitted to Congress on October 15, 1975, all such regulations which were not specifically disapproved by the Senate on April 8, 1976 had become effective upon the expiration of ninety legislative days following October 15, 1975. Consequently, the House Committee reviewed only the revised version of those seven provisions which had been disapproved by the Senate on April 8, 1976. It concluded that six of the seven previously disapproved and revised provisions were still unacceptable. The Committee report did not, however, provide alternative language for the six disapproved provisions, or explain its objections to them.19/ On September 14, 1976 the House voted to disapprove the six provisions specified in the Committee report. Only the provision concerning the procedure to be followed by the Administrator in considering petitions to protect the legal and constitutional rights of individuals was found acceptable.20/

17/ See id.; S. Rep. No. 748, supra, at 5.

18/ S. Rep. No. 748, supra, at 5.

19/ H.R. Rep. No. 1485, 94th Cong., 2d Sess. (1976).

20/ 122 Cong. Rec. 30250-52 (1976).

IV. Fourth Set of Regulations

On June 2, 1977 GSA submitted a fourth set of revised regulations to Congress. These regulations did become effective after having been submitted to Congress for ninety legislative days without receiving the disapproval of either House. 42 Fed. Reg. 63626 (Dec. 16, 1977). This fourth set differed materially from the third in the following four ways:

(1) section 105-63.104(b) had been revised in the third set in accordance with former Assistant Attorney General Lee's recommendation that the definition of Mr. Nixon's "private or personal materials" be broadened to include papers related to Mr. Nixon's "private political association[s]." In the fourth set these words were deleted;

(2) in the third set of regulations section 105-63.401-2(g) had provided that the members of the Review Board be appointed by the Administrator. The fourth set deleted any mention of the Administrator's authority to make such appointments. This Office has previously noted that "[t]he only apparent reason for this change . . . would be to insure that the [non-Executive Branch members of the Board] could not be considered to be inferior officers of the United States under Art. II, § 2, cl. 2 of the Constitution and therefore subject to the control of the President and the Administrator at least with regard to their performance of Board responsibilities;"21/

(3) in the third set of regulations, section 105-63.401-4(d) had provided that recommendations of the Board concerning identification of private and personal material and material relating neither to abuses of governmental power nor having general historical significance would be made to the Administrator, whose determination on these matters would be final. The fourth set of regulations provided that the Board's decision on such matters would be "the final administrative determination;" and

(4) section 105-63.404(c) of the third set of regulations prohibited reproduction of presidential tape recordings. In the fourth set, these tape recordings would be made available for copying under procedures approved by the court in United States v. Mitchell, et al. (D.D.C. Misc. No. 74-128) for reproduction of tapes played at the Watergate trial.

21/ Babcock Memorandum, supra, at 6.

President Nixon promptly challenged the validity of the fourth set of regulations. See Nixon v. Freeman, 670 F.2d 346 (D.C. Cir. 1982). On February 14, 1979 the parties to the Nixon lawsuit reached a settlement agreement which called for certain amendments to the regulations and disposed of all of Mr. Nixon's challenges except those concerning creation of public listening centers for presidential tape recordings, and archival screening of tapes and dictabelts containing Mr. Nixon's personal diary. Meanwhile, the revised portions of the regulations agreed upon by the parties were submitted to Congress by GSA for approval and became effective after ninety legislative days. 45 Fed. Reg. 14855 (March 7, 1980).22/

V. Prior OLC Assessment of Congressional Involvement

Finally, we wish to bring to your attention a previous assessment made by this Office concerning the extent of congressional influence upon the four sets of regulations discussed above: 23/

Based upon an empirical analysis set forth in a recent law review article authored by Professors Gellhorn & Bruff, we think it can be stated that much of the substantive content of the first three sets of regulations was heavily influenced, if not dictated, by both the actual exercise of legislative vetoes by the Congress and the intimate participation in the drafting process by the cognizant congressional committees and members of their staffs.6/

Although the Administrator argues to the contrary, we think a persuasive case based on

22/ A description of the changes arrived at through negotiation among the parties in Nixon v. Freeman is described in Plaintiffs' Memorandum of Points and Authorities in the Allen case, at 12-13. The revised sections included § 105-63.104(a) (defining those political materials of the President and his staff which are excluded from public disclosure); § 105-63.401(a) (giving priority to segregating and returning private and personal materials); and § 105-63.401(c) (providing for a registry of persons to be notified concerning the publication of materials containing references to them).

23/ Babcock Memorandum, supra, at 4-5.

documentary evidence may be made by Mr. Nixon that the fourth set was likewise influenced.

6/ Indeed, documents in [the Civil] Division's files concerning this case suggest, as do the current regulations, that congressional views on certain constitutional questions raised by the regulations were much more persuasive than were the views expressed by the Department of Justice. See also Bruff & Gellhorn, Congressional Control of Administrative Action: A Study of Legislative Vetoes, 90 Harv. L. Rev. 1369, 1397-1403 (1977).

We hope that you find this brief narrative to be helpful. Please do not hesitate to contact us if you wish further assistance in this matter.

Theodore B. Olson
Assistant Attorney General
Office of Legal Counsel