

Originally Processed With FOIA(s):  
2019-1493-S

FOIA Number:  
2019-1493-S

# FOIA MARKER

**This is not a textual record. This is used as an  
administrative marker by the George Bush Presidential  
Library Staff.**

---

**Record Group/Collection:** George H.W. Bush Presidential Records  
**Collection/Office of Origin:** National Security Council  
**Series:** H-Files  
**Subseries:** IF Transition Files

---

**OA/ID Number:** 99017  
**Folder ID Number:** 99017-008

---

**Folder Title:**  
NSC Procedural Manual - Binder 4 [1]

---

| Stack: | Row: | Section: | Shelf: | Position: |
|--------|------|----------|--------|-----------|
| V      | 0    | 0        | 0      | 0         |

---

## Withdrawal/Redaction Sheet (George Bush Library)

| Doc. No. / Type | Subject/Title                                                             | Date | Restriction       | Classification |
|-----------------|---------------------------------------------------------------------------|------|-------------------|----------------|
| 01. Paper       | Re: Answers to Questions in Regard to Technical Consultants Panel (2 pp.) | n.d. | <del>(b)(1)</del> |                |
| 02. Paper       | Personal information (2 pp.)                                              | n.d. | (b)(6)            |                |

Page 1 of 1

**Collection:**

**Record Group:** Bush Presidential Records  
**Office:** National Security Council  
**Series:** H-Files  
**Subseries:** Transition Files  
**WHORM Cat.:**  
**File Location:** NSC Procedural Manual - Binder 4 [1]

**Pinksheet Number:** MB14501  
**OA/ID Number:** 99017-008  
**Date Closed:** 9/4/2019  
**FOIA/Sys Case #:** 2019-1493-S  
**Re-review Case #:**  
**P-2/P-5 Review Case #:**

# 4

1

1

From: NSMDC --CPUA  
To: NSMDC --CPUA -UNCLASSIFIED-

Date and time 07/05/88 13:49:31

NOTE FROM: Maria D. Clark  
SUBJECT:

PROCEDURAL MANUAL INDEX

1 ..... Organization  
    1a .... NSC Staff Operations  
    1b .... Transition

2 ..... Security  
    2a .... Contacts w/ Communists

3 ..... Information Policy  
    3a .... Access to Pres Library

4 ..... Legal Issues

5 ..... Ethics

6 ..... Records Management

7 ..... Correspondence & Document Control Procedures  
    7a .... Pres Trips / Visits / Summits

*Guidelines for Pres. Mtgs.*

8 ..... Relative Agencies

9 ..... Congressional Issues

10 ..... NSC & Related Mtg Data

11 ..... Administrative / Budget / Personnel

12 ..... Travel

13 ..... Telephone Listings

14 ..... Computer Procedures  
    14a ... NSC Upgrades  
    14b ... EOP Telecommunications Upgrades  
    14c ... NSC Computer Support to Vice Pres

NATIONAL SECURITY COUNCIL

Tab A is highly  
classified & will  
be supplied in  
quarterly context.  
It is not appropriate  
for a collection of  
administrative  
material.

JM

Answers to Questions in Regard to  
Technical Consultants' Panel

How useful are the consultant panels?

The consultant panels have proven to be very useful in dealing with certain highly technical problems requiring special expertise. The NSC technical panels have served a unique role in the following ways:

1. They provide the NSC and the Assistant to the President for National Security Affairs with an independent technical perspective and an independent source of expert advice on critical technical matters which are not biased by bureaucratic agency positions.
2. The NSC panels can illuminate problems in policy related areas which cannot be dealt with effectively by panels within DoD or other agencies.
3. Since the NSC panels are more insulated from agency biases, they can deal with problems which cut across several agencies.

How often do they meet?

Each panel will normally meet for two days, approximately once a month for the duration of the study -- normally nine to 12 months. In addition, individual members will meet between major meetings. Over the last 15 months there have been five active panels (see currently active and recently active panels in list at Tab A). During this 15-month period there have been approximately 50 days of panel meetings and 100 other individual meetings with consultants.

Are there any formal study products?

There are formal or informal study reports for all of the panels listed in Tab A. The Space Panel is just completing a three-part final report. Part II, dealing with a US Anti-satellite capability, is complete. Part I, dealing with Survivability of US Satellites, is essentially complete, and Part III, dealing with the Future Evolution of US Military Space capability, will be complete within a few weeks. The Telecommunications

Security Panel has prepared two informal reports in the form of letters from the panel chairman. Reports from all of the other panels are available in our files.

What happens to the panel products?

The panel reports are usually forwarded to the President for information. They are also forwarded to the appropriate agencies for consideration and comment. The recommendations of the NSC panels are not directive in nature; however, the panels' access to the White House usually assures that their recommendations gain sufficient visibility to stimulate further action, if it is warranted, through established agency mechanisms. In several cases, for example, the panel recommendations, followed by consultation and coordination with the appropriate agencies, have led to issuance of a Presidential decision memorandum.

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20508

April 14, 1988

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.  
Counsel to the President  
The White House

PAUL SCHOTT STEVENS  
Special Assistant to the President  
and Executive Secretary  
National Security Council

ABRAHAM D. SOFAER  
Legal Adviser  
Department of State

SUBJECT: Treaty Ratification Proceedings

Attached is a copy of this Office's memorandum of law on the legal significance of Senate treaty ratification proceedings. Any comments would be welcome.

  
Nicholas Rostow  
Special Assistant to the President  
and Legal Adviser

Attachment

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20506

April 14, 1988

INFORMATION

MEMORANDUM FOR THE FILE

FROM: NICHOLAS ROSTOW *NR*.  
DANIEL LEVIN *DL*

SUBJECT: Treaty Interpretation: Effect of Executive  
Branch Representations

ISSUE

In the absence of express conditions incorporated by the Senate in the resolution of advice and consent to ratification of a treaty and formally communicated to the other treaty party, is the President legally obligated to interpret a treaty in conformity with Executive branch representations made to -- and relied on by -- the Senate in giving its advice and consent to ratification?

CONCLUSION

We have found no decisions holding that a treaty has a different meaning as a matter of domestic law than it has in international law, or that the United States is bound -- as a matter of either domestic or international law -- to the meaning of a treaty presented to and relied on by the Senate in giving its advice and consent. The meaning of the treaty for both domestic and international law is its meaning as determined by the text, the intent of the parties, the negotiating history, and subsequent practice by the parties that establishes agreement regarding interpretation. The Senate's understanding of a treaty's meaning, whether or not based on Executive branch representations, is not binding if it is incorrect. Reservations or conditions officially communicated to the other treaty party are binding as, in effect, additional treaty terms.

On the basis of judicial decisions, we conclude that the Executive branch is not bound as a matter of domestic or international law to representations it made to the Senate in the course of the Senate's advice and consent if such representations in fact are incorrect. Senate reliance on the representations is immaterial, as is the "authoritativeness" of such

representations. (In the INF Treaty context, "authoritative" is used to characterize Administration testimony and submissions for the record when Senators might prefer to use the word "binding." Whether or not called "authoritative," such testimony and submissions always are presumed to represent an Administration's best judgment as to the meaning and effect of a treaty.)

The following analysis of cases is divided by category: (1) Case law concerning treaty interpretation that discusses to some degree what the Senate was told in the course of ratification proceedings (decisions dealing with interpretation of the United Nations Protocol Relating to the Status of Refugees; the Warsaw Convention limiting liability in connection with international air traffic; the tax provisions of the Panama Canal Treaty, and miscellaneous other relevant cases); and (2) decisions dealing with principles of treaty interpretation that, while not specifically addressing what the Senate had been told in the course of ratification proceedings, nevertheless are relevant to the issue under consideration (cases dealing with the rule that the meaning of a treaty is interpreted in light of the parties' subsequent conduct, and can change over time as a result of that conduct; the rule that where the meaning of a treaty is unambiguous no recourse is had to supplemental means of interpretation; and general formulations used by courts in discussing treaty interpretation).

#### DISCUSSION

Three theories have been advanced to support the view that the President is bound as a matter of domestic law to apply Executive branch representations relied on by the Senate in consenting to a treaty: (1) the "vitiation" theory, which holds that the Senate's constitutional role in the treaty making process would be vitiated if the President were free to implement a treaty consistent with an interpretation other than that understood by the Senate at the time of advice and consent to ratification; (2) the "estoppel" theory, which holds that the President is estopped from implementing a meaning of a treaty different from the one presented by the Executive branch to the Senate; and (3) the "political" theory, which holds that as a matter of politics and good government the President ought not to implement a meaning of a treaty different from that presented to the Senate. (The political theory does not claim that the President is legally bound to a particular meaning of a treaty, only that he ought not to adopt a different view. Consequently, it is a political argument beyond the scope of this memorandum.) We conclude that neither the vitiation nor the estoppel theory is supported by case law.

I. Case Law On Treaty Interpretation and Senate Advice and Consent Proceedings

A. United Nations Protocol Cases

In 1968, the United States acceded to the United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, [1968] 19 U.S.T. 6223, T.I.A.S. 6577 (the "Protocol"). A number of decisions have considered the Protocol's effect on U.S. immigration and political asylum law.

In Stevic v. Sava, 678 F.2d 401 (2d Cir. 1982), rev'd, 467 U.S. 407 (1984), the Second Circuit considered whether the Protocol (and subsequent legislation) had changed the standard to be applied in cases in which an alien claimed to be entitled to withholding of deportation based on the prospects that he would be persecuted if deported. The standard under prior law had required the alien to show a "clear probability" of persecution if deported, and the alien argued that the Protocol embodied a new standard, requiring only a showing of a "well founded fear" of persecution. The court concluded that the Protocol was "somewhat more generous" than prior U.S. law on withholding of deportation. 678 F.2d at 406. The court also noted that "[i]n the legislative proceedings leading to the United States accession to the Protocol in 1968, assurances were given to the Senate by the President and the State Department that existing legislation did not need to be amended in order to comply with the Protocol," (the court noted that there was at least a suggestion that there might be some "minor" differences between the Protocol and pre-existing law). Id. at 406 (citations omitted). Despite the assurances that the Protocol had not changed existing law, Congress amended U.S. immigration law in 1980 (the Refugee Act) to accord with the Protocol. Id. at 408. In reviewing the Protocol and the Refugee Act, the court concluded "that the Refugee Act completed the process, begun with accession to the Protocol, of modifying the legal test applicable to . . . applications for relief from deportation." Thus, notwithstanding assurances given to the Senate by the Executive branch that the Protocol was consistent with existing law, the court concluded that in fact it was not.

The Supreme Court reversed in Immigration and Nationalization Service v. Stevic, 467 U.S. 407 (1984). The Court did not rely on the fact that "[t]he President and the Senate believed that the Protocol was largely consistent with existing law. There are many statements to that effect in the legislative history of accession to the Protocol." Id. at 417. Undertaking its own analysis of the history and meaning of the Protocol and the

Refugee Act, the Court concluded that the Protocol (and subsequent amendment of U.S. immigration law) had not worked a change with respect to the standards for withholding of deportation. The Court wrote:

Nor is there any merit to respondent's argument that this conclusion is inconsistent with the Protocol. Existing domestic statutory law in 1968 was largely consistent with the Protocol. Under the Protocol, however, attaining the status of "refugee" was essential in order for an alien to assert his right under Article 33 to avoid deportation, and then he was protected only against deportation to a territory where his "life or freedom" would be threatened. Under our statutory scheme, on the other hand, no alien in the United States would be deported to a country where he was likely to be "persecuted," a seemingly broader concept than threats to "life or freedom." In addition, the alien would qualify for withholding even if he might not be a "refugee" under the Protocol because, for example, he was not outside his country of nationality owing to a fear of persecution. Cf. Rosenberg v. Yee Chien Woo, 402 U.S. 49, 57 (1971). Moreover, the domestic statute and regulations provided many additional procedural safeguards as well, including a right to be represented by counsel and a right to judicial review.

While refugee status was not essential to avoid withholding of deportation, it was essential under domestic law to qualify for preferential immigration status. Our definition of a "refugee" under § 203(a)(7) was of course consistent with the Protocol. Indeed, the relevant statutory language virtually mirrored the Protocol definition. The geographic and ideological limitations were limits on admission. That was not inconsistent with the Protocol -- the Protocol did not require admission at all, nor did it preclude a signatory from exercising judgment among classes of refugees within the Protocol definition in determining whom to admit. Article 34 merely called on nations to facilitate the admission of refugees to the extent possible; the language of Article 34 was precatory and not self-executing. The point is not, however, that the Senate was merely led to believe accession would work no substantial change in the law; the point is that it did not work a substantial change in the law. [Emphasis added.]

There were of course differences between the Protocol and the text of domestic law. The most significant difference was that Article 33 gave the refugee an entitlement to avoid deportation to a country in which his life or freedom would be threatened, whereas domestic law merely provided the Attorney General with discretion to grant withholding of deportation on grounds of persecution. The Attorney General, however, could naturally accommodate the Protocol simply by exercising his discretion to grant such relief in each case in which the required showing was made, and hence no amendment of the existing statutory language was necessary. There were other differences between the Protocol and the text of domestic statutory law in 1968 -- e.g., the Protocol provides protection for those persecuted on grounds of nationality and membership in social groups, as well as race, religion, or political opinion. Given our existing statutory provisions, and the considerable discretion an administrator such as the Attorney General possesses in interpreting and implementing such statutory provisions, once again, no amendment of the statute was necessary. Finally, the Protocol required a showing that the "refugee's life or freedom would be threatened," while § 243(h) required that the alien would be subject to "persecution." Although one might argue that the concept of "persecution" is broad enough to encompass matters other than threats to "life or freedom" -- deprivations of property, for example -- and therefore that the Protocol was narrower than the coverage of the section, we perceive no basis for concluding that the particular mention of the alien's interest in "life or freedom" made the Protocol any more generous than domestic law.

In summary, then, to the extent that domestic law was more generous than the Protocol, the Attorney General would not alter existing practice; to the extent that the Protocol was more generous than the bare text of § 243(h) would necessarily require, the Attorney General would honor the requirements of the Protocol and hence there was no need for modifying the language of § 243(h) itself. As the Secretary of State correctly explained at the time of consideration of the Protocol: "[F]oremost among the rights which the Protocol would guarantee to refugees is the prohibition (under Article 33 of the Convention) against their expulsion or return to any country in which their life or freedom would be threatened. This article is comparable to Section 243(h) of the Immigration and Nationality Act . . . and it can be implemented within the administrative discretion provided by existing regulations."

Id. at 427-29 n.22. Under the Court's analysis, it would not be enough that the Senate merely believed that accession to the Protocol would not change the law; it had to be correct in that belief. Consistent with this reasoning, Executive branch representations that turn out to be incorrect do not determine the meaning of a treaty for domestic purposes.

Similarly, in Immigration and Naturalization Service v. Cardoza-Fonseca, 107 S. Ct. 1207 (1987), the Court relied in part on the Protocol and the legislative history underlying the 1980 Refugee Act in concluding that the Protocol and the 1980 legislation had altered the standard applied for political asylum applications. Id. at 1216-18. The Court concluded that the Protocol and Refugee Act had changed U.S. law, notwithstanding the assurances to the Senate to the contrary. Justice Powell, in dissent, objected on precisely this point:

[T]he Court relies on materials interpreting the United Nations Protocol. For several reasons, I find these materials to be only marginally relevant. Both the President and the Senate thought that the Protocol was perfectly consistent with our country's immigration laws. We should be reluctant to assume that our country has been violating the Protocol during the 20 years since its adoption.

Id. at 1229-30 (Powell, J. dissenting) (citations omitted).

Another case examining the effect of accession to the Protocol on U.S. immigration law supports the view that the Senate's understanding of the meaning of a treaty may be binding. Pierre v. United States, 547 F.2d 1281 (5th Cir.), vacated and remanded to consider mootness, 434 U.S. 962 (1977). Although the court in Pierre did not hold that the Protocol had a different meaning domestically than internationally, or that the President was bound by what he had told the Senate, the court relied heavily on what the Senate had been told by Executive branch representatives in concluding that the Protocol did not change U.S. law:

The Board of Immigration Appeals thoroughly reviewed the statutory history of the Protocol . . . [and] concluded that "the United States Senate, in giving its advice and consent to accession to the Protocol, did not contemplate that radical changes in existing immigration laws would be effected. Quite the contrary, the general representations made to induce affirmative Senate action indicated that our immigration laws already embodied the humane provisions for

refugees fostered by the Convention and Protocol." . . . We agree with these conclusions and determine accordingly that accession to the Protocol by the United States was neither intended to nor had the effect of substantially altering the statutory immigration scheme.

547 F.2d at 1288 (citations omitted). The court rejected the argument that "the Senate's accession to the Protocol vested in aliens a United States constitutional entitlement," noting that "[t]his is just the sort of 'radical change' in our immigration laws which the Senate did not intend." *Id.* Although the court spoke in terms of interpreting the true meaning of the Protocol, rather than discussing whether a particular interpretation was binding for domestic purposes (and did not suggest that there was a divergence between the domestic and true meanings), the reference to what the Senate intended rather than to what the parties intended supports the view that the Senate's understanding is important and may be binding. The decision was vacated, and the case remanded to consider mootness. On remand, the Fifth Circuit remanded the case to the district court for further proceedings. Pierre v. United States, 570 F.2d 95, 96 (5th Cir. 1978) (per curiam).

Other decisions holding that the Protocol did not alter U.S. immigration law also rely, in part, on statements made by the Executive branch to the Senate in the course of accession proceedings. None held that the Protocol had a different meaning as a matter of domestic and international law as a result of such statements, and none included statements as deferential to the Senate's understanding and intent as Pierre. See, e.g., Ming v. Marks, 367 F. Supp. 673, 677-78 (S.D.N.Y. 1973), aff'd on opinion below, 505 F.2d 1170, 1172 (2d Cir. 1974) (per curiam), cert. denied, 421 U.S. 911 (1975) (the most deferential of this group to the Senate's understanding); Bertrand v. Sava, 684 F.2d 204, 218 (2d Cir. 1982); Rejaie v. Immigration and Naturalization Service, 691 F.2d 139, 142-44 (3d Cir. 1982); Kan Kam Lin v. Rinaldi, 361 F. Supp. 177, 185 (D.N.J. 1973), aff'd, 493 F.2d 1229 (3d Cir.), cert. denied, 419 U.S. 874 (1974).

Significantly, in each of these cases, the Executive branch asserted that what it had told the Senate about the meaning of the Protocol was correct, and the court agreed with that view. In no case did the court suggest that the Executive branch would be estopped from changing its view of the treaty's meaning if it determined that its earlier interpretation was incorrect.

## B. Warsaw Convention Cases

The Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, T.S. 876 (1934), note following 49 U.S.C. App. 1502 (the "Warsaw Convention" or "Convention"), established rules concerning liability for certain losses in connection with international air transportation. Several cases interpreting provisions of the Convention address the issue discussed here.

In Reed v. Wiser, 555 F.2d 1079 (2d Cir.), cert. denied, 434 U.S. 922 (1977), the appellate court considered whether airline employees are entitled to assert as a defense the liability limitations of the Warsaw Convention. The court noted that the official language of the Convention was French. 555 F.2d at 1082. Although the Senate gave its advice and consent to ratification of the official French text, there was also an English translation before the Senate, apparently prepared by the State Department (*id.* at 1082 & n.6), which, the court noted, was "probably inaccurate." *Id.* at 1084. The court relied on the meaning of the original French text, notwithstanding the fact that it is fair to assume that the Senate had relied on the English translation in determining whether to give its advice and consent. The court did not discuss the question of the Senate's reliance.

In Air France v. Saks, 470 U.S. 392 (1985), the Court considered the meaning of accident under the Warsaw Convention. The Court noted that "[t]he governing text of the Convention is in the French language," and that there was an "official American translation . . . which was before the Senate when it ratified the Convention." *Id.* at 397 & n.2. Notwithstanding the fact that the Senate presumably relied on the English version, a unanimous Court (Justice Powell not participating) held that:

[t]o determine the meaning of the term "accident" in Article 17 we must consider its French legal meaning. This is not because "we are forever chained to French law by the Convention," but because it is our responsibility to give the specific words of the treaty a meaning consistent with the shared expectations of the contracting parties. We look to the French legal meaning for guidance as to these expectations because the Warsaw Convention was drafted in French by continental jurists.

Id. at 399 (citations omitted). (There does not appear to have been a question of inaccurate translation in Air France, and the Court did not discuss the question of Senate reliance.)

In other cases involving the Warsaw Convention, courts relied on the French text without discussing inaccuracies in the English translation or Senate reliance. See, e.g., Day v. Trans World Airlines, Inc., 528 F.2d 31, 33 n.7 (2d Cir. 1975), cert. denied, 429 U.S. 890 (1976); Block v. Compagnie Nationale Air France, 386 F.2d 323, 330 (5th Cir. 1967), cert. denied, 192 U.S. 905 (1968); Burnett v. Trans World Airlines, Inc., 368 F. Supp. 1152, 1155 (D.N.M. 1973) ("In interpreting the meaning of the terms employed in the Convention the French legal meaning must govern. . . . Although the ultimate question presented is the construction of a treaty of the United States and therefore a question of domestic law, the court must at the outset ascertain the meaning of the Warsaw Convention drawn in French in order to determine what that domestic law is.").

#### C. Panama Canal Treaty Cases

The Panama Canal Treaty, T.I.A.S. 10030 (the "Treaty"), was signed by the United States and Panama on September 7, 1977, and was ratified by the Senate on April 17, 1978. The Implementation Agreement of Article III, September 7, 1977, T.I.A.S. 10031, provides, in part:

United States citizen employees and dependents shall be exempt from any taxes . . . on income received as a result of their work for the [Panama Canal] Commission. . . .

Article XV, para. 2. A number of cases have considered whether this provision exempts such employees from U.S. taxes as well as from Panamanian taxes.

Coplin v. United States, 6 Cl. Ct. 115 (Ct. Cl. 1984), rev'd, 761 F.2d 688 (Fed. Cir. 1985), aff'd, 107 S. Ct. 247 (1986), discussed at length the issue under consideration here. The court in Coplin noted that the United States had argued "that the United States Senate intended Article XV to operate only against Panama and not the United States. [The United States] points to the legislative history of the ratification proceedings and suggests that Article XV ought to be interpreted so as to reflect the intention of Congress as expressed during its deliberations." 6 Cl. Ct. at 128. The court rejected this argument and held the taxpayers exempt from U.S. taxes.

It should first be noted that the legislative history cited by [the United States] is not as compelling as it would have the court believe. The most one can say about the conversation between Senator Stone and [the State Department's Legal Adviser] is that one member of the Senate Foreign Relations Committee may have been persuaded by the position taken by the Executive branch; there is no indication that any other member of the Committee shared those views. . . . The Committee Report merely recites the interpretation offered by the State Department without elaboration or discussion. Of course, there was no reason the Committee should have questioned the interpretation offered by the Executive branch. The issue, on its face, appeared to be merely one of domestic tax law; the negotiating transcripts, which place the matter in a wholly different light, were still classified and there is no indication that they were presented to or examined by the Committee.

In any case, all three branches of our government have taken the position that even the clearest expression of legislative intent cannot change the legal effect of an international agreement to which the Senate has given its approval. . . . Charles Evans Hughes, in his letter to the Senate in 1919, considered this proposition as black letter law: "The adoption of resolutions by the Senate setting forth its views will not affect the obligations of the covenant if it is in fact ratified without reservations which constitute part of the instrument of ratification." 58 Cong. Rec. 3302 (1919).

The Senate thoroughly considered the same issue during the deliberations over the Kellogg-Briand Peace Treaty of August 27, 1928. See 70 Cong. Rec. 1655 et seq. (1929). After considerable debate, the Senate concluded that a legislative report not mentioned or included in the resolution of ratification could not modify or amend the treaty in any way. See *id.* at 1730. This view was accepted by the Department of State and related to other signatories of the treaty. . . .

The State Department has consistently taken this view. . . .

There are important policies behind the refusal to give legal effect to expressions of intent that are not contained in the ratification documents and thereby made part of the formal agreement between the parties. Unless such statements are included in the ratification instruments, it is impossible to determine whether the confirming body (here the Senate) assented to the proposed interpretation. . . . Here, for example, the Committee Report, which reflects the State Department's section-by-section analysis, was voted upon by the members of the Foreign Relations Committee but not the full Senate. Even if one were persuaded that the Foreign Relations Committee accepted all of the State Department's analyses, there is no assurance that two-thirds of the full Senate would have. . . . In addition, where the document is not part of the ratification protocol, there is no assurance that the President has given his approval to it. . . .

Perhaps most important, foreign governments dealing with us must rely upon the official instruments of ratification as an expression of the full intent of the government of the United States, precisely as we expect from foreign governments. . . .

The Senate managed to attach a multitude of reservations, understandings and other modifications to the treaties with Panama as a condition for giving its advice and consent. Each of those provisions was approved by two-thirds of the Senate, presented by the President and accepted by Panama. It would be entirely inappropriate -- and inconsistent with the established policy of the United States -- to now modify the agreement on the basis of views expressed in committee and never approved by the Senate or presented to Panama for its concurrence or rejection.

Id. at 144-45. Although the court was speaking of the international effect of the Treaty, it never suggested that it could have a different domestic meaning. In a tax case between the United States and a U.S. citizen, the court applied a meaning that was contrary to the view presented by the Executive branch to the Senate. The reversal by the Federal Circuit was not based on any disagreement with the views of the Court of Claims quoted above. Rather, the circuit court relied on a new statement by the Government of Panama that it agreed with the United States' interpretation that the Treaty did not exempt the employees from U.S. taxes. 761 F.2d at 691-92. The Supreme Court affirmed

because it interpreted the Treaty as not granting a U.S. tax exemption. The Court did not rely on what had been said to the Senate. O'Connor v. United States, 107 S. Ct. 347 (1986).

In Harris v. United States, 768 F.2d 1240 (11th Cir. 1985), vacated, 107 S. Ct. 450 (1986), the Eleventh Circuit reached a conclusion similar to that of the Court of Claims in Coplin. The Harris court stated that "[t]he government's reliance on the Senate hearings and Senate Report accompanying the Treaty also is misplaced." 768 F.2d at 1245. The court disagreed that the record showed that the Senate had a clear understanding, and concluded:

Nor does Senate Executive Report No. 95-12 provide competent evidence on intent of parties to the agreement. . . . [I]n Coplin, the government conceded that the section by section analyses were prepared by [two individuals] neither of whom were present at any negotiating session during which the substance of Article XV was discussed. . . . We reject the government's attempt to establish intent through documents it prepared after the fact. . . . In sum, the competent affidavits and legislative history before the district court fully support the taxpayers' position that the parties intended a bi-national tax exemption.

768 F.2d at 1246-47. Thus, the court undertook an independent evaluation of the intent of the treaty parties rather than holding that the interpretation presented by the Executive branch to the Senate was binding. The Supreme Court vacated this decision for reconsideration in light of its interpretation of the Treaty as set forth in O'Connor; the Court did not hold that the Treaty's meaning presented by the Executive branch to the Senate was binding.

In Corliss v. United States, 567 F. Supp. 162 (W.D. Ark. 1983), the court emphasized what the Senate had been told the Treaty meant in reaching the opposite conclusion from the Court of Claims in Coplin. The court noted that the meaning of the provision was "a matter of concern during Senate hearings," id. at 164, and that the view that there is no exemption from U.S. taxes "is clearly shown by the deliberations of the Senate in ratification of the Treaty." Id. at 165. The court further noted that "[n]othing has been offered or brought into question . . . which even intimates that the understanding of the Panamanians is contrary to that of the analysis provided in part by the United States negotiating team." Id. at 166. The court's

reliance on the Senate's proceedings provides support for the view that those proceedings can be binding. Other district court decisions on this question also relied on statements made to the Senate by Executive branch representatives, although after less discussion than appears in Corliss. See, e.g., Highley v. United States, 574 F. Supp. 715 (M.D. Tenn. 1983); Rego v. United States, 591 F. Supp. 123 (W.D. Tenn. 1984).

As was the case with the decisions under the Protocol that accorded weight to what the Senate had been told, it is significant that in these cases the Executive branch asserted that what it had told the Senate about the Treaty's meaning was correct, and the courts agreed. None suggested that the Executive branch would be bound to the interpretation presented to the Senate if the President subsequently determined that that interpretation had been incorrect.

#### D. Other Cases

In Fourteen Diamond Rings v. United States, 183 U.S. 176 (1901), the Supreme Court considered whether the Philippine Islands were a foreign country for purposes of U.S. tariff laws. Relying on the treaty with Spain that ceded the Philippines to the United States, the Court held that the Philippines were not a foreign country for purposes of these statutes. In so holding, the Court ignored a Senate resolution passed shortly after ratification of the treaty that would have compelled the opposite result:

It is enough that this was a joint resolution; that it was adopted by the Senate by a vote of 26 to 22, not two-thirds of a quorum[;] and that it is absolutely without legal significance on the question before us. The meaning of the treaty cannot be controlled by subsequent explanations of some of those who may have voted to ratify it.

Id. at 180. The Court relied on its conclusion that a post-ratification resolution did not have binding effect. If the understanding of the Senate as to the meaning of a treaty were dispositive, however, the Court could have been expected to give at least some weight to the resolution as evidence of the understanding of the Senate that had consented to the treaty. It did not. As Justice Brown stated in his concurring opinion:

[I]n my view the case would not be essentially different if this resolution had been adopted by a unanimous vote of the Senate. To be efficacious such resolution must be considered either (1) as an amendment to the treaty, or (2) as a legislative act qualifying or modifying the treaty. It is neither.

Id. at 182 (Brown, J. concurring).

In New York Indians v. United States, 170 U.S. 1 (1898), the Court refused to give effect to a proviso to a treaty adopted by the Senate but not approved by the President or presented to the other party.

The proviso may also have been well considered as merely directory to the President, but in any event it is difficult to see how it can be regarded as part of the treaty or as limiting at all the terms of the grant.

The power to make treaties is vested by the Constitution in the President and Senate, and while this proviso was adopted by the Senate, there is no evidence that it ever received the sanction or approval of the President. It cannot be considered a legislative act, since the power to legislate is vested in the President, Senate and House of Representatives. There is something too, which shocks the conscience in the idea that a treaty can be put forth as embodying the terms of an arrangement with a foreign power or an Indian tribe, a material provision of which is unknown to one of the contracting parties, and is kept in the background to be used by the other when the exigencies of a particular case may demand it.

Id. at 23. The Court did not look to the proviso, which presumably expressed the intent of the Senate, in construing the treaty.

Factor v. Laubenheimer, 290 U.S. 276 (1933), might be cited for the proposition that a treaty can have a different meaning as a matter of domestic and international law. In Factor, the Court construed the extradition treaty with England as requiring extradition even for a crime that was not criminal where the individual to be extradited resided. In so holding, the Court recognized that England might not similarly construe the treaty. Id. at 298. It appears clear, however, that the Court was not intending to suggest that the treaty had different domestic and international meanings; rather, the Court adopted what it believed to be the proper construction of the treaty notwithstanding the fact that Great Britain might "fail . . . to comply with the obligations of the treaty." Id. The Court did not refer to the Senate proceedings.

## II. Doctrines of Treaty Interpretation

Articles 31 and 32 of the Vienna Convention on the Law of Treaties provide general rules of treaty interpretation:

### Article 31

#### General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

- (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
- (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

- (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
- (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
- (c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

## Article 32

## Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

- (a) leaves the meaning ambiguous or obscure; or
- (b) leads to a result which is manifestly absurd or unreasonable.

The United States has not ratified the Vienna Convention, but considers it to be a generally accurate statement of customary international law. Court decisions generally are consistent with the principles embodied in Articles 31 and 32.

A number of cases discussing these rules of treaty interpretation, while not directly on point, shed light on whether the President should be considered bound as a matter of domestic law to Executive branch representations made to, and relied on by, the Senate. Most significant are decisions holding that a treaty is to be interpreted in light of the subsequent conduct of the parties, and a treaty's meaning can change over time based on that subsequent conduct. Such a doctrine is inconsistent with the view that the President is bound to the meaning of the treaty as understood by the Senate when it gave its advice and consent. The rule that supplementary means of interpretation will not be consulted when the meaning of the treaty is clear also could lead to an interpretation different from that understood by the Senate. Finally, in the numerous formulations of the general rules governing treaty interpretation, it does not appear that the courts have advanced the rule that the treaty should be interpreted in conformity with the Senate's understanding of it.

A. Interpretation -- and Modification -- in Light of Subsequent Conduct of the Parties

It is well established that "[t]he course of conduct of the parties to an international agreement, like the course of conduct of parties to any contract, is evidence of its meaning."

O'Connor v. United States, 107 S. Ct. 347, 351 (1986) (collecting

cases). The Court applied this rule in Trans World Airlines, Inc. v. Franklin Mint Corp., 466 U.S. 243 (1984), to the point where the dissent accused it of "reform[ing] the agreement." Id. at 282 (Stevens, J. dissenting). Franklin Mint involved the question whether the Civil Aeronautic Board's choice of a conversion factor to implement the Warsaw Convention's liability limit was proper. The Court noted that the Convention provided a gold-based liability limit for lost cargo. Id. at 245. The Court further noted that the United States had repealed legislation setting an official price for gold, and that the CAB had picked a fixed dollar amount to implement the Convention's liability limit. Nevertheless, the Court upheld the limit, relying on the course of conduct of the parties:

Our task of construing [the Convention's] purposes is, however, made considerably easier by the 50 years of consistent international and domestic practices under the Convention. . . .

The Convention's framers viewed the treaty as one "drawn for a few years," not for "one or two centuries." That it has in fact been adhered to for over half a century is a tribute not only to the framers' skills but to the signatories' manifest willingness to accept a flexible implementation of the Convention's terms. . . . We may not ignore the actual, reasonably harmonious practice adopted by the United States and other signatories in the first 40 years of the Convention's existence. . . . In determining whether the Executive branch's domestic implementation of the Convention is consistent with the Convention's terms, our task is to construe a "contract" among nations. The conduct of the contracting parties in implementing that contract in the first 50 years of its operation cannot be ignored.

Id. at 255-56, 259-60 (citations omitted). As noted, the Court adopted this view notwithstanding the fact that it thereby recognized that the conduct of the parties in effect amended a portion of the Convention.

Similarly, in Day v. Trans World Airlines, Inc., 528 F.2d 31 (2d Cir. 1975), cert. denied, 429 U.S. 890 (1976), the Second Circuit explained:

Those called upon to interpret a treaty should . . . strive to "give the specific words of a treaty a meaning consistent with the genuine shared expectations of the contracting parties." Maximov v. United States, 299 F.2d 565, 568 (2d Cir. 1962), aff'd, 373 U.S. 49 (1963). These expectations can, of course, change over time. Conditions and new methods may arise not present at the precise moment of drafting. For a court to view a treaty as frozen in the year of its creation is scarcely more justifiable than to regard the Constitutional clock as forever stopped in 1787. Justice Holmes' counsel concerning Constitutional construction, set forth in Missouri v. Holland, 252 U.S. 416, 433 (1920), applies with equal force to the task of treaty interpretation: "[W]hen we are dealing with words that are a constituent act . . . we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters."

Id. at 35 (parallel citations omitted) (emphasis added). Such a view of the nature of a treaty's meaning, depending upon the conduct of the parties and changed circumstances, is inconsistent with a view that the President is bound to the interpretation held by the Senate when it consented to the treaty, even where that interpretation is based on Executive branch representations. Franklin Mint shows that even the express terms of a treaty may be "amended" by a course of conduct. It is difficult to see how Executive branch representations to the Senate, which are not embodied in treaty language through express conditions to the resolution of advice and consent, can have a stature and ability to withstand change superior to that of the treaty itself.

B. The Rule that Supplementary Means of Interpretation are not Consulted Where the Treaty's Meaning is Clear

A second well-established canon of treaty construction that is inconsistent with the view that the President is bound to the treaty as presented by the Executive branch to the Senate is the rule that supplemental means of construction will not be consulted when the court determines that the treaty's meaning is clear. As the Supreme Court stated in Society for the Propagation of the Gospel v. New Haven, 21 U.S. 464, 490 (1823), "we are aware of no rule of interpretation applicable to treaties, or to private contracts, which would authorize the court to make exceptions by construction where the parties to the contract have not thought proper to make them. Where the language of the parties is clear of all ambiguity, there is no room for construction." See also Hidalgo County Water Control and Improvement Board v. Hedrick, 226 F.2d 1 (5th Cir. 1955), cert. denied, 350 U.S. 983 (1956):

Our attention is directed to the hearings before the Senate Committee and to the evidence there adduced, to Senate discussions in the Committee room and on the Senate floor, to statements of the Secretary of State, of the Attorney General of Texas and others, and to other treaties involving other nations and other rivers. There is not, as we view the case, any need for a discussion of these matters. Such factors are to be considered and weighed when and only when the meaning of a treaty provision is uncertain and the treaty language is ambiguous or admits of more than one construction.

Id. at 10 (citing Nielson v. Johnson, 279 U.S. 47 (1929)); Block v. Compagnie Nationale Air France, 229 F. Supp. 801 (N.D. Ga. 1964), aff'd, 386 F.2d 323 (5th Cir. 1967), cert. denied, 392 U.S. 905 (1968):

This Court concludes that the language contained in the Warsaw Convention is not ambiguous, and deems it unnecessary to resort to a discussion of the legislative history of the Treaty.

Id. at 809 (citation omitted). This rule of interpretation could cause a court to ignore Executive branch representations made to the Senate if the court determined that the Treaty's meaning was clear.

#### C. General Formulations Concerning Treaty Interpretation

In a large number of cases, courts have set forth general rules concerning how to interpret treaties. Invariably, these decisions refer to the need to determine the intent of the parties. Consistent with the Vienna Convention, the sources referred to are the language, the negotiating history, and the subsequent conduct of the parties. We have found no decision holding that the meaning as presented to the Senate by the Executive branch or as understood by the Senate is a general guide to treaty interpretation. As the Supreme Court stated in Choctaw Nation of Indians v. United States, 318 U.S. 423 (1943):

[T]reaties are construed more liberally than private agreements, and to ascertain their meaning we may look beyond the written words to the history of the treaty, the negotiations and the practical construction adopted by the parties.

Id. at 431-32; see also Geofroy v. Riggs, 133 U.S. 258, 271 (1890) ("It is a general principle of construction with respect to treaties that they shall be liberally construed, so as to carry out the apparent intention of the parties to secure equality and reciprocity between them. As they are contracts between independent nations, in their construction words are to be taken in their ordinary meaning, as understood in the public law of nations, and not in any artificial or special sense impressed upon them by local law, unless such restricted sense is clearly intended.").

### III. Theories Binding the President to the Senate's Understanding

Three theories have been proposed that would bind the President to the interpretation of a treaty presented by the Executive to the Senate, and relied on by the Senate, in the course of ratification proceedings: (i) the "vitiation" theory, which would bind the President to interpret a treaty in the same manner as the Senate understood it in order not to vitiate the Senate's constitutional role in treaty making; (ii) the "estoppel" theory, which would estop the President from adopting an interpretation different from that presented to the Senate by the Executive branch and relied on by the Senate; and (iii) the political theory, which holds that, as a matter of good faith and good government, the President ought not to adopt an interpretation different from that presented by the Executive branch to, and relied on by, the Senate.

#### A. The Vitiating Theory

The vitiating theory is presented in, for example, the Revised Restatement of Foreign Relations Law (Tent. Draft 6 April 1985):

When the Senate gives its advice and consent to a treaty on the basis of a particular understanding of its meaning, the President, if he makes the treaty, must do so on the basis of the Senate's understanding.

314(2). No case law is cited in the Restatement to support this view, and the case law does not support it. Indeed, this view would hold the President bound to the Senate's interpretation of the treaty regardless of the basis of the interpretation (i.e., it is not limited to an interpretation based on Executive branch representations).

The weakness of the theory is apparent from a consideration of the legislative process apart from judicial decisions. Neither the President's nor Congress' constitutional role in the

legislative process is considered "vitiating" if the courts ultimately determine that they (individually or collectively) were wrong in their view of the constitutionality of particular domestic legislation. Nor is the President's role in treaty making considered vitiated if the courts conclude that he was wrong as to the meaning of a treaty, something the courts have the constitutional power to do. See, e.g., Kelley v. Societe Anonyme Belge D'Exploitation, 242 F. Supp. 129, 136 (E.D.N.Y. 1965); cf. Immigration and Naturalization Service v. Cardoza-Fonseca, 107 S. Ct. 1207 (1987).

#### B. The Estoppel Theory

The estoppel theory would bind the President only to Senate understandings based on Executive branch representations. This view is set forth in the April 9, 1987, Justice Department Office of Legal Counsel memorandum:

[I]n a case in which the statements by the executive branch amount to a formal representation by the President concerning the meaning of a particular treaty provision, the ratification record may be conclusive. If, for example, the ratification record unequivocally shows that the President presented the treaty to the Senate based on specific, official representations regarding the meaning of an ambiguous provision, that the Senate regarded that understanding as important to its consent, and that the Senate relied on the representations made by the executive branch in approving the treaty (and thus in refraining from attaching a formal reservation setting forth the understanding), we believe that the President would, in effect, be estopped from taking a contrary position in his subsequent interpretation of the treaty, just as he would be bound by a formal reservation or understanding passed by the Senate to the same effect.

Id. at 14. The cases do not support this view. The single case cited for this proposition, United States v. Vogel Fertilizer Co., 455 U.S. 16, 31 (1982), does not involve treaties or estoppel. Rather, it concerned a challenge to a Treasury regulation. The Treasury Department had advanced one view of the meaning of a provision of a statute when it proposed the statute, and then promulgated regulations based on a different interpretation of the same provision. The Court struck down the regulation. It did not find that Treasury was estopped from changing its regulation. Rather, the Court held that it was

"Congress' understanding of what it was enacting that ultimately controls," id. at 31, and that "Congress adopted not only the proposal of the Treasury Department, but also the Department's explanation and interpretation which are wholly incompatible" with the new interpretation embodied in the regulation. Id. at 31-32. Vogel is neither a treaty case nor an estoppel case. It is difficult to see how it provides any support for the estoppel theory.

In any event, it is difficult to understand how a President can be estopped in the exercise of his constitutional duties based on either his or his predecessors acts that do not amount to a constitutionally recognized binding mechanism. The cases do not hold that such an estoppel exists, and there do not appear to be any cases recognizing such an estoppel principle in areas other than treaty interpretation.

The basis for the estoppel theory is concern to prevent presidential defrauding of the Senate with respect to a treaty's true meaning. This concern is misplaced. The Senate's independent review of the treaty's text and all the legal obligations contained therein is the surest safeguard against fraud.

### C. Political Theory

The "political" theory provides only that as a matter of politics, good government or good faith the President ought not to change the interpretation that was presented to the Senate by the Executive branch and on which the Senate relied in consenting to a treaty. It is expressed in, for example, the response of Arms Control and Disarmament Agency Director Ikle to a question in connection with Senate advice and consent to the Geneva Protocol of 1925 concerning chemical and biological warfare. A dispute arose between the Administration and the Senate over whether the Protocol governed herbicides and riot control agents. In a compromise, the Administration announced that the United States would renounce, as a matter of national policy, the first use in war of herbicides or riot control agents. The Senate Foreign Relations Committee Report noted that the Committee announced that it "attache[d] particular importance to the following" exchange:

Question. Assuming the Senate were to give its advice and consent to ratification on the grounds proposed by the Administration, what legal impediment would there be to subsequent Presidential decisions broadening the permissible uses of herbicides and riot control agents?

Answer. There would be no formal legal impediment to such a decision. However, the policy which was presented to the Committee will be inextricably linked with the history of Senate consent to ratification of the Protocol with its consent dependent upon observance. If a future administration should change this policy without Senate consent . . . it would be inconsistent with the history of the ratification, and could have extremely grave political repercussions and as a result is extremely unlikely to happen.

Senate Comm. on Foreign Relations, The Geneva Protocol of 1925, S. Exec. Rep. No. 35, 93d Cong., 2d Sess. 4-5 (1974).

Similarly, in Goldwater v. Carter, 617 F.2d 697 (D.C. Cir.) (en banc), vacated, 444 U.S. 996 (1979), while the court held that legally the President could terminate a treaty without Senate advice and consent, it recognized the political considerations involved:

Treaty termination is a political act, but political acts are not customarily taken without political support. Even if formal advice and consent is not constitutionally required as a prerequisite to termination, it might be sought. If the Congress is completely ingored, it has its arsenal of weapons, as previous Chief Executives have on occasion been sharply reminded.

Id. at 708-09. (The Supreme Court vacated the judgment and ordered the complaint -- which alleged that the termination was ineffective without Senate approval -- dismissed without agreeing on a rationale.)

The political theory is not a legal argument, and its merits are beyond the scope of this memorandum.

#### CONCLUSION

We thus conclude that judicial decisions provide no support for the proposition that Executive branch representations to the Senate concerning a treaty have legal force with respect to the treaty's meaning as a matter of law. Rather, we conclude that Justice Holmes' insight about interpreting constituent documents is correct: ratification proceedings are no mort main.

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20506

March 23, 1988

MEMORANDUM FOR THE FILES

FROM: NICHOLAS ROSTOW *R.*  
SUBJECT: Senate Procedures Regarding Treaties

I had lunch today with Arthur B. Culvahouse, Dan Crippen, and Martin Gold; we discussed Senate procedures with respect to giving advice and consent to a treaty.

Martin Gold made the following points:

1. Since the introduction of televised Senate proceedings, the Senate has streamlined its rules, including its rules with respect to treaties. There is no longer consideration by the committee-of-the-whole prior to submission to the full Senate.
2. The Senate first considers the text of the treaty, article-by-article. Amendments to the text of the treaty in the first and second degree only are considered. (An amendment in the first degree is an amendment to the text; an amendment in the second degree is an amendment to the amendment in the first degree.) Amendments to the treaty may be offered in any order.
3. After the Senate finishes consideration of the treaty text, it takes up the resolution of advice and consent. Again, Senators may offer amendments in the first and second degree. Amendments are adopted by majority vote; the resolution must pass by two-thirds vote of the Senators present. Senators are recognized as they catch the attention of the Chair, but the Majority and Minority Leaders and the Chairman and Ranking Members of the Foreign Relations Committee (or their designees, if any) have priority as to recognition. There is no limitation on the number of amendments or the length of time devoted to the resolution.
4. A cloture motion, which requires 60 votes to pass, would limit debate and impose a "germaneness standard" on amendments. Debate and vote would have to take place within 30 session hours. No Senator could speak for longer than one

hour. Amendments (whether in the first or in the second degree) may be considered only if they were properly filed prior to the commencement of the 30 hours and are pending during the 30 hours; an amendment is pending if called up by a Senator from the list of amendments properly filed. The leadership of the Senate and the Foreign Relations Committee have priority in this debate.

5. An open question is whether cloture may be invoked with respect to the treaty text. Cloture probably can be invoked with respect to single amendments, but no vote on the whole treaty in fact takes place when the Senate considers amendments to the text. Rather, the Senate only votes on a treaty when it votes on its resolution of advice and consent, that is, a message to the President.

We had a long and inconclusive discussion on the significance, as a matter of law, of incorporation by reference into the resolution of thousands of pages of testimony and written answers to written questions. We also inconclusively discussed how the Senate might indicate its collective reliance on Administration testimony.

Mr. Gold will provide a memorandum on the Senate's rules for our consideration.

## 1985 REPORTS TO CONGRESS

| DATE   | TITLE                                                                                    | SOURCE   |
|--------|------------------------------------------------------------------------------------------|----------|
| Jan 4  | DOE 6th Annual Report<br>required by Sec 657 PL 95-91                                    | WH       |
| Jan 8  | Cyprus Conflict - 35th periodic<br>report PL 95-384                                      | WH & NSC |
| Jan 23 | Nation Endowment for Democracy<br>PL 98-164 Sec 504(h)                                   | Both     |
| Feb 1  | Soviet Noncompliance<br>PL 98-525 Sec 1106(b)                                            | Both     |
| Feb 2  | Theater Nuclear Weapons &<br>Force Structure                                             | NSC      |
| Feb 8  | National Defense Stockpile<br>PL 98-525 Sec 904                                          | Both     |
| Feb 11 | U.S. Arm Control & Disarmament<br>Agency - 24th Annual Report                            | Both     |
| Feb 12 | Nuclear Non-Proliferation<br>7th Annual Report<br>PL 95-242 Sec 601                      | Both     |
| Feb 25 | Tourism Policy Council<br>3rd Annual Report                                              | Both     |
| Mar 4  | Continuing Acquisition of MX<br>PL 98-525 Sec 110                                        | Both     |
| Mar 4  | Euratom-Continued Cooperation<br>PL 95-242 Sec 304(a)                                    | Both     |
| Mar 13 | Nuclear Weapons Management<br>Sec 1632 DOD Authorization                                 | Both     |
| Mar 14 | Caribbean Basin Economic<br>Recovery Act<br>(Bahamas Proclamation)<br>PL 98-67 Sec 212   | Both     |
| Mar 20 | Science, Technology & American<br>Diplomacy<br>6th Annual Report                         | Both     |
| Mar 28 | Notice Continuing National<br>Economic Emergency Export<br>Control Regulations           | Both     |
| Apr 1  | Late Transmittals of<br>International Agreements<br>PL 95-426 Sec 708<br>7th Transmittal | Both     |

|        |                                                                              |      |
|--------|------------------------------------------------------------------------------|------|
| Apr 1  | DCI Annual Report to Congress                                                | NSC  |
| Apr 3  | U.S. Support for Democratic<br>Resistance in Nicaragua<br>PL 98-473 Sec 8066 | Both |
| Apr 8  | Intelligence Identities Act                                                  | NSC  |
| Apr 15 | Maybank Amendment<br>Proposed Modifications                                  | Both |
| Apr 16 | Cyprus Conflict<br>36th Periodic Report<br>PL 95-384 Sec 13(b)               | Both |
| Apr 22 | Iran Emergency<br>Periodic Report (50 USC 1703(c))                           | Both |
| Apr 26 | U.S. Participation in UN<br>PL 98-164                                        | Both |
| Apr 30 | POW/MIA Report<br>PL 98-525 Sec 116                                          | Both |
| Apr 30 | Pakistan's Nuclear Program<br>(22 USC 2429(a) - 1)                           | Both |
| May 1  | National Emergency with respect<br>to Nicaragua<br>(50 USC 1703(b))          | Both |
| May 20 | Voting Practices in the UN<br>PL 98-151<br>2nd Annual Report                 | Both |
| May 31 | Pelly Amendment - Soviet<br>Overharvest Minke Whales<br>(22 USC 1978(b))     | Both |
| Jun 3  | Continuing Extension of<br>Jackson-Vanik<br>PL 93-618 Sec 402(b)             | Both |
| Jun 10 | Building Framework for Mutual<br>Restraint<br>PL 98-525 Sec 1110             | Both |
| Jun 13 | Chemical Warfare Review Commission<br>PL 98-525 Sec 1511                     | Both |
| Jun 14 | Export of Crude Oil to Canada<br>(43 USC 1354)                               | Both |

|        |                                                                                                                        |      |
|--------|------------------------------------------------------------------------------------------------------------------------|------|
| Jul 3  | Automobile Products Trade Act<br>18th Annual Report                                                                    | WH   |
| Jul 9  | U.S. Counterforce Capability<br>PL 98-525 Sec 1105                                                                     | Both |
| Jul 11 | Certain Verification Programs<br>relating to Biological &<br>Chemical Weapons<br>PL 98-525 Sec 1109                    | Both |
| Jul 11 | UN Decade for Women<br>PL 98-164 Sec 118                                                                               | Both |
| Jul 12 | National Economic Emergency<br>Export Administration Act<br>(50 USC 1703)                                              | Both |
|        | ASAT Certification to Congress<br>PD 85-19 (Sgd Aug 20)                                                                | NSC  |
| Sep 3  | Cyprus Conflict - 37th Report<br>PL 95-384 Sec 13(b)                                                                   | Both |
| Oct 1  | Briefing Congress on Soviet<br>Strategic Defense Program                                                               | NSC  |
|        | U.S. Assistance to Coal Exporting<br>Nations (Pres approved Delegation<br>of Authority to Administrator AID<br>Oct 28) | NSC  |
| Oct 31 | Nicaraguan Emergency Periodic<br>Report (50 USC 1703(c))                                                               | Both |
|        | Certification on Jordan Arms Sale<br>PD 86-10 (Sgd Oct 21)                                                             | NSC  |
| Nov 13 | Iran Emergency Periodic Report<br>(50 USC 1703(c))                                                                     | Both |
| Nov 14 | Nicaragua Disbursement of<br>Humanitarian Assistance<br>PL 99-83 Sec 722(j)                                            | Both |
| Nov 25 | Cyprus Conflict - 38th Report<br>PL 95-384 Sec 13(b)                                                                   | Both |
| Nov 25 | Pakistan Certification<br>PL 99-83 Sec 903                                                                             | Both |
| Dec 4  | U.S. - Japan Cooperative Medical<br>Science Program<br>18th Annual Report<br>PL 86-610 Sec 5(h)                        | Both |

Dec 23

Soviet Non-Compliance  
PL 99-145 Sec 1002

Both

1985

MEMORANDUM FOR THE RECORD

FOR: ROBERT M. KIMMITT  
WILLIAM F. MARTIN  
THOMAS SHULL  
CHRIS LEHMAN  
PAUL THOMPSON  
RON SABLE  
WILMA HALL  
GEORGE VAN ERON

FROM: LORETTA BRAXTON

SUBJECT: March 12 Congressional Meeting Summary

Procedures for handling Congressional correspondence were discussed and the following recommendations were introduced:

- \* (1) It was decided that Chris and Ron would discuss with Congressional Liaison, the possibility of sending Presidential Congressionals directly to the Agencies. They discussed this with Kathy Jaffke and this procedure as agreed upon, effective immediately. This new procedure, will continue to allow the NSC to review all drafts received from the Agencies.
- (2) McFarlane's Congressionals will be channeled through Tom Shull to me. A portion of these Congressionals will be drafted and answered by Tom, others will be sent to me for routine staffing with particular recommendations and/or comments from Tom attached. A suspense of not more than 5 days will be assigned to each letter.
- (3) In preparation for our Wednesday staff meeting, I will forward to you, by noon on Wednesday, a computer printout of all outstanding Congressionals at that time. Ron Sable, upon receipt of his copy will check with me for current computer updates.

## MEMORANDUM

## NATIONAL SECURITY COUNCIL

ACTION

January 26, 1984

MEMORANDUM FOR WILLIAM F. MARTIN

FROM: RON SABLE SUBJECT: Congressional Correspondence with National  
Security ImplicationsSituation

The ability and necessity for providing accurate, timely responses to Congress on national security questions is vital to the effective operation of the White House in general and the NSC in particular. We cannot afford the luxury of failing to provide the promised answer or the completed work; when the ball is dropped it reflects on the President.

A case in point is the Lebanon policy letter from Reps. Aspin and Hamilton to the President. Finding that directed action had not been taken, I conducted a review of policy/procedures for handling such correspondence. Evidence from the review clearly demonstrates poor performance -- in areas subject to NSC Secretariat/agency Executive Secretariat control.

Procedures/Policy

Congressional letters on national security matters fall into one of several categories with varying degrees of attention provided, based upon an initial determination in the White House Legislative Affairs Office (WHLA) or NSC Secretariat. The sheer volume (approximately 100 per month for in-house NSC action alone) of correspondence has a direct bearing on treatment accorded individual letters, but I still find room for major improvement.

Priority Letter -- Procedures exist in WHLA/NSC to "flag" the hot letters needing 1-2 day turn around via the priority letter (urgent) category. That works well in most cases because its done by hand delivery, red tag and phone calls.

Routine Staffing (draft or direct reply) -- Drafts are returned to WHLA via NSC Secretariat means. Copies of direct replies are forwarded to WHLA by NSC Secretariat Correspondence Staff (Braxton) when received. Suspenses may or may not be assigned (rationale for not assigning suspenses is unclear). State Department delays of up to 6 weeks are common.

No Reply Necessary Per Agency -- Such recommendations are forwarded from agencies to NSC by memo. A copy of the memo is forwarded to WHLA by NSC Correspondence staff. State delays are common.

No Reply Necessary Per Staff -- As previously mentioned, many actions in this category are closed by phone, in person or simply noted by the NSC action officer as "OBE." No formal vehicle could be found for passing that determination (and associated rationale) to WHLA or NSC Secretariat.

### Summary

In summary, control of national security-related Congressional correspondence is less than desirable due to a combination of factors:

- Failure to honor suspense.
- Determination made that no answer required; determination not passed through tracking system.
- Little emphasis on "overdue" suspenses. The situation is now at the point where the potential for great embarrassment is present.
- Lack of assigned suspense.

### Recommendations

I recommend that the following actions be taken to reduce Congressional correspondence delays to a manageable level.

1. Suspense be assigned by NSC Secretariat for all categories of replies.

Approve \_\_\_\_\_

Disapprove \_\_\_\_\_

2. Strong letter be forwarded from you/Kimmitt to Agency Secretariats (info Agency Legislative Affairs), advising of unsatisfactory performance and plans for change (Tom Shull has a letter in draft form). State letter should be the strongest.

Approve \_\_\_\_\_

Disapprove \_\_\_\_\_

3. NSC staff be required to update tracking system to include reporting of rationale when determination is made that no reply is required. Notification to WHLA is necessary to close out.

Approve \_\_\_\_\_

Disapprove \_\_\_\_\_

4. Establish a weekly report on the status of urgent correspondence, which is personally reviewed by you, WHLA (Oglesby) and NSC Legislative Affairs. (Basics for such a report currently exists by combining Loretta Braxton's and Kathy Jaffke's weekly overdue/status reports.)

Approve \_\_\_\_\_

Disapprove \_\_\_\_\_

5. WHLA establish formal tracking for correspondence transmitted to NSC for urgent action (via a form memo or other system; creating a hard copy back-up record) which will reduce the chance of operating (and loss) outside the NSC tracking system.

Approve \_\_\_\_\_

Disapprove \_\_\_\_\_

6. Agreement be reached between NSC Secretariat and WHLA regarding the minimum acceptable time for such correspondence to get from WHLA to NSC for action (examples of one-month delay are available).

Approve \_\_\_\_\_

Disapprove \_\_\_\_\_

7. Bud McFarlane discuss the matter as a special subject at the morning staff meeting (impress upon Senior Directors the need to improve significantly) and Tuesday/Friday 5:00 p.m. meeting, to let action officers know he is serious (we will provide talking points, etc.).

Approve \_\_\_\_\_

Disapprove \_\_\_\_\_

cc: Tom Shull

THE WHITE HOUSE  
WASHINGTON

November 10, 1983

MEMORANDUM FOR BOB KIMMITT

FROM:

LYNN SKOLNICK *Lynn Skolnick*

SUBJECT:

Congressional Correspondence

While I realize that Congressional correspondence is not always at the top of Ken or your stacks -- I think we need to readdress the issue for just a moment. We have received an increasing amount of correspondence from Members of Congress in recent months on issues of foreign affairs and national security. While this will slow down, undoubtedly, during the recess we expect the load to be heavy again when Congress returns.

We are working on a variety of ideas for improving our existing system. We would appreciate NSC's assistance on one of these proposals -- we would like to suggest a weekly report from NSC to Legislative Affairs that details the status of mail that NSC is either handling directly or has staffed to other departments. We need to make sure that both of our systems carefully identify and track those letters that need expeditious handling and that we followup with the departments to make sure that they are meeting their deadlines. We also need to pay close attention to those letters that NSC or the departments decide do not require further reply after Ken's interim response to the Members. Short explanations of why no response is necessary would be very helpful.

Any assistance/thoughts you can give to this would be greatly appreciated. I think that a weekly report would help both you and Ken keep a closer eye on those letters, in particular, that need to be addressed quickly and thoroughly before the issue is overtaken by events!

Thanks.

cc: Ken Duberstein  
Chris Lehman  
Charlie Ponticelli

## MEMORANDUM

## NATIONAL SECURITY COUNCIL

January 12, 1984

## MEMORANDUM FOR THE NSC STAFF

FROM: ROBERT M. KIMMITT *Bok*  
SUBJECT: NSC Legislative Affairs

When dealing with Members of Congress and their staffs, it is important that the Administration speak with one voice. Additionally, the Congressional aspect of national security issues is always important and should be carefully considered in the policy-making process.

Bud McFarlane has tasked our Legislative Affairs Office with coordinating contact with Capitol Hill on matters of policy significance, and has additionally asked for that office's concurrence or comment on policy issues with direct Hill relevance. The Legislative Affairs Office will then coordinate, as appropriate, with the White House Legislative Affairs Office, as well as with the legislative offices at State, DOD, CIA, and elsewhere.

Your personal involvement is required to make this process work smoothly. Accordingly, I request that each office ensure that your contacts with Congress (meetings, letters, etc.) and your policy memos with Hill relevance are coordinated with the NSC Legislative Affairs Office. The members of that office are:

|                    |                                                                                    |
|--------------------|------------------------------------------------------------------------------------|
| Christopher Lehman | Senior Director of Legislative Affairs, Rm. 487 - x. 4682                          |
| Ronald K. Sable    | Director of Legislative Affairs Rm. 487 - x. 3046                                  |
| Paul Thompson      | Deputy Director of Legislative Affairs and Staff Legal Counsel, Rm. 372 - x. 4970. |

## NATIONAL SECURITY COUNCIL

January 10, 1984

MEMORANDUM FOR ROBERT M. KIMMITT

FROM: CHRISTOPHER M. LEHMAN *CLM*

SUBJECT: Hill Coordination

As the Second Session of the 98th Congress gets underway, I believe it would be very useful to send a memo to all NSC staff, laying out procedures for coordinating individual offices' efforts when they have Congressional relevance.

A draft memo which outlines what I believe to be appropriate procedures is attached at TAB I. Over the past year, the cooperation of the staff was good, although there was substantial room for improvement. Clarifying these procedures in writing would be helpful. I would also appreciate Bud McFarlane's raising the issue at a staff meeting.

## Recommendation:

That you sign and send out the memo to the NSC staff at TAB I.

Approve ✓ Disapprove \_\_\_\_\_

## ATTACHMENT

TAB I - Memo to the NSC Staff

## MEMORANDUM

## NATIONAL SECURITY COUNCIL

January 6, 1982

ACTION

MEMORANDUM FOR MICHAEL O. WHEELER

FROM: ROBERT M. KIMMITT *Bob*

SUBJECT: Enrolled Bill Procedures

At Tab I for your signature is a memorandum to Dick Darman on enrolled bill procedures. I assume you will send instructions directly to Secretariat. *yes*

RECOMMENDATION:

That you sign the memorandum at Tab I.

Approve ☒Disapprove ☐*Thanks.*

Attachment

Tab I Memorandum to Darman

cc: John Poindexter

MEMORANDUM  
NATIONAL SECURITY COUNCIL

January 6, 1983

ACTION

MEMORANDUM FOR RICHARD G. DARMAN

FROM: MICHAEL O. WHEELER **NW**

SUBJECT: Enrolled Bill Procedures

We understand that Judge Clark does not currently receive copies of your memoranda circulating enrolled bills for White House Staff comment in cases where National Security Council Staff views are reflected in an OMB enrolled bill memorandum. We would like to rescind any NSC Staff instruction that may have led to this practice and ask that all enrolled bills having national security implications be sent to Judge Clark for comment prior to Presidential review. This request applies also to all other situations (e.g., Executive Orders, proclamations) where NSC Staff views are given to OMB prior to your circulating papers for White House comment.

Thank you.

December 4, 1976

MEMORANDUM FOR: DAVID AARON  
RICK INDERFURTH

FROM: Jeanne W. Davis *JD*

SUBJECT: Requirements for Presidential Reports  
to Congress on Foreign Affairs Matters

In response to your request, I attach a list of recurring reports which the President sends to Congress on various foreign affairs matters. Not included are numerous reports, such as those required under the Foreign Assistance Act or the Arms Export Control Act, which are transmitted directly to the Congress on the President's behalf by State, AID, or Defense. These reports, which are cleared substantively with the NSC, are sent pursuant to formal and informal delegations of authority.

Also not included in this listing are those ad hoc reporting requirements to Congress, such as Presidential determinations, which are prepared on an individual basis. All US bilateral agreements with foreign countries signed as Executive Agreements, are required to be reported to the Congress under the Case Act (1 USC 1126) by the Secretary of State, rather than the President. Treaties are transmitted to the Senate by Presidential message.

Attachment

|                                                                                                                                 | <u>Coordinating Agency</u>     | <u>Due</u>                             | <u>Last Prepared</u>                |
|---------------------------------------------------------------------------------------------------------------------------------|--------------------------------|----------------------------------------|-------------------------------------|
| International Economic Report                                                                                                   | CIEP                           | Annually<br>60 days after<br>convening | March 17, 1976                      |
| US Participation in UN                                                                                                          | NSC                            | Annually                               | October 1, 1976                     |
| PL-480                                                                                                                          | Agriculture                    | Annually<br>by April 1st               | January 28, 1976                    |
| Cyprus                                                                                                                          | NSC                            | Every 60 days                          | October 4, 1976                     |
| CSCE                                                                                                                            | NSC                            | Semi-annual                            | First Report due<br>December , 1976 |
| Report that a non-market economy country does not impose unreasonable restrictions on citizens who wish to emigrate to the U.S. | NSC                            | Annually<br>by June 3rd                | June 2, 1976                        |
| Marine Science                                                                                                                  | National Science<br>Foundation | Annually                               | December 11, 1975                   |
| US Aeronautics &<br>Space Activities                                                                                            | NASA                           | Annually                               | June 29, 1976                       |

OFFICE OF MANAGEMENT AND BUDGET  
ROUTE SLIP

TO Jeanne Davis, NSC

Take necessary action ☐

Approval or signature ☐

Comment ☐

Prepare reply ☐

Discuss with me ☐

For your information ☐

See remarks below ☐

FROM Naomi R. Sweeney

DATE 11-16-76

REMARKS

This may be of use to you during the  
transition period.

August 26, 1976

## THE LEGISLATIVE CLEARANCE FUNCTION

This paper briefly describes the major elements of the legislative clearance function which the Office of Management and Budget (OMB), working with other elements of the Executive Office of the President and with the agencies, carries out on behalf of the President. The function is designed to serve the needs of the President in carrying out his legislative responsibilities.

### Background

The President's legislative responsibilities are founded in his constitutional duties and powers to: (1) require the opinion in writing of the principal officer in each of the executive departments, (2) take care that the laws are faithfully executed, (3) give the Congress information on the state of the Union, (4) recommend to the Congress such measures as he judges necessary, (5) approve or disapprove bills passed by the Congress, and (6) convene either or both Houses of Congress.

The legislative clearance function originated in the early 1920's in the Administration of President Harding. It grew out of the control over the budget given to the President by the Budget and Accounting Act of 1921. In its initial years, the clearance function was largely confined to bills involving expenditures, but it was later extended by President Roosevelt to all bills. A detailed description of the development of the legislative clearance function is contained in an article by Richard Neustadt, "The Growth of Central Clearance," in the American Political Science Review of September 1954.

OMB Circular A-19 sets forth the basic guidelines and procedures for carrying out the function. These procedures have been substantially the same for more than 35 years.

### Description of Current Clearance Procedures

The clearance function covers agency legislative proposals, agency reports and testimony on pending legislation, and enrolled bills.

Legislative Proposals -- All bills which agencies wish to transmit to the Congress are sent to OMB for clearance.

There they are reviewed and a determination is made on what additional data and information are needed and what other agencies have substantial interests and should be asked to comment.

Agencies whose views are asked may favor a draft bill or have no objection. It is likely, however, that one or more of them will propose substantive or technical amendments, or perhaps a complete substitute. Divergent views may be reconciled by telephone or by letter. If appropriate, a meeting of the interested agencies will be arranged by OMB staff.

In its review of draft bills, OMB applies existing Presidential policies. If significant issues arise which are not covered by such policies, it seeks appropriate Presidential direction.

After review, analysis, resolution of issues, and obtaining appropriate policy guidance, OMB advises the proposing agency that (1) there is "no objection" from the standpoint of the Administration's program to the submission of the proposed draft bill to the Congress, (2) the proposed bill is "consistent with the Administration's objectives," or (3) the proposed bill is "in accord with the President's program." This "advice" is conveyed by the submitting agency to the Congress in its transmittal letter. On the other hand, if the agency is advised that its proposed bill conflicts with an important Administration objective, or is not in accord with the President's program, it may not transmit the bill to the Congress. Draft bills in the first category, i.e., "no objection" bills, are normally considered part of the agency's legislative program as contrasted to the President's legislative program which consists of bills in the second and third category.

The above are simply illustrative of the range of advice given, and there are many possible variations or qualifications, including suggested amendments to eliminate other agencies' objections. A more complete description of the forms and meaning of OMB advice on legislation is set forth in the attachment to this paper.

Reports on Pending Legislation -- If agencies are asked by congressional committees to report or testify on pending legislation or wish to volunteer a report, similar clearance procedures are followed. Agencies are given "advice" which they transmit in their reports or include in their testimony. In the case of reports, however, receipt of advice contrary to the views expressed in the proposed report does not require

an agency to change its views, but the agency is expected to review its position.

Enrolled Bills -- After Congress has completed action on a bill, it is enrolled and sent to the President for his approval or disapproval. The Constitution provides that the President shall take action within 10 days after receipt of the bill, not including Sundays.

To assist the President in deciding his course of action on a bill, OMB requests each interested agency to submit within 48 hours its analysis and recommendation in a letter to OMB, signed by the head of the agency or other Presidential appointee. OMB prepares a memorandum to the President on the enrolled bill which transmits these views letters and summarizes the issues and various views and recommendations. If an agency recommends disapproval or a signing statement, it is responsible for preparing a draft of an appropriate statement for the President's consideration.

Volume of Activity -- During the 93rd Congress, 29,396 bills and joint resolutions were introduced in the two Houses. The agencies submitted to OMB for clearance approximately 9,000 proposed reports on bills and 850 draft bills. OMB received congressional committee requests for its views on over 3,500 bills. The 93rd Congress enacted 872 public and private laws.

#### Relationship to the President's Legislative Program

The legislative recommendations of the President in his three regular annual messages -- State of the Union, Budget, and the Economic Report -- together with those in any special messages or other communications to the Congress generally constitute the President's legislative program. These recommendations have had their origin in many sources. One major source is the agencies themselves. Each year, along with their budgets, departments and agencies submit to OMB proposed agency legislative programs for the coming session of Congress.

Other major sources include bills introduced in the Congress, and proposals of commissions, panels, and task forces established by law or by administrative order to examine and recommend on particular subjects.

In conjunction with the legislative clearance function, OMB and the agencies assist the White House staff in the development of the President's program. Each President develops his legislative program, of course, through methods of his

own choice; and the form and nature of OMB and agency assistance vary, depending on the President's wishes. Almost always, however, it has involved the application of clearance procedures to the draft bills which are prepared to carry out the President's legislative recommendations.

The existence of the President's program gives the legislative clearance process coherence, a set of goals, and greater significance. It provides general guidance for the executive branch, both in shaping proposals which are not part of the President's program and in commenting on bills before the Congress.

#### Purposes of the Clearance Function

As noted earlier, the function is essentially a staff service for the President performed in accordance with his wishes and designed to assist him in carrying out his legislative responsibilities. It has several purposes, of which some assist the Congress and the executive branch agencies themselves, as well as the President:

- it provides a mechanism for bringing together and staffing out agency legislative proposals which the President may wish to include in his legislative program;
- it helps the executive agencies develop draft bills which are consistent with and which carry out the President's policy objectives;
- it is a means of keeping Congress informed (through the "advice" transmitted by the agencies) of which bills are part of the President's program and of what the relationship of other bills is to that program;
- it provides a mechanism for assuring that Congress gets coordinated and informative agency views on legislation which it has under consideration;
- it assures that bills submitted to Congress by one executive agency properly take into account the interests and concerns of other affected agencies and will therefore have the general support of such agencies;
- it provides a means whereby divergent agency views can be reconciled.

## ATTACHMENT

### Forms Of OMB Advice On Legislation

The purpose of giving "advice" on proposed or pending legislation is to indicate to the Congress what the relationship of legislation is to the President's program. This permits the President to give visible endorsement (or opposition) to those legislative items which are important to him and informs the Congress of a relationship that is of importance to it in its consideration and scheduling of legislation.

"Advice" is given to the agencies by OMB to incorporate in their letters transmitting draft bills to the Congress or in their written reports commenting on legislation pending in the Congress. It is also given to agencies when they submit proposed testimony to OMB for clearance, but the advice is usually not included in the oral testimony as delivered, except in cases where it would have a significant effect on a committee's consideration or would not otherwise become available to a committee through a written report.

The three basic forms of advice and their implications are set forth below:

1. "In accord (not in accord) with the program of the President." When an agency or a committee of the Congress is advised that enactment of a bill would be in accord with the program of the President, it means that the bill is of sufficient importance for the President to give it his personal and public support. That identification of the legislative proposal with the President is made in a variety of ways; e.g., by inclusion in one of his regular messages (State of the Union, Economic, Budget), a special message, speech, press conference, letter, or leadership meeting.

"Not in accord" advice indicates that a bill is so contrary to the President's legislative proposals or other policies or is otherwise so objectionable that were it enacted, a veto would be considered. It is not, however, necessarily a commitment to veto.

When "not in accord" or "not consistent with" (see below) advice is given to an agency with respect to a draft bill, the agency may not transmit its proposal to the Congress.

2. "Consistent (not consistent) with the Administration's objectives." "Consistent with" advice is used where the relationship of a legislative proposal to the Administration's objectives is direct and the Administration's expressed support is desirable but the item does not warrant personal identification with, or support by, the President. "Not consistent with" advice signals to the Congress that there are major objections to a bill, but does not indicate as clearly as "not in accord" advice that a veto would be considered if it were enacted.

3. "No objection." Advice that there is no objection to a bill from the standpoint of the Administration's program is given on the large number of agency draft bills that deal with matters primarily of agency concern and do not bear a direct or immediate relationship to the President's program or the Administration's objectives. In effect, such advice indicates to the Congress that OMB knows of no reason why the President would not approve the bill if the Congress should enact it.

Advice to an agency that there is no objection from the standpoint of the Administration's program to its submission of a report (or testimony) on a bill to a committee of Congress does not indicate any commitment as to ultimate Presidential approval or disapproval of the bill if it is enacted. Nevertheless, such "no objection" clearance does set up certain presumptions. If all agencies' views are favorable, the presumption is that no major objection to the bill is known and that the agencies affected will recommend Presidential approval if it becomes enrolled. If all agencies' views are adverse, the presumption is that the agencies may wish to recommend a veto if the bill becomes enrolled.

Infrequently, "no objection" clearance is given to agency reports expressing divergent views on the same bill. When this is done, it normally means that there is no objection to the bill if the Congress acts favorably after considering the adverse views. Occasionally, it means that the Administration's position is being reserved pending resolution of the agencies' differences, and this reservation may be explicitly stated. The interested agencies are advised of each other's differing views in these cases.

In some cases the advice given is qualified. For example, the advice may be that there would be no objection to enactment of the bill from the standpoint of the Administration's program if it were revised in specified respects.

Finally, if congressional time schedules do not permit an agency to transmit to OMB its proposed report or testimony in time for the normal coordination and advice, the agency is required to consult informally with OMB as to the advice to be included in its proposed report. OMB may advise it to state in the report that time has not permitted securing advice from OMB as to the relationship of the proposed report or testimony to the program of the President. Where appropriate, OMB may subsequently furnish advice on the report or testimony, which the agency then transmits to the Congress.

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20506

February 28, 1987

MEMORANDUM FOR THE NSC STAFF

FROM: W. ROBERT PEARSON *Bob*  
SUBJECT: Updated Meeting Procedures

Mr. Carlucci has decided that the President should give opening remarks at NSC/NSPG meetings. This means that Presidential talking points/remarks should now be included in the Presidential NSC/NSPG meeting package. Please find attached a reworked NSC/NSPG meeting package which should be placed at Tab 6 in your NSC Staff Manual.

Attached also please find an revised example of an agenda for NSC/NSPG/PRG/PCG meetings. This should be included in your Staff Manual at Tab 7. If you are preparing the agenda for a PRG or PCG meeting then of course the 1 item will drop of and the rest of the agenda moves up.

Thanks for your cooperation in keeping our Staff Manual up to date.

The procedures for the notification of NSC/NSPG meeting remain the same. The Executive Secretary will invite the participants and prepare the notice of meeting memo from the participants list and agenda supplied by the action officer.

For PRG (Policy Review Group) meetings the Executive Secretary will invite the participants. The notice of meeting memo and agenda will be prepared the same day by the action officer as an Executive Secretary to Executive Secretary memo.

Attachments

Tab I      Tab 6 of NSC Staff Manual (NSC/NSPG Meeting Package)  
Tab II     Tab 7 of NSC Staff Manual (Meeting Agenda)

CLASSIFICATION

THE WHITE HOUSE

Log Number

WASHINGTON

(Always use WH Letterhead)

Do Not Date

(NATIONAL SECURITY PLANNING GROUP)  
MEETING WITH THE (NATIONAL SECURITY COUNCIL)

DATE:

LOCATION:

TIME:

FROM: (APNSA'S NAME IN ALL CAPS)

I. PURPOSEII. BACKGROUND

The NSC Executive Secretariat will send an advance notice of meeting, using an agenda prepared with your office, to alert participants. The Executive Secretariat notifies participating counterparts by phone of attendance rules, i.e., principal only and prepares clearance list, seating chart and meeting folders.

III. PARTICIPANTS

List at Tab B

IV. PRESS PLAN

No press plan.

V. SEQUENCE OF EVENTS

Outline meeting agenda and President's role.

The staff officer prepares as a Tab II to the Presidential meeting package or as separate memo talking points for the APNSA to use in the meeting.

## Attachments

Tab A      Agenda  
Tab B      List of participants  
Tab C      Opening Statement (Presidential)

CLASSIFICATION

Declassify on: OADR

CLASSIFICATION STAMPED

CLASSIFICATION

CLASSIFICATION STAMPED

Log Number

(Always use plain, heavy bond)

Do Not Date

NATIONAL SECURITY COUNCIL MEETING  
(used for NSC/NSPG/PRG/PCG meetings)  
Day of week, date of meeting (including year)  
Place of meeting  
Time meeting begins - time meeting ends

(SUBJECT IN ALL CAPS)

Agenda (in Initial Caps)

- I. Opening Statement.....President
- II. Introduction.....APNSA's Name\*
  - o Background (\_\_\_ minutes)
  - o Issues for Decision
- III. Intelligence Assessment.....Director CIA's Name\*  
(\_\_\_ minutes)
- IV. Policy Options.....Secretary of State's Name\*  
(\_\_\_ minutes)
- V. Military Considerations.....Secretary of Defense's Name\*  
(\_\_\_ minutes)
- VI. Discussion.....All participants  
(\_\_\_ minutes)
- VII. Summary.....APNSA's Name\*  
(\_\_\_ minutes)

(\*Names to be Typed in Initial Caps)

Total of minutes must equal total time for meeting; list speaking times in amounts divisible by 5, i.e., 5, 10, 15 etc.

The fixed portions of the agenda are the introduction, discussion and summary. Number and names of other speakers before discussion will vary with the meeting.

CLASSIFICATION

Declassify on: OADR

CLASSIFICATION STAMPED

## Participants

The President  
The Vice President  
The Secretary of State  
The Secretary of Treasury (if in Washington)  
The Secretary of Defense  
The Attorney General (if in Washington)  
Chief of Staff to the President  
Assistant to the President for National Security Affairs

Plus representatives from the following departments and agencies  
(list all those additional agencies who have been invited to the  
meeting, i.e.):

Department of Interior  
Department of Agriculture  
Department of Commerce  
Department of Labor  
Department of Health and Human Resources  
Department of Housing and Urban Development  
Transportation Department  
Department of Energy  
Department of Education  
Office of Management and Budget  
Central Intelligence Agency  
United Nations Political Affairs  
Joint Chiefs of Staff  
White House Military Office  
Agency for International Development  
Arms Control and Disarmament Agency  
General Services Administration  
United States Information Agency  
National Aeronautics and Space Administration  
Veterans Administration  
Federal Emergency Management Agency  
Office of Personnel Management  
Federal Reserve System  
U.S. Postal Service  
National Security Agency  
Peace Corps  
National Communications System  
White House Communications Agency

CLASSIFICATION STAMPED

CLASSIFICATION

Log Number

TALKING POINTS FOR MEETING WITH  
(NAME)

- The President is already familiar with almost any issue he may have to discuss. Keep talking points to absolute minimum number and length.
- Talking points are to be typed on plain heavy bond paper.
- The heading for talking points should be centered, typed in all caps, and underlined as shown above.
- Talking points should always be double-spaced.
- Each point should be set off by dashes; type two hyphens then "code & tab" on the Displaywriter before beginning each point.
- Talking points for the President should be accompanied by 3x5 cards. Sample attached.

CLASSIFICATION  
Declassify on: OADR

CLASSIFICATION STAMPED

ABBREVIATED TALKING POINTS ON A 3x5 INDEX CARD

TALKING POINTS -- MEETING WITH (PARTICIPANT)

- BREVITY IS THE ESSENCE OF GOOD TALKING POINTS SHOULD BE CUES WITH KEY WORDS NOT REPETITION OF 8x10 PAGE MATERIAL.
- TYPE TALKING POINTS IN ALL CAPS SINGLE SPACED.
- TYPE TALKING POINTS IN THE SAME ORDER AS THEY APPEAR ON THE DOUBLE-SPACED BOND PAGE.

2

- USE ONLY THE MOST OBVIOUS ABBREVIATIONS ON A INDEX CARD, i.e., U.S.

CLASSIFICATION

CLASSIFICATION STAMPED

Log Number

(Always use plain, heavy bond)

Do Not Date

NATIONAL SECURITY COUNCIL MEETING  
(used for NSC/NSPG/PRG/PCG meetings)  
Day of week, date of meeting (including year)  
Place of meeting  
Time meeting begins - time meeting ends

(SUBJECT IN ALL CAPS)

Agenda (in Initial Caps)

- I. Opening Statement.....President
- II. Introduction.....APNSA's Name\*
  - o Background (\_\_\_ minutes)
  - o Issues for Decision
- III. Intelligence Assessment.....Director CIA's Name\*  
(\_\_\_ minutes)
- IV. Policy Options.....Secretary of State's Name\*  
(\_\_\_ minutes)
- V. Military Considerations.....Secretary of Defense's Name\*  
(\_\_\_ minutes)
- VI. Discussion.....All participants  
(\_\_\_ minutes)
- VII. Summary.....APNSA's Name\*  
(\_\_\_ minutes)

(\*Names to be Typed in Initial Caps)

Total of minutes must equal total time for meeting; list speaking times in amounts divisible by 5, i.e., 5, 10, 15 etc.

The fixed portions of the agenda are the introduction, discussion and summary. Number and names of other speakers before discussion will vary with the meeting.

CLASSIFICATION

Declassify on: OADR

CLASSIFICATION STAMPED

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20508

1338

February 26, 1987

MEMORANDUM FOR THE NSC STAFF

FROM: GRANT S. GREEN, ~~GR.~~

SUBJECT: Correspondence for FCC & CLP

Effective immediately all correspondence to Mr. Carlucci and LTG Powell will be signed only by the appropriate Senior Director. In those instances where a Senior Director is not available (leave, travel, etc.), papers will be forwarded by the designated acting office head. "Thru-to" format is not acceptable, however, a "prepared by" line on the bottom of each memo should be included.

The Secretariat will continue to staff actions to individual staff officers within each directorate to ensure that actions reach the drafting officer as soon as possible.

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20506

7375

October 6, 1987

MEMORANDUM FOR THE NSC STAFF

FROM: GRANT S. GREEN JR.  
SUBJECT: PRG / PCG Meetings

When scheduling PRG or PCG meetings it is requested that the following be observed:

- All requests for PRG or PCG meetings should be made through the Executive Secretary's office (preferably by memo from the Senior Director to General Powell). This will ensure that schedules are coordinated, rooms are reserved and proper papers are tasked.
- When the PRG / PCG Meeting is confirmed, the Executive Secretary's office will invite the participants via Secure Phone. Any telephone conversations regarding PRG / PCG meetings that include the subject of the meeting should be handled on the Secure Phone (both within the complex and with outside agencies).
- The same day that a PRG / PCG meeting is confirmed, the Staff Officer should prepare a notice of meeting memo and agenda which will be sent to participating agencies.
- Staff members who wish to attend a PRG meeting must obtain prior clearance through the Executive Secretary's office.

MEMORANDUM

NATIONAL SECURITY COUNCIL

June 25, 1985

MEMORANDUM FOR: DON FORTIER  
KARNA SMALL  
JOCK COVEY  
KEN DEGRAFFENREID  
CHRIS LEHMAN  
ROBERT LINHARD  
JACK MATLOCK  
ROD MCDANIEL  
CONSTANTINE MENGES  
OLLIE NORTH  
BOB PEARSON  
WALT RAYMOND  
BRENDA REGER  
PHIL RINGDAHL  
ROGER ROBINSON  
GASTON SIGUR  
PAUL THOMPSON

FROM: WILLIAM F. MARTIN *William Martin*  
SUBJECT: Morning Staff Meetings

We have recently had an overflow of staff attending the ODSM meetings. In several instances, we've had more than one from a directorate, resulting in a standing room only crowd. Bud and John are willing to make temporary exceptions to the principle of one from each directorate as circumstances warrant, but they have urged me to ask you to give advance notice to Bob Pearson when you propose that more than one attend from your directorate. This will allow us to ensure that all principals have seats and enable us to allocate the remaining seats based on the principle of need to attend. We will make every effort to accommodate your needs, but please recognize that space is a very real problem. Thank you.

## MEMORANDUM

System II

## NATIONAL SECURITY COUNCIL

March 16, 1982

## MEMORANDUM FOR THE NSC STAFF

FROM: MICHAEL O. WHEELER *HW*

SUBJECT: Preparation for NSC Meetings

This office is now the focal point for coordination of NSC and NSPG meetings, to include: timely dissemination of meeting notices and background materials; assuring that background materials are provided to the National Security Advisor for forwarding to the President; compiling for approval by the National Security Advisor an attendance list; preparing the meeting room; insuring that detailed minutes are prepared as soon as practical after the meeting; and following up with any required implementation of decisions reached at such meetings.

NSC Staff Officers are responsible for preparing specific materials for submission/dissemination through the Staff Secretary. Sample formats as follows:

- \*Tab A Memo to the Agencies notifying them of a meeting;
- \*Tab B Agenda (Note: prepare this in draft as soon as possible after meeting is announced for approval by Judge Clark and/or Bud McFarlane);
- Tab C Package which is presented to the President by Judge Clark (Note: this package is due to Darman's office not later than 3:00 p.m. the day before the meeting -- due to the Staff Secretary's office not later than 12:00 noon the same day.);
- \*Tab D Memo to the Agencies forwarding background materials for the meeting; and
- Tab E Minutes.

Should you have questions regarding procedures to be followed in the meeting preparation, please contact my office.

\*Note: Ideally, Tabs A, B, and D should go out simultaneously; i.e., one memorandum to the agencies per meeting. This office will telephonically notify the agencies of the date, time, place and subject of the meeting. The memo to the agencies would confirm the information passed telephonically and transmit background materials.

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20506

System II

~~CONFIDENTIAL~~ (NOTE: NOT THE CLASSIFICATION OF THIS MEMO; simply used  
for illustration)

Do Not Type Date  
(Staff Secretary's Office to Date)

MEMORANDUM FOR

Ms. Nancy Bearg Dyke  
Assistant to the Vice President  
for National Security Affairs

Mr. William Schneider  
Associate Director for National  
Security and International Affairs  
Office of Management and Budget

Mr. L. Paul Bremer III  
Executive Secretary  
Department of State

Mr. Thomas B. Cormack  
Executive Secretary  
Central Intelligence Agency

Mr. David Pickford  
Executive Secretary  
Department of the Treasury

Ms. Jacqueline Tillman  
Executive Assistant to the United States  
Representative to the United Nations

Lieutenant Colonel Robert P. Meehan  
Assistant for Interagency Matters  
Office of the Secretary of Defense

Mr. Dennis Whitfield  
Executive Assistant to the United States  
Trade Representative

Ms. Jean Jones  
Director, Executive Secretariat  
Department of Commerce

Colonel Charles F. Stebbins  
Executive Assistant to the  
Chairman, Joint Chiefs of Staff

SUBJECT: Indicate (C)

A National Security Council meeting has been scheduled for day, month,  
date, 1982, in The Cabinet Room to discuss (indicate topic). (C)

Michael O. Wheeler  
Staff Secretary

~~CONFIDENTIAL~~  
Review month, date, 1984

DETERMINED TO BE AN  
ADMINISTRATIVE MARKING  
PER E.O. 12958, SEC 3.3 (C)  
MB 2/4/19

CLASSIFICATION

A G E N D A

1. Number each item on the agenda followed by name of individual who will discuss that item -- name to the right as indicated. Clark
2. Continue listing of items in this manner. Name

CLASSIFICATION  
Declassification Info

MEMORANDUM

NATIONAL SECURITY COUNCIL

CLASSIFICATION

ACTION

Type Date

MEMORANDUM FOR WILLIAM P. CLARK

FROM: STAFF MEMBER

SUBJECT: NSC Meeting, Day, Month, Date, 1982

At Tab I is a memorandum from you to the President outlining the agenda for the NSC meeting and appropriate background material. The memorandum also forwards (indicate attachments and identify Tabs).

At Tab II are suggested talking points for your use at the meeting.

RECOMMENDATION

That you sign the memo to the President at Tab I.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

Attachments

Tab I Memo to the President  
A Indicate what is behind Tab A  
B Indicate what is behind Tab B  
Tab II Suggested talking points

CLASSIFICATION  
Declassification Info

MEMORANDUM

System II

THE WHITE HOUSE

WASHINGTON

CLASSIFICATION

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: WILLIAM P. CLARK

SUBJECT: NSC Meeting, Day Month, Date, 1982

Issue

Facts

Discussion

(Note: instead of recommendations, list the decisions to be taken at the end of the discussion section.)

Attachments

Tab A      Indicate what is behind Tab A  
Tab B      Indicate what is behind Tab B

CLASSIFICATION

Declassification Info

CLASSIFICATION

TALKING POINTS

For the (Date) NSC Meeting

Issue One: State as concisely as possible.

- 5-space indentation for double tick; body of each tick should be blocked as shown here.
- Typed in same style as above.

Continue above format for each issue, double spacing between each issue.

CLASSIFICATION  
Declassification Info

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

CONFIDENTIAL WITH  
INDICATE CLASSIFICATION  
OF ATTACHMENTS

(NOTE: NOT THE CLASSIFICATION OF THIS MEMO;  
simply used for illustration)

Do Not Type Date  
(Staff Secretary's Office to Date)

MEMORANDUM FOR

Ms. Nancy Bearg Dyke  
Assistant to the Vice President  
for National Security Affairs

Mr. William Schneider  
Associate Director for National  
Security and International Affairs  
Office of Management and Budget

Mr. L. Paul Bremer III  
Executive Secretary  
Department of State

Mr. Thomas B. Cormack  
Executive Secretary  
Central Intelligence Agency

Mr. David Pickford  
Executive Secretary  
Department of the Treasury

Ms. Jacqueline Tillman  
Executive Assistant to the United States  
Representative to the United Nations

Lieutenant Colonel Robert P. Meehan  
Assistant for Interagency Matters  
Office of the Secretary of Defense

Mr. Dennis Whitfield  
Executive Assistant to the United States  
Trade Representative

Ms. Jean Jones  
Director, Executive Secretariat  
Department of Commerce

Colonel Charles F. Stebbins  
Executive Assistant to the  
Chairman, Joint Chiefs of Staff

SUBJECT: Indicate (C)

Attached are background materials for your use in preparing for  
the National Security Council meeting scheduled for day, month,  
date, 1982, in The Cabinet Room to discuss subject topic. (C)

Michael O. Wheeler  
Staff Secretary

Attachments

CONFIDENTIAL WITH  
INDICATE CLASSIFICATION  
OF ATTACHMENTS  
Declassification Info

DETERMINED TO BE AN  
ADMINISTRATIVE MARKING  
PER E.O. 12958, SEC 3.3 (C)  
9/4/19

CLASSIFICATION

NATIONAL SECURITY COUNCIL MEETING

DATE, TIME                      Indicate  
AND PLACE:

SUBJECT:                      Concise, one-line

PARTICIPANTS:

The President  
The Vice President

State  
Secretary Alexander M. Haig, Jr.  
Deputy Secretary Walter J. Stoessel

OSD  
Secretary Caspar W. Weinberger  
Deputy Secretary Frank C. Carlucci

Treasury  
Secretary Donald T. Regan

Commerce  
Secretary Malcolm H. Baldrige

Energy  
Deputy Secretary Kenneth W. Davis

OMB  
Mr. David A. Stockman

CIA  
Mr. William J. Casey

USUN  
Ambassador Jeane J. Kirkpatrick

JCS  
General David C. Jones

White House  
Mr. Edwin Meese III  
Mr. James A. Baker III  
Mr. Michael K. Deaver  
Judge William P. Clark  
Mr. Robert C. McFarlane

The Vice President's Office  
Admiral Daniel J. Murphy

NSC  
Colonel Michael O. Wheeler  
Mr. Whomever (Staff Member)

Minutes

Type Name of Speaker: Underline name; single space statement; double space between each speaker.

At end of the minutes, type the time of adjournment. Add a paragraph which summarizes the immediate decisions/actions resulting from the meeting.

CLASSIFICATION  
Declassification Info

MEMORANDUM

NATIONAL SECURITY COUNCIL

November 17, 1980

MEMORANDUM FOR: THE NSC STAFF  
FROM: CHRISTINE DODSON CD  
SUBJECT: M-B-B Luncheon

There will be an M-B-B Luncheon on Wednesday, November 19.  
Forward your agenda items to Les Denend by 2:00 p.m.  
today and your background information should be in my  
office by 4:00 p.m. on Tuesday, November 18.

K

## MEMORANDUM

## NATIONAL SECURITY COUNCIL

October 8, 1980

MEMORANDUM FOR THE NSC STAFF

FROM: *Christine Dodson*  
Christine Dodson

SUBJECT: Requests for Meetings with ZB

Please elaborate on your requests for Dr. Brzezinski to meet with a foreign official. Specifically indicate whether the call is for substantive reasons; if so about what or if merely a courtesy call, the importance of doing it. Your input would help a great deal.

## MEMORANDUM

## NATIONAL SECURITY COUNCIL

April 14, 1980

MEMORANDUM FOR: THE NSC STAFF  
FROM: CHRISTINE DODSON, *Christine*  
SUBJECT: Participants in Presidential Meetings

The White House wishes to have a complete and accurate list of attendees in ALL meetings involving the President. (This requirement is noted at the bottom of the "Approved Presidential Activity" Memoranda which are sent to Dr. Brzezinski by Phil Wise once an appointment has been set on the President's calendar). This list is to include names and titles of ALL participants, including any White House/NSC staffs who drop-in on a meeting.

The list should be prepared on plain bond paper and include date, time and location of the event and should reach me for forwarding to Phil Wise at the conclusion of each meeting.

And, to remind: if in charge of a meeting, you are responsible for the preparation of the attendees list whether or not you actually attended it and you must ensure that the names/titles of the individuals are accurate.\*

Your office is also responsible for arranging the proper clearance of the individuals attending a meeting with either the President or Dr. Brzezinski and their entrance into the White House complex.

\* Check the list with someone who did attend.  
Those you cleared in and those who  
actually attended often are not the same people.

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20506

8354

*Maria*

November 30, 1988

MEMORANDUM FOR PAUL STEVENS

FROM: CAROL PAQUETTE *CP*

NOTED

SUBJECT: NSC Military Fitness Reports/Evaluations  
Procedures

Per your request, I have prepared the NSC military fitness reports procedures as a Memorandum for the Record, for your signature, and insertion in the "how to" transition volume.

RECOMMENDATION

That you sign the memorandum at Tab I.

Approve \_\_\_\_\_

Disapprove \_\_\_\_\_

Attachment

Tab I - Memo For The Record  
NSC Military Fitness Reports/Evaluations  
Procedures

MEMORANDUM FOR THE RECORD

FROM: PAUL SCHOTT STEVENS  
Executive Secretary

SUBJECT: NSC Military Fitness Reports/Evaluations  
Procedures

Prior to 1987, there was no systematic procedure within the NSC for the review and approval of military fitness reports/evaluations. At that time, at the direction of the Executive Secretary, the Administrative Office reviewed all Service regulations regarding fitness reports/evaluations and recommended a standardized procedure acceptable to all the Services and approved by the APNSA.

The two items at issue were: who should be the senior signing official (APNSA or DAPNSA); and what signatures would be required on each fitness report/evaluation.

Issue One - Senior Signing Official

As a matter of administrative policy, it was decided that all fitness reports/evaluations would either be signed by the APNSA or DAPNSA as senior signing official, in accordance with the following guidelines:

OFFICERS:

O-4 (Field Grade) and Above - APNSA  
CW3 (Field Grade) and Above - APNSA

O-3 and Below - DAPNSA  
CW2 and Below - DAPNSA

ENLISTED:

E-6 and Above - APNSA  
(Eligible for  
Promotion to  
the Senior  
Enlisted Grades)

E-5 and Below - DAPNSA

## Issue Two - Required Signatures

In accordance with appropriate Service regulations, signatories on fitness reports/evaluations for each Service were designated as follows:

### Army

Officer: O-4/CW3 and Above  
Rater (Immediate Supervisor)  
Intermediate Rater (DAPNSA)  
Senior Rater (APNSA)

O-3/CW2 and Below  
Rater (Immediate Supervisor)  
Intermediate Rater (Executive Secretary)  
Senior Rater (DAPNSA)

Enlisted: E-6 and Above  
Rater (Immediate Supervisor)  
Indorser (APNSA)

E-5 and Below  
Rater (Immediate Supervisor)  
Indorser (DAPNSA)

### Air Force

Officer: O-4/CW3 and Above  
Rater (Immediate Supervisor)  
Additional Rater (DAPNSA)  
Indorser (APNSA)  
(Indorser also serves as the Evaluator for O-6's)

O-3/CW2 and Below  
Rater (Immediate Supervisor)  
Additional Rater (Executive Secretary)  
Indorser (DAPNSA)

Enlisted: E-6 and Above  
Rater (Immediate Supervisor)  
1st Indorser (APNSA)

E-5 and Below  
Rater (Immediate Supervisor)  
1st Indorser (DAPNSA)

### Marines

Officer: O-4 and Above  
Reporting Officer (Immediate Supervisor)  
Reviewing Officer (APNSA)

O-3 and Below  
Reporting Officer (Immediate Supervisor)  
Reviewing Officer (DAPNSA)

### Navy

Officer: O-4/CW3 and Above  
Reporting Senior (APNSA)

O-3/CW2 and Below  
Reporting Senior (DAPNSA)

Enlisted: E-6 and Above  
Reporting Senior (APNSA)

E-5 and Below  
Reporting Senior (DAPNSA)

### Summary

The above described procedures have worked out satisfactorily in practice for the past one and a half years. They conform to all Service requirements, and avoid the "inflated" senior endorsements that had prevailed previously, under which the APNSA personally endorsed all fitness reports irrespective of rank or responsibility. They have made for a fair and predictable evaluation system, and one that has gained acceptance of ~~detailed~~ military personnel.

the

and support

*^*  
*^*  
*Detailed to the NSC.*

MEMORANDUM FOR THE RECORD

FROM: PAUL SCHOTT STEVENS  
Executive Secretary

SUBJECT: NSC Military Fitness Reports/Evaluations  
Procedures

Prior to 1987, there was no systematic procedure within the NSC for the review and approval of military fitness reports/evaluations. At that time, at the direction of the Executive Secretary, the Administrative Office reviewed all Service regulations regarding fitness reports/evaluations and recommended a standardized procedure acceptable to all the Services and approved by the APNSA.

The two items at issue were: who should be the senior signing official (APNSA or DAPNSA); and what signatures would be required on each fitness report/evaluation.

Issue One - Senior Signing Official

As a matter of administrative policy, it was decided that all fitness reports/evaluations would either be signed by the APNSA or DAPNSA as senior signing official, in accordance with the following guidelines:

OFFICERS:

O-4 (Field Grade) and Above - APNSA  
CW3 (Field Grade) and Above - APNSA

O-3 and Below - DAPNSA  
CW2 and Below - DAPNSA

ENLISTED:

E-6 and Above - APNSA  
(Eligible for  
Promotion to  
the Senior  
Enlisted Grades)

E-5 and Below - DAPNSA

## Issue Two - Required Signatures

In accordance with appropriate Service regulations, signatories on fitness reports/evaluations for each Service were designated as follows:

### Army

Officer: O-4/CW3 and Above  
Rater (Immediate Supervisor)  
Intermediate Rater (DAPNSA)  
Senior Rater (APNSA)  
  
O-3/CW2 and Below  
Rater (Immediate Supervisor)  
Intermediate Rater (Executive Secretary)  
Senior Rater (DAPNSA)  
  
Enlisted: E-6 and Above  
Rater (Immediate Supervisor)  
Indorser (APNSA)  
  
E-5 and Below  
Rater (Immediate Supervisor)  
Indorser (DAPNSA)

### Air Force

Officer: O-4/CW3 and Above  
Rater (Immediate Supervisor)  
Additional Rater (DAPNSA)  
Indorser (APNSA)  
(Indorser also serves as the Evaluator for O-6's)  
  
O-3/CW2 and Below  
Rater (Immediate Supervisor)  
Additional Rater (Executive Secretary)  
Indorser (DAPNSA)  
  
Enlisted: E-6 and Above  
Rater (Immediate Supervisor)  
1st Indorser (APNSA)  
  
E-5 and Below  
Rater (Immediate Supervisor)  
1st Indorser (DAPNSA)

### Marines

Officer: O-4 and Above  
Reporting Officer (Immediate Supervisor)  
Reviewing Officer (APNSA)

O-3 and Below  
Reporting Officer (Immediate Supervisor)  
Reviewing Officer (DAPNSA)

### Navy

Officer: O-4/CW3 and Above  
Reporting Senior (APNSA)

O-3/CW2 and Below  
Reporting Senior (DAPNSA)

Enlisted: E-6 and Above  
Reporting Senior (APNSA)

E-5 and Below  
Reporting Senior (DAPNSA)

### Summary

The above described procedures have worked out satisfactorily in practice for the past one and a half years. They conform to all Service requirements, and avoid the "inflated" senior endorsements that had prevailed previously, under which the APNSA personally endorsed all fitness reports irrespective of rank or responsibility. They have made for a fair and predictable evaluation system, and one that has gained acceptance of ~~detailed~~ military personnel.

the and support

*Detained to the NSC.*

OA  
orig.s !  
for:

Document Originally  
Attached to  
Following Page

DECEMBER 12, 1977.

Office of the White House Press Secretary

---

THE WHITE HOUSE

## EXECUTIVE ORDER

#12028 - -

OFFICE OF ADMINISTRATION IN THE  
EXECUTIVE OFFICE OF THE PRESIDENT

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the National Security Act of 1947, as amended, Reorganization Plan No. 2 of 1970 (5 U.S.C. App. II), Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), and Reorganization Plan No. 1 of 1977 (42 F.R. 56101 (October 21, 1977)), and as President of the United States of America, in order to effectuate the establishment of the Office of Administration in the Executive Office of the President, it is hereby ordered as follows:

Section 1. The establishment, provided by Section 2 of Reorganization Plan No. 1 of 1977 (42 F.R. 56101), of the Office of Administration in the Executive Office of the President shall be effective, as authorized by Section 7 of that Plan, on December 4, 1977.

Sec. 2. The Director of the Office of Administration, hereinafter referred to as the Director, shall report to the President. As the chief administrative officer of the Office of Administration, the Director shall be responsible for ensuring that the Office of Administration provides units within the Executive Office of the President common administrative support and services.

Sec. 3. (a) The Office of Administration shall provide common administrative support and services to all units within the Executive Office of the President, except for such services provided primarily in direct support of the President. The Office of Administration shall, upon request, assist the White House Office in performing its role of providing those administrative services which are primarily in direct support of the President.

(b) The common administrative support and services provided by the Office of Administration shall encompass all types of administrative support and services that may be used by, or useful to, units within the Executive Office of the President. Such services and support shall include, but not be limited to, providing support services in the following administrative areas:

(1) personnel management services, including equal employment opportunity programs;

(2) financial management services;

more

(OVER)

- (3) data processing, including support and services;
- (4) library, records, and information services;
- (5) office services and operations, including: mail, messenger, printing and duplication, graphics, word processing, procurement, and supply services; and
- (6) any other administrative support or service which will achieve financial savings and increase efficiency through centralization of the supporting service.

(c) Administrative support and services shall be provided to all units within the Executive Office of the President in a manner consistent with available funds and other resources, or in accord with Section 7 of the Act of May 21, 1920 (41 Stat. 613), as amended (31 U.S.C. 686, referred to as the Economy Act).

Sec. 4. (a) Subject to such direction or approval that the President may provide or require, the Director shall:

- (1) organize the Office of Administration;
- (2) employ personnel;
- (3) contract for supplies or services; and
- (4) do all other things that the President, as head of the Office of Administration, might do.

(b) The Director shall not be accountable for the program and management responsibilities of units within the Executive Office of the President; the head of each unit shall remain responsible for those functions.

Sec. 5. The primary responsibility for performing all administrative support and service functions of units within the Executive Office of the President shall be transferred and reassigned to the Office of Administration; except to the extent those functions are vested by law in the head of such a unit, other than the President; and except to the extent those functions are performed by the White House Office primarily in direct support of the President.

Sec. 6. The records, property, personnel, and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred or reassigned by this Order from units within the Executive Office of the President to the Office of Administration, shall be transferred to the Office of Administration.

Sec. 7. (a) The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

more

(b) Such transfers shall become effective on April 1, 1978, or at such earlier time or times as the Director of the Office of Management and Budget determines, after consultation with the Director of the Office of Administration and other appropriate units within the Executive Office of the President.

JIMMY CARTER

THE WHITE HOUSE,  
December 12, 1977.

# # # # #

---

# President's Reorganization Project

---



**Executive Office  
of The President**

**April 1977**



PRESIDENT'S  
REORGANIZATION  
PROJECT

WASHINGTON, D.C. 20503

INFORMATION PACKET

FOR FURTHER INFORMATION, CONTACT:

Harrison Wellford, Executive Associate Director, OMB...395-3864  
A. D. Frazier, Jr., Project Director.....395-6190  
Fred Droz, Public Awareness Liaison.....395-5136/5014  
Walt Wurfel, Deputy White House Press Secretary.....456-2100

CONTENTS

White House Fact Sheet  
Historical perspective on EOP  
Description of EOP units  
Biographies

APRIL 5, 1977

Office of the White House Press Secretary

-----  
(FACT SHEET ON EXECUTIVE OFFICE OF THE PRESIDENT REORGANIZATION)

INTRODUCTION

In keeping with his pledge to make the government work more effectively, the President has ordered a complete reorganization study of the Executive Office of the President.

The study is now getting underway. It is presently planned that recommendations will go to the President in early June. ||

OBJECTIVES OF REORGANIZATION

The study will work to:

- \* Insure that the Executive Office of the President is organized and staffed to meet the requirements of the President.
- \* Propose a more efficient and effective organization of units within the Executive Office of the President.
- \* Promote open and responsive government.

AGENCIES AND UNITS INVOLVED

See attached table.

PROJECT PROCEDURES

The project will be accomplished in four phases: fact-finding, evaluation, proposal and review of alternatives, and final recommendations to the President. ||

Throughout the process, the public, non-government organizations and groups, government officials, and unit personnel will be consulted.

PROJECT ADMINISTRATION

Harrison Wellford, Executive Associate Director, OMB  
A. D. Frazier, Jr., Project Director  
Frank Wilson, Deputy Project Director  
Fred Droz, Public Awareness Liaison

April 1977.

HISTORICAL PERSPECTIVE ON THE EXECUTIVE OFFICE  
OF THE PRESIDENT

The Executive Office of the President (EOP) provides the institutional support to the President in the fulfillment of his constitutionally and legislatively mandated duties. It has grown from a small office created in Franklin D. Roosevelt's administration, concerned largely with budgetary matters, to the present 18 units. The units are concerned with a broad range of policy areas such as: domestic and foreign economy, national security, intelligence, energy, science, environment, and communications.

The Presidents who preceded FDR had no significant White House staff, and no institutionalized support, as we now know it. The staffing arrangements were very ad hoc.

Roosevelt soon realized that existing staffing arrangements for overseeing the Executive Branch were not adequate to meet the new responsibilities that Congress had placed on the President or the electorate's rising expectations of what the Federal Government should accomplish. The country was in the midst of a major economic upheaval, with massive unemployment and international tensions increasing daily. There was considerable popular concern that the Presidency be made more effective by increasing the staff and its skills.

President Roosevelt responded in 1936 by Executive Order, creating the President's Advisory Committee on Administrative Management (Brownlow Committee). It was chaired by Louis Brownlow, Director of the Public Administration Clearinghouse, and included Charles Merriam and Luther Gulick, both prominent figures with extensive experience in government.

The Brownlow Committee report strongly supported the creation of an Executive Office of the President staffed by additional aides. The report was sent to Congress in 1937, and stressed that the need for creating this added organization was not based on potential savings to the taxpayers, but because "the President needs help."

While many of FDR's recommendations were not accepted, Congress did pass the Reorganization Act of 1939, which permitted implementation of most of the President's staffing proposals.

As an example of the difference between the perception of "help" for the President, then and now, the Brownlow Committee suggested that the White House Office be augmented by six

administrative assistants, "possessed of high competence, great physical vigor, and a passion for anonymity." In addition, there should be an Executive Office of the President consisting of "managerial arms" for personnel, fiscal affairs, and planning.

The National Resources Planning Board was established as the planning arm. It had responsibility for coordinating the economic, social, physical, and governmental aspects of public policies involving the use of water, land, and other natural resources. It was abolished in 1943 due to a lack of support for long-range planning.

The most significant effect of the Reorganization Act of 1939 was to give the President authority to transfer certain units to an "EOP" and create other units that were geared toward specific policy responsibilities. For example, the Bureau of the Budget (BoB) was transferred from the Department of the Treasury to the newly created EOP. The significance was that the President's Budget and Executive Branch Departmental programs were now being developed, coordinated, and reviewed by an administrative arm of the President.

Consequently, through the BoB and the National Resources Planning Board, the President had established a continual review process of the major goals of his administration. The President was then able to bring together appropriate expertise to advise him on issues and concerns that were directly related to the functioning of his Office.

The President's White House staff was also increased. Roosevelt then had two types of staff: those whose services to the President were personal, public relations or political; and those in the EOP whose responsibilities to the President were managerial and programmatic in nature. However, policy and program initiatives continued to flow up to the President through departments and agencies, there to be evaluated by his staff resources.

In addition to the Brownlow studies, there were further efforts to reorganize the Executive Branch which included the EOP in their recommendations.

-- The First Hoover Commission (Commission on the Organization of the Executive Branch (1947-49) was chaired by former President Herbert Hoover. This body's recommendations resulted in passage of the Reorganization Act of 1949 which placed the National Security Council and National Security Resources Board in the EOP;

-- The "Rockefeller Committee" (Advisory Committee on Government Organization, 1953-60) was chaired by Nelson Rockefeller, then an Undersecretary at HEW and a Special Assistant to the President. An extension of the Reorganization Act of 1949 and the creation of a special Presidential Science Advisor and Advisory Committee resulted from this group's proposals;

-- The Second Hoover Commission's (1953-55) recommendations resulted in the establishment of more effective managerial and budgeting practices within the Bureau of the Budget. The Commission's study also focused on how best to improve the economy and efficiency of government to eliminate overlapping or duplication of effort;

-- The Price (1964), Heineman (1967), and Lindsay (1968) Task Forces were each concerned with the operations of the Executive Branch of the government. They focused their efforts on studying organizational changes that might increase the effectiveness and responsiveness of government. The recommendations of these task forces influenced a number of internal changes in the EOP. More importantly, these groups had a significant impact on the thinking of a subsequent advisory group, the Ash Council;

-- The President's Advisory Council on Executive Organization, or the "Ash Council", (1969-71) was chaired by Roy Ash, once President of Litton Industries. The Council proposed massive changes within the government by recommending consolidation of several agencies into four large departments. These recommendations were never acted upon, but as a result of other recommendations, the Council on International Economic Policy, and the Domestic Council were formed. In addition, the Bureau of the Budget (BoB) was changed to the present Office of Management and Budget (OMB). It is interesting to note that of the **eighteen** units in EOP, twelve were created since 1969.

The most recent reorganization effort is occurring now in the Carter Administration. A small group of administrative and political analysts is conducting an extensive analysis of the EOP. The analysis focuses on some fundamental questions:

What staff resources does the President need? How should these units and activities be structured and grouped in order to help the President fulfill his duties to the American people? What functions are appropriately carried out within the EOP? How can these functions be performed more effectively? How can EOP operations be carried out more efficiently and economically? How can the EOP become a model for open and responsive government?

EXECUTIVE OFFICE OF THE PRESIDENT

| <u>Agency</u>                            | <u>Current<br/>Director/Chairman</u>                                | <u>Functions</u>                                                                                                                                                  |
|------------------------------------------|---------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| White House Office                       |                                                                     | Provide staff support to the President                                                                                                                            |
| OMB                                      | Bert Lance                                                          | Assists in budget preparation, administration, develop administrative management, coordinating proposed legislation, evaluation efforts, monitor agencies.        |
| Council of Economic Advisers             | Charles Schultze                                                    | Advises on economic developments, recommends economic programs and policy, prepares economic reports.                                                             |
| Council on Environmental Quality         | Charles Warren (designate)                                          | Recommends policies to further environmental quality, analysis of trends in environment, administers environmental impact statement process.                      |
| Council on International Economic Policy | W. Michael Blumenthal                                               | Ensures consistency between domestic and foreign economic policy.                                                                                                 |
| Council on Wage and Price Stability      | Charles Schultze, Co-Chairman<br>W. Michael Blumenthal, Co-Chairman | Monitors the economy with respect to wages, costs, productivity, profits, and prices; review programs, activities of government to determine impact on inflation. |
| Domestic Council                         | Stu Eizenstat                                                       | Formulate and coordinate domestic policy recommendations; assess national needs, review ongoing programs.                                                         |
| National Security Council                | Zbigniew Brzezinski                                                 | Advises with respect to the integration of domestic, foreign and military policies relating to the national security.                                             |

\* Sources: 1976/77 United States Government Manual, Revised May 1, 1976, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D. C. 1976

| Agency                                                        | Current<br>Director/Chairman    | Functions                                                                                                                                                                                                                        |
|---------------------------------------------------------------|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Office of Special<br>Representative for<br>Trade Negotiations | Robert Strauss                  | Supervising and coordinating<br>the trade agreements programs<br>and directing U.S. partici-<br>pation in trade negotiations<br>with other countries.                                                                            |
| Office of Telecommuni-<br>cations Policy                      | (vacant)                        | Establishes policies and pro-<br>grams pertaining to communi-<br>cations matters; emergency<br>mobilization plans for com-<br>munications resources.                                                                             |
| Office of Science and<br>Technology Policy                    | Dr. Frank Press<br>(designate)  | Scientific, engineering and<br>technological analysis on<br>government programs; advises<br>on scientific and technologi-<br>cal considerations in areas<br>of national concern; coordi-<br>nates research and develop-<br>ment. |
| Office of Drug Abuse<br>Policy                                | Dr. Peter Bourne<br>(designate) | Recommends on objectives,<br>policies and priorities for<br>Federal drug abuse functions<br>and coordinates functions.                                                                                                           |
| Economic Policy<br>Group                                      | W. Michael Blumenthal           | Studies and recommends policy<br>options on a wide variety of<br>domestic and foreign economic<br>issues.                                                                                                                        |
| Energy Resources<br>Council                                   | Dr. James Schlesinger           | Coordination of energy policy<br>matters; broad policy<br>formulation                                                                                                                                                            |
| Federal Property<br>Council                                   | Bert Lance<br>(Ex Officio)      | Reviews all Federal real<br>property policies and recom-<br>mends necessary reforms,<br>modifications, or initiatives.<br>Dispute resolution on real<br>property disposal.                                                       |
| Office of Federal<br>Procurement Policy                       | (vacant)                        | To improve the economy,<br>efficiency, and effectiveness<br>of the procurement policies,<br>regulations, procedures, and<br>forms.                                                                                               |

| Agency*                                               | Current<br>Director/Chairman | Functions                                                                                                                                                                                       |
|-------------------------------------------------------|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Intelligence Over-<br>sight Board                     | Robert D. Murphy             | Monitors and reports on compliance of intelligence community with established guidelines; reviews adequacy of internal guidelines and activities that raise questions of legality or propriety. |
| President's Foreign<br>Intelligence Advisory<br>Board | Leo Cherne                   | Advises with respect to effectiveness with which intelligence community is meeting current and future needs.                                                                                    |

Other Areas Included in Study:

|                                                                                                        |                                            |                                                                               |
|--------------------------------------------------------------------------------------------------------|--------------------------------------------|-------------------------------------------------------------------------------|
| Special Assistance<br>to the President                                                                 | Dick Moe                                   | Provides staff support to maintain Office of the Vice President.              |
| Executive Residence                                                                                    | Rex Scouten<br>(Chief Usher)               | Provide and maintain the official residence of the President and family.      |
| Official Residence of<br>the Vice President                                                            | Graham Claytor, Jr.<br>(Secretary of Navy) | Provide and maintain the official residence of the Vice President and family. |
| Various Advisory Committees<br>and Commissions Related<br>to the Executive Office<br>of the President. |                                            |                                                                               |

# Withdrawal/Redaction Sheet

## (George Bush Library)

| Document No.<br>and Type | Subject/Title of Document    | Date | Restriction | Class. |
|--------------------------|------------------------------|------|-------------|--------|
| 02. Paper                | Personal information (2 pp.) | n.d. | (b)(6)      |        |

**Collection:**

**Record Group:** Bush Presidential Records  
**Office:** National Security Council  
**Series:** H-Files  
**Subseries:** Transition Files  
**WHORM Cat.:**  
**File Location:** NSC Procedural Manual - Binder 4 [1]

|                                     |                                |
|-------------------------------------|--------------------------------|
| <b>Date Closed:</b> 9/4/2019        | <b>OA/ID Number:</b> 99017-008 |
| <b>FOIA/SYS Case #:</b> 2019-1493-S | <b>Appeal Case #:</b>          |
| <b>Re-review Case #:</b>            | <b>Appeal Disposition:</b>     |
| <b>P-2/P-5 Review Case #:</b>       | <b>Disposition Date:</b>       |
| <b>AR Case #:</b>                   | <b>MR Case #:</b>              |
| <b>AR Disposition:</b>              | <b>MR Disposition:</b>         |
| <b>AR Disposition Date:</b>         | <b>MR Disposition Date:</b>    |

### RESTRICTION CODES

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

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

**Deed of Gift Restrictions**

- C(1) Closed by Executive Order 13526, governing access to national security information
- C(2) Closed by statute or by the agency which originated the information
- C(3) Closed in accordance with restrictions contained in donor's deed of gift [formerly listed as only C]
- PRM. Removed as a personal record misfile

**Presidential Records Act - [44 U.S.C. 2204(a)]**

- P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]

---

# President's Reorganization Authority

---



**April 1977**



PRESIDENT'S  
REORGANIZATION  
PROJECT

WASHINGTON, D.C. 20503

IF YOU HAVE ANY QUESTIONS THAT ARE  
NOT ADDRESSED IN THE ATTACHED BOOKLET,  
OR IF YOU WOULD LIKE FURTHER INFORMATION  
ON THE PRESIDENT'S REORGANIZATION  
AUTHORITY, PLEASE CONTACT THE OFFICE OF  
MANAGEMENT AND BUDGET, CONGRESSIONAL  
LIAISON, AT 395-4657.

## TABLE OF CONTENTS

|                                                                    | <u>Page</u> |
|--------------------------------------------------------------------|-------------|
| President's Signing Statement                                      | 1-2         |
| Press Release                                                      | 3-4         |
| President's Reorganization Project                                 | 5-8         |
| Questions and Answers on the President's<br>Reorganization Project | 9-14        |
| The Executive Branch Today                                         | 15-17       |
| Reorganization Act of 1977 (S. 626)                                | Appendix 1  |
| Selected References on Reorganization                              | Appendix 2  |
| Reorganization Plan Authority Background                           | Appendix 3  |

April 6, 1977

Office of the White House Press Secretary  
-----THE WHITE HOUSESTATEMENT BY THE PRESIDENT ON  
SIGNING THE REORGANIZATION ACT OF 1977

Today, I am signing legislation which will permit us to submit reorganization plans to the Congress over the next three years. The reorganizations proposed in the plans will go into effect unless disapproved by Congress within 60 days.

As I have stated on many occasions, my Administration is determined to reorganize and streamline the executive branch of our government. This is one of the ways in which I plan to fulfill my commitment to the American people to make government more responsive, efficient, and open. Reorganization Authority provides one time-tested and efficient way to bring about these needed improvements.

Although the bill before me extends the Reorganization Authority for three years instead of the four-year period I requested of Congress, it does provide some flexibility that has not been available to other Presidents. For the first time in the history of the authority, we can amend a reorganization plan while it is before Congress. Previously, a sound plan could have been rejected because no one could make minor but critical changes. In addition, the Congress has removed the limitation which previously permitted a President to submit only one plan every 30 days. This means that we can move more rapidly in presenting our reorganization proposals.

The reorganization process which is set into motion today will be an open one. We intend to involve the Congress, State and local governments, and individual groups and citizens who will be affected by change. We shall depend on public awareness and participation to help us pinpoint problems, to originate ideas and solutions, and to provide reactions to various options developed by reorganization study teams which are already at work. In fact, I have asked that a study of the Executive Office of the President be undertaken immediately, and the reorganization project within the Office of Management and Budget is beginning that project now.

The reorganization program will make a searching examination of the entire Federal structure. The program will be directed by Bert Lance who shares my enthusiasm for and serious commitment to the goal of making government work better.

I do plan to give my personal attention and support to the entire reorganization program. Reorganization of the Federal Government is not a simple task. It will take energy, time, and, above all, active cooperation among the executive branch, the Congress and most importantly, the American people. We are here to serve the public, and I intend that this government will be responsive to their needs and provide services to them in as efficient a manner as possible.

April 6, 1977

## Office of the White House Press Secretary

THE WHITE HOUSE

President Carter today signed into law the Reorganization Act of 1977 and announced plans for a "searching examination of the entire government structure," starting with his own office.

The Act gives the President authority to propose to Congress reorganization plans that will take effect 60 days later unless rejected by either the House or Senate.

The President stressed that Congress, State and local officials, and private citizens and groups will be involved at every stage of the reorganization process.

Bert Lance, Director of the Office of Management and Budget which will coordinate the effort, told the press that major initiatives are already underway. One is a critical view of the 18 agencies now in the Executive Office of the President. "It is our intention to examine each element closely to insure it requires Presidential attention," Lance said.

Like the Executive Office project, reorganization recommendations will be developed by special teams of Federal employees from OMB and agencies being reorganized, as well as experts from the private sector.

Lance said that OMB, rather than an outside commission, is coordinating the effort to assure that budget and organization decisions are linked, and to provide staying power for what will be a four-year effort. "Reorganization is more than box-shuffling," Lance said, "its objectives will be to make government more open, responsive, and predictable as well as more efficient." Lance repeated the President's pledge that no Federal employees would lose their jobs because of reorganization.

"Previous reorganizations have stressed moving agencies among Cabinet departments. Ours will take a bottom-up approach," said Lance, "looking first at program and people's needs and reworking structure and process to meet those needs."

## PRESIDENT'S REORGANIZATION PROJECT

The President has pledged to make government work better through substantial improvements in the organization and management of the executive branch. This document describes the reorganization program, including its objectives, its operation, and its current status.

### Objectives

The Carter Administration's reorganization program is designed to make the government more responsive, open, accountable and efficient. Its major objectives follow:

- ° ensuring maximum efficiency and economy in government operations;
- ° promoting more effective planning and coordination of government activities;
- ° simplifying government so people--average citizens--can understand it;
- ° making government more responsive to citizens' needs;
- ° opening government's proceedings and documents to the public, subject only to the rights of citizens to privacy and genuine concerns of national security;
- ° reducing fragmentation, overlap, and unnecessary paperwork;
- ° demanding higher levels of performance from government officials by developing incentives for increased productivity;
- ° giving managers the authority necessary to do the job and then holding them accountable;
- ° increasing the predictability and consistency of government actions;
- ° emphasizing those tasks government can do and limiting those it cannot; and
- ° improving the relationships between Federal, State and local governments to ensure a balanced partnership and better coordination.

### Method

A successful reorganization must stress two main themes: careful and comprehensive analysis, and a process which allows

the largest possible number of people to be involved. The President is aware that past reorganization efforts have promised more than they have delivered. After careful study of past efforts, the President has chosen a strategy built around the following premises:

- ° An Incremental Approach: Reorganization proposals will be developed and implemented over a four-year period. There is no grand design for restructuring the entire government at one time.
- ° Priority Planning: Initial projects have been chosen to fulfill major campaign commitments. For example, these include creation of a department of Energy, streamlining the Executive Office of the President and civil rights enforcement activities, and consolidation of consumer advocacy agencies. Later initiatives will be developed by functional area study teams which will do a comprehensive review of government agencies and programs. The result of their first effort will be an agenda of projects for future action.
- ° Program Analysis from the Bottom Up: Most past reorganization efforts have failed to address problems at the program level where government meets the people. This analysis will begin with identification and analysis of failures at the program level.
- ° Close Working Relationship with the Congress: Reorganization proposals cannot be developed in a political vacuum. The Congress and its staff are a primary source of information and advice. They will be asked to participate in the development of alternatives and recommendations.
- ° Public Involvement: In sharp contrast to earlier reorganization efforts, the program will include a strong public awareness component to involve, inform and win the support of important groups and the public generally. We expect the public to be of help in identifying problems, suggesting changes, and providing reaction to tentative proposals.
- ° Department and Agency Participation: The officials charged with implementing reorganization plans must be involved in their development. Department and agency staff will participate on project teams. Department and agency heads will review all phases of the study process and review and comment on draft recommendations.

## Project Organization

Executive Committee: A top level group responsible for advising the President on all aspects of the reorganization effort, including study priorities and final recommendations.

Reorganization Advisory Group: A group of individuals with a broad range of backgrounds and skills responsible for ensuring public involvement, developing ideas, and providing independent advice.

Reorganization and Management Staff: An OMB staff consisting of careerists and temporary employees recruited for the life of the project who are responsible for conducting reorganization studies, including analysis, preparation of options and recommendations, and follow-through with the Congress. The core staff will be supplemented by borrowing agency employees, State and local government employees.

QUESTIONS AND ANSWERS ON  
THE PRESIDENT'S REORGANIZATION PROJECT

Q. How will you approach reorganizing the government?

A. Three main themes distinguish our approach to reorganizing the government:

- A step-by-step incremental process: We will carry out reorganization by studying and implementing changes through separate but related projects over a four-year period.
- A bottom-up perspective: In most cases, our analysis will begin where the government meets the people - at the program level. Where failures in programs have organizational remedies, we will act. Simply shuffling boxes at the top will not achieve the kind of meaningful change promised by the President.
- An open process: To be effective, reorganization proposals should not be developed in secret. We will involve the Congress, Federal employees, and the people in pinpointing problems and developing recommendations.

Q. How will your staff proceed with the reorganization effort?

A. Our organization studies staff will be grouped by six functional areas: National Security and International Affairs, Human Resources, Economic Development, Natural Resources and Energy, Regulatory Reform, and General Government. We will also deal with administrative management and intergovernmental relations issues. The initial step in our process will be agenda setting, followed by conduct of the studies and implementation.

Q. Since you can't abolish Departments or independent regulatory commissions under the reorganization act, are they going to be excluded from your studies?

A. No. The authority signed into law today is only one tool available to the reorganization project. We also intend to apply management systems like zero-base budgeting and "sunset" to all programs. Many changes in departments can be effected by administrative action. Finally, we shall go to Congress with specific legislative proposals if they are needed as we have already done with the Department of Energy.

- Q. How does the prohibition on eliminating statutory programs by Reorganization Plans affect the project.
- A. It has no impact. Historically, few statutory programs have ever been abolished by Reorganization Plan. Statutory programs normally change through legislation and the normal authorization - appropriation process.
- Q. Is there a relationship between the reorganization project and zero-base budgeting?
- A. Definitely. They share the same bottom-up rationale. We anticipate that many organizational issues will surface as program managers start to analyze and justify functions in zero-base budget development. The simplification of structure and elimination of unneeded and unproductive programs will be the end products of these complementary thrusts.
- Q. Aren't there legal questions on the constitutionality of the one-house veto provision of the Reorganization Act of 1977.
- A. The Attorney General has advised the President that the reorganization plan process is constitutional. Presidents Truman, Eisenhower, Kennedy, and Nixon utilized this authority containing a one-house veto provision and no serious constitutional challenge was made. Moreover, the legislative veto does preserve the relative powers of President and Congress since no plan would become effective if either House objects.
- Q. Will the Administration's commitments to openness extend to the reorganization project?
- A. Hopefully, we have learned from the failure of previous reorganization proposals which were developed in a political vacuum or with only superficial outside input. A hallmark of our approach will be consultation with Congress, affected interest groups, agency personnel, State and local government officials, and the public. There will be a strong public awareness and involvement component, conducted primarily by the President's Reorganization Advisory Group, which we feel is essential to the integrity of the reorganization effort.
- Q. Is the public going to be able to participate in the development of reorganization proposals?

- A. Public hearings and the solicitation of views of affected groups will be part of the program. A public awareness staff in the project will be responsible for developing channels of two-way communication at each stage of the process. The Reorganization Advisory Group will be responsible for making sure that adequate communication is taking place.
- Q. Won't an "open" reorganization process which involves the Congress and special interest groups tip your hand and stir up more opposition to your plans?
- A. No. Opposition is most likely when Congress and interest groups are surprised by plans to which they have not contributed. An open process, by giving all interests a chance to be heard, should result in greater support in the long run.
- Q. Isn't 60 days a very short time for Congressional review?
- A. The normal time period is 60 days, but we do not anticipate sending up a plan without extensive advance consultation with the Congress and all affected parties.
- Q. Will your reorganization address only structural issues?
- A. We will address more than changes on an organization chart. Our efforts will include coordinated reforms in structure, cost control, productivity, budgeting, personnel policy, and intergovernmental relations.
- Q. What programs or areas have you targeted for reorganization?
- A. We have no master list or hidden agenda. The President has, however, identified several areas for early action, including energy, oil spill pollution control, consumer affairs, civil rights, advisory committees, and the Executive Office. We will choose our next projects after a comprehensive review of the Federal Government. This review will be conducted by six study teams, each of which will be responsible for specific functional areas of the government.
- Q. Do you support creation of a Department of Education? Is the Veterans Administration an early target of reorganization?
- A. We have not begun the reorganization with preconceived notions. Answers to questions on specific agencies must await further analysis.

Q. Will the reorganization project treat the civil service system as a given?

A. No. Effective management of Federal programs is not possible if the rigidities of the existing system go unchallenged. The Reorganization Project, working jointly with the chairman of the Civil Service Commission, will conduct a major study of the civil service system.

Q. How will the reorganization project affect the average citizen?

A. In several ways. He or she can anticipate that the efficiency and quality of government service will be improved. Red tape and unnecessary reporting will be reduced. Simplification of government will mean that citizens can more easily understand and relate to it.

Q. How will the reorganization project affect the jobs of Federal employees?

A. The President has assured career employees that no one would lose his or her job or be forced to take a cut in salary or grade as a result of reorganization. When reductions in positions become necessary they will be accomplished through the normal attrition process, not by cutbacks in existing personnel.

Q. What will be the first reorganization plan you will submit and how many will you submit in 1977 and in the following two years?

A. The President has ordered a comprehensive review of his own household - the Executive Office. Its reorganization will be the subject of the first plan. The timing of future plans will become clear as our study teams complete their survey of reorganization options.

Q. What is your target date for completing the Reorganization Project?

A. We do not start out with one integrated grand design which we plan to present to Congress all at once. We will move ahead on a step-by-step, project-by-project basis staged over a four-year period. This approach also allows the Congress to have more time to study each proposal individually and permits us to gather ideas from the civil servants, interest groups, and the public.

- Q. Why has responsibility for the reorganization program been assigned to the Office of Management and Budget?
- A. By placing the reorganization project in OMB we have assured that the effort will have a strong institutional base to give it staying power over the next four years. Second, this arrangement allows us to take full advantage of the natural linkage between budget and organizational changes. It will aid the planning and implementation of the reorganization effort. Third, OMB already has a core staff of knowledgeable individuals who can help with this effort.
- Q. Isn't "Cabinet" government inconsistent with a reorganization project coordinated and directed by the Office of Management and Budget?
- A. As you know, the President selected Cabinet officers and agency heads with the utmost confidence in their ability to manage. They know what their responsibilities are, and are aware of how the President wants the reorganization process to be conducted. Central coordination and study of cross-cutting functional areas by OMB are essential and will not trespass on the clear cut responsibilities of the Secretaries. Internal department reorganization and management improvements are primarily the responsibility of the agency heads.
- Q. Do you intend to hire additional staff for reorganization and who are they?
- A. We intend to make as much use of existing personnel in OMB and the agencies as we can. We also intend to borrow people from the private sector - business, citizens groups, universities - to help us on special projects. We have requested a supplemental appropriation which will allow OMB to hire an additional 32 employees for the project. These people will be temporary for the life of the reorganization project. They will not be permanent additions to the OMB staff.
- Q. How much are all these reorganization studies going to cost?
- A. We have requested from Congress a supplemental appropriation of \$1,600,000 for FY 1977. We expect to hire 32 new temporary employees to staff the reorganization program. The budget requested for FY 1978 for the reorganization project is \$2.6 million. Additional support will,

naturally, be required and obtained on a part-time basis from current OMB staff and other government agencies. We are confident that this extra investment will be recovered many times over in greater efficiency and improved service delivery.

## THE EXECUTIVE BRANCH TODAY

The following chart reflects an inventory and categorization of executive branch agencies and other governmental organizations which will be addressed by the President's Reorganization Project. It includes all Federal governmental non-judicial and non-legislative branch units which meet the following criteria. Units which:

- ° were statutorily created; or
- ° were created by Presidential Reorganization Plan or Executive order; or
- ° appear in the President's budget but have no specific statutory authority; or
- ° function with some degree of autonomy; or
- ° are advisory bodies to executive branch agencies or the President.

Official and non-official sources were used in compiling the list of agencies to be studied. Knowledgeable sources within and outside of government were consulted both as to content of the list and the procedure under which the list was compiled. The resultant list reflects their recommendations.

It is important to note that this categorization of organizational elements is not an exhaustive accounting of the whole Federal Government. Instead, it is the definition of the executive branch to be utilized in the reorganization process. For this purpose, the executive branch is divided into categories of agencies reporting to the President and other governmental organizations.

Examples of categories shown on the following chart include:

### EXECUTIVE BRANCH AGENCIES

"Executive Office of the President," e.g., the Office of Management and Budget, the National Security Council, and the Council of Economic Advisors.

"Cabinet-Level Departments," e.g., the U.S. Department of Agriculture, Department of State, and Department of Commerce.

"Sub-Agencies" of Cabinet Departments include such units as the Soil Conservation Service in Agriculture, the Agency for International Development within State, and the Census Bureau within Commerce.

"Independent Executive Agencies" include, for instance, the Veterans Administration, the Environmental Protection Agency, and regulatory commissions such as the Federal Trade Commission.

"Sub-Agencies" of Independent Executive Agencies are the Department of Veterans Benefits in the Veterans Administration, the Office of Toxic Substances in the Environmental Protection Agency, and the Bureau of Consumer Protection in the Federal Trade Commission.

"Other Committees, Commissions and Boards" include such independent entities as the Navajo and Hopi Relocation Commission, the National Capital Planning Commission, and the Marine Mammal Commission.

"Presidential Advisory Committees" include groups like the Presidential Council on Physical Fitness and Sports and the Federal Council on Aging.

Both Cabinet-level Departments and Independent Executive Agencies also typically have multiple Advisory Committees, e.g., the Gila National Forest Grazing Advisory Board in the Department of Agriculture, and the National Drinking Water Advisory Council in the Environmental Protection Agency.

#### OTHER GOVERNMENTAL ORGANIZATIONS

"Interagency and Interdepartmental Committees," e.g., the Interagency Committee on Antarctica and the Interdepartmental Committee on the Status of Women.

"Wholly-Owned Government Corporations," e.g., the Legal Services Corporation and the Tennessee Valley Authority.

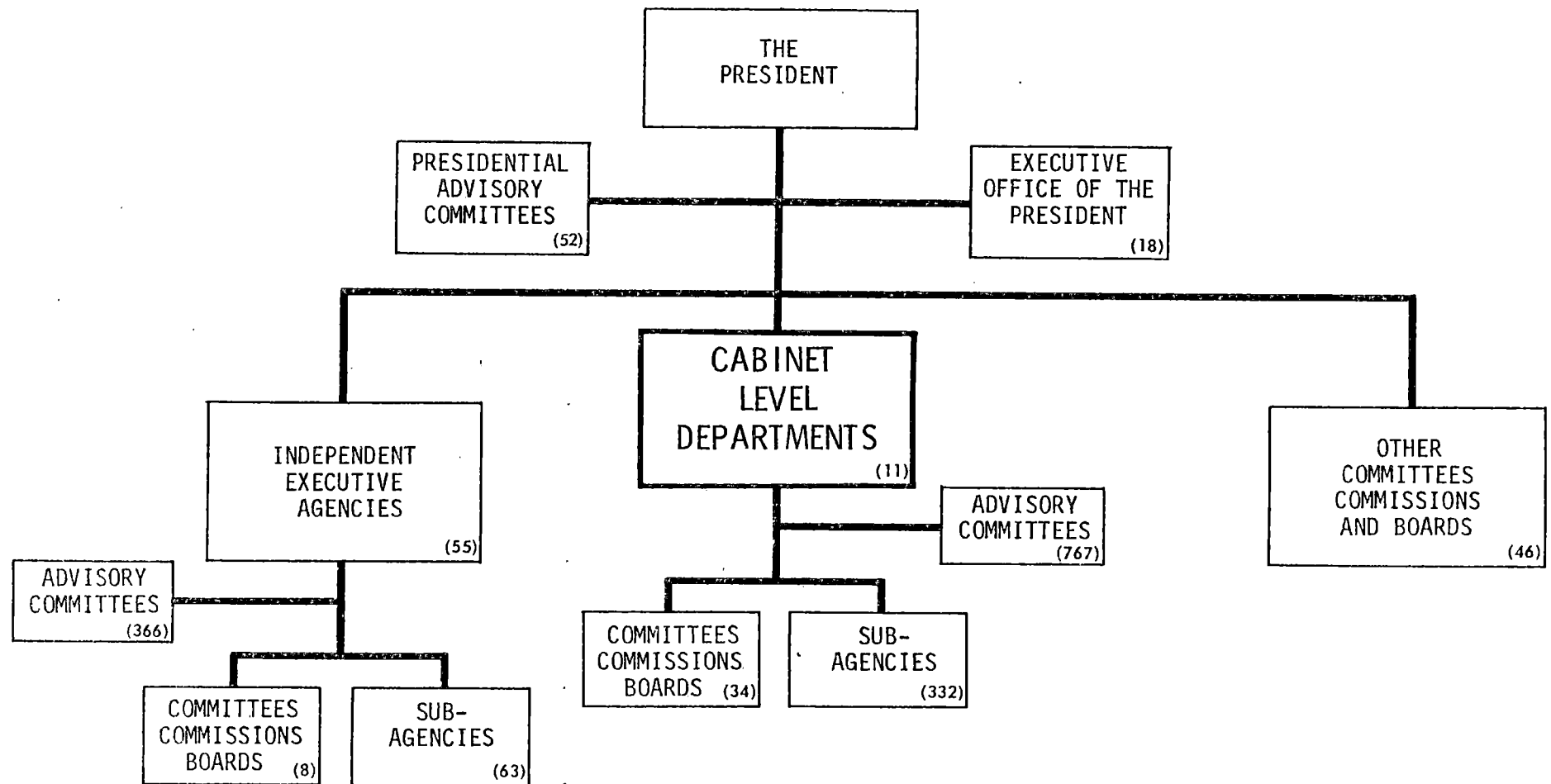
"Mixed Ownership Government Corporations," e.g., Consolidated Rail Corporation and the Rural Telephone Bank.

"Quasi-Official Organizations," e.g., the U.S. Postal Service and the National Academy of Sciences.

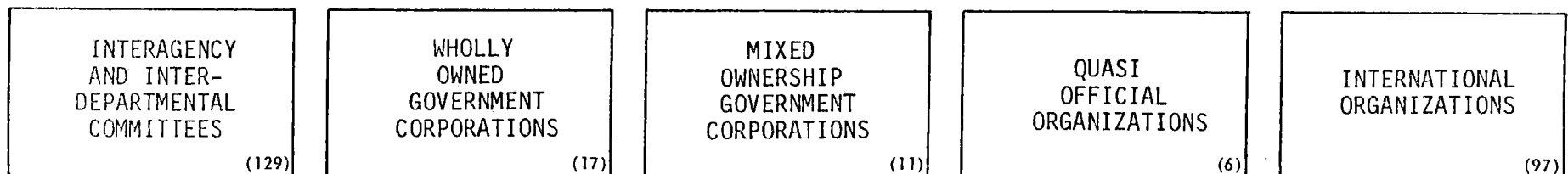
"International Organizations" are both bilateral (e.g., the International Boundary Commission, with Canada) and multilateral (e.g., the Pan American Health Organization).

# THE EXECUTIVE BRANCH

## EXECUTIVE BRANCH AGENCIES



## OTHER GOVERNMENTAL ORGANIZATIONS



## AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday, the fourth day of January,  
one thousand nine hundred and seventy-seven*

### An Act

To reestablish the period within which the President may transmit to the Congress plans for the reorganization of agencies of the executive branch of the Government, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Reorganization Act of 1977".*

SEC. 2. Chapter 9 of title 5, United States Code, is amended to read as follows:

#### "Chapter 9.—EXECUTIVE REORGANIZATION

"Sec.

"901. Purpose.

"902. Definitions.

"903. Reorganization plans.

"904. Additional contents of reorganization plan.

"905. Limitations on powers.

"906. Effective date and publication of reorganization plans.

"907. Effect on other laws, pending legal proceedings, and unexpended appropriations.

"908. Rules of Senate and House of Representatives on reorganization plans.

"909. Terms of resolution.

"910. Introduction and reference of resolution.

"911. Discharge of committee considering resolution.

"912. Procedure after report or discharge of committee; debate; vote on final disapproval.

#### "§ 901. Purpose

"(a) The Congress declares that it is the policy of the United States—

"(1) to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;

"(2) to reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Government;

"(3) to increase the efficiency of the operations of the Government to the fullest extent practicable;

"(4) to group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes;

"(5) to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof as may not be necessary for the efficient conduct of the Government; and

"(6) to eliminate overlapping and duplication of effort.

"(b) Congress declares that the public interest demands the carrying out of the purposes of subsection (a) of this section and that the purposes may be accomplished in great measure by proceeding under this chapter, and can be accomplished more speedily thereby than by the enactment of specific legislation.

"(c) It is the intent of Congress that the President should provide appropriate means for broad citizen advice and participation in restructuring and reorganizing the executive branch.

"(d) The President shall from time to time examine the organization of all agencies and shall determine what changes in such organization are necessary to carry out any policy set forth in subsection (a) of this section.

## "§ 902. Definitions

"For the purpose of this chapter—

"(1) 'agency' means—

"(A) an Executive agency or part thereof; and

"(B) an office or officer in the executive branch; but does not include the General Accounting Office or the Comptroller General of the United States;

"(2) 'reorganization' means a transfer, consolidation, coordination, authorization, or abolition, referred to in section 903 of this title; and

"(3) 'officer' is not limited by section 2104 of this title.

## "§ 903. Reorganization plans

"(a) Whenever the President, after investigation, finds that changes in the organization of agencies are necessary to carry out any policy set forth in section 901(a) of this title, he shall prepare a reorganization plan specifying the reorganizations he finds are necessary. Any plan may provide for—

"(1) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of another agency;

"(2) the abolition of all or a part of the functions of an agency, except that no enforcement function or statutory program shall be abolished by the plan;

"(3) the consolidation or coordination of the whole or a part of an agency, or of the whole or a part of the functions thereof, with the whole or a part of another agency or the functions thereof;

"(4) the consolidation or coordination of a part of an agency or the functions thereof with another part of the same agency or the functions thereof;

"(5) the authorization of an officer to delegate any of his functions; or

"(6) the abolition of the whole or a part of an agency which agency or part does not have, or on the taking effect of the reorganization plan will not have, any functions.

The President shall transmit the plan (bearing an identification number) to the Congress together with a declaration that, with respect to each reorganization included in the plan, he has found that the reorganization is necessary to carry out any policy set forth in section 901(a) of this title.

"(b) The President shall have a reorganization plan delivered to both Houses on the same day and to each House while it is in session, except that no more than three plans may be pending before the Congress at one time. In his message transmitting a reorganization plan, the President shall specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of the function. The message shall also estimate any reduction or increase in expenditures (itemized so far as practicable), and describe any improvements in management, delivery of Federal services, execution of the laws, and increases in efficiency of Government operations, which it is expected will be realized as a result of the reorganizations included in the plan.

“(c) Any time during the period of thirty calendar days of continuous session of Congress after the date on which the plan is transmitted to it, but before any resolution described in section 909 has been ordered reported in either House, the President may make amendments or modifications to the plan, consistent with sections 903–905 of this title, which modifications or revisions shall thereafter be treated as a part of the reorganization plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this chapter. The President may withdraw the plan any time prior to the conclusion of sixty calendar days of continuous session of Congress following the date on which the plan is submitted to Congress.

**“§ 904. Additional contents of reorganization plan**

“A reorganization plan transmitted by the President under section 903 of this title—

“(1) may change, in such cases as the President considers necessary, the name of an agency affected by a reorganization and the title of its head, and shall designate the name of an agency resulting from a reorganization and the title of its head;

“(2) may provide for the appointment and pay of the head and one or more officers of any agency (including an agency resulting from a consolidation or other type of reorganization) if the President finds, and in his message transmitting the plan declares, that by reason of a reorganization made by the plan the provisions are necessary;

“(3) shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;

“(4) shall provide for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with a function or agency affected by a reorganization, as the President considers necessary by reason of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which shall have the functions after the reorganization plan is effective; and

“(5) shall provide for terminating the affairs of an agency abolished.

A reorganization plan transmitted by the President containing provisions authorized by paragraph (2) of this section may provide that the head of an agency be an individual or a commission or board with more than one member. In the case of an appointment of the head of such an agency, the term of office may not be fixed at more than four years, the pay may not be at a rate in excess of that found by the President to be applicable to comparable officers in the executive branch, and if the appointment is not to a position in the competitive service, it shall be by the President, by and with the advice and consent of the Senate. Any reorganization plan transmitted by the President containing provisions required by paragraph (4) of this section shall provide for the transfer of unexpended balances only if such balances are used for the purposes for which the appropriation was originally made.

**“§ 905. Limitations on powers**

“(a) A reorganization plan may not provide for, and a reorganization under this chapter may not have the effect of—

“(1) creating a new executive department, abolishing or transferring an executive department or independent regulatory agency, or all the functions thereof, or consolidating two or more executive departments or two or more independent regulatory agencies, or all the functions thereof;

"(2) continuing an agency beyond the period authorized by law for its existence or beyond the time when it would have terminated if the reorganization had not been made;

"(3) continuing a function beyond the period authorized by law for its exercise or beyond the time when it would have terminated if the reorganization had not been made;

"(4) authorizing an agency to exercise a function which is not expressly authorized by law at the time the plan is transmitted to Congress;

"(5) increasing the term of an office beyond that provided by law for the office; or

"(6) dealing with more than one logically consistent subject matter.

"(b) A provision contained in a reorganization plan may take effect only if the plan is transmitted to Congress within three years of the date of enactment of the Reorganization Act of 1977.

#### **"§ 906. Effective date and publication of reorganization plans**

"(a) Except as otherwise provided under subsection (c) of this section, a reorganization plan is effective at the end of the first period of sixty calendar days of continuous session of Congress after the date on which the plan is transmitted to it unless, between the date of transmittal and the end of the sixty-day period, either House passes a resolution stating in substance that the House does not favor the reorganization plan.

"(b) For the purpose of this chapter—

"(1) continuity of session is broken only by an adjournment of Congress sine die; and

"(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

"(c) Under provisions contained in a reorganization plan, any provision thereof may be effective at a time later than the date on which the plan otherwise is effective or, if both Houses of Congress have defeated a resolution of disapproval, may be effective at a time earlier than the expiration of the sixty-day period required by subsection (a).

"(d) A reorganization plan which is effective shall be printed (1) in the Statutes at Large in the same volume as the public laws and (2) in the Federal Register.

#### **"§ 907. Effect on other laws, pending legal proceedings, and unexpended appropriations**

"(a) A statute enacted, and a regulation or other action made, prescribed, issued, granted, or performed in respect of or by an agency or function affected by a reorganization under this chapter, before the effective date of the reorganization, has, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, the same effect as if the reorganization had not been made. However, if the statute, regulation, or other action has vested the functions in the agency from which it is removed under the reorganization plan, the function, insofar as it is to be exercised after the plan becomes effective, shall be deemed as vested in the agency under which the function is placed by the plan.

"(b) For the purpose of subsection (a) of this section, 'regulation or other action' means a regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

“(c) A suit, action, or other proceeding lawfully commenced by or against the head of an agency or other officer of the United States, in his official capacity or in relation to the discharge of his official duties, does not abate by reason of the taking effect of a reorganization plan under this chapter. On motion or supplemental petition filed at any time within twelve months after the reorganization plan takes effect, showing a necessity for a survival of the suit, action, or other proceeding to obtain a settlement of the questions involved, the court may allow the suit, action, or other proceeding to be maintained by or against the successor of the head or officer under the reorganization effected by the plan or, if there is no successor, against such agency or officer as the President designates.

“(d) The appropriations or portions of appropriations unexpended by reason of the operation of the chapter may not be used for any purpose, but shall revert to the Treasury.

**“§ 908. Rules of Senate and House of Representatives on reorganization plans**

“Sections 909 through 912 of this title are enacted by Congress—

“(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by section 909 of this title; and they supersede other rules only to the extent that they are inconsistent therewith; and

“(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

**“§ 909. Terms of resolution**

“For the purpose of sections 908 through 912 of this title, ‘resolution’ means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: ‘That the \_\_\_\_\_ does not favor the reorganization plan numbered \_\_\_\_\_ transmitted to the Congress by the President on \_\_\_\_\_, 19—.’, and includes such modifications and revisions as are submitted by the President under section 903(c) of this chapter. The blank spaces therein are to be filled appropriately. The term does not include a resolution which specifies more than one reorganization plan.

**“§ 910. Introduction and reference of resolution**

“(a) No later than the first day of session following the day on which a reorganization plan is transmitted to the House of Representatives and the Senate under section 903, a resolution, as defined in section 909, shall be introduced (by request) in the House by the chairman of the Government Operations Committee of the House, or by a Member or Members of the House designated by such chairman; and shall be introduced (by request) in the Senate by the chairman of the Governmental Affairs Committee of the Senate, or by a Member or Members of the Senate designated by such chairman.

“(b) A resolution with respect to a reorganization plan shall be referred to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be. The committee shall make its recommendations to the House of Representatives or the

Senate, respectively, within 45 calendar days of continuous session of Congress following the date of such resolution's introduction.

**"§ 911. Discharge of committee considering resolution**

"If the committee to which is referred a resolution introduced pursuant to subsection (a) of section 910 (or, in the absence of such a resolution, the first resolution introduced with respect to the same reorganization plan) has not reported such resolution or identical resolution at the end of 45 calendar days of continuous session of Congress after its introduction, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

**"§ 912. Procedure after report or discharge of committee; debate; vote on final disapproval**

"(a) When the committee has reported, or has been deemed to be discharged (under section 911) from further consideration of, a resolution with respect to a reorganization plan, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

"(b) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to shall not be in order.

"(c) Immediately following the conclusion of the debate on the resolution with respect to a reorganization plan, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final approval of the resolution shall occur.

“(d) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a reorganization plan shall be decided without debate.”.

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*

## SELECTED REFERENCES ON REORGANIZATION

Books

Emmerich, Herbert. Federal Reorganization and Administrative Management. University, Alabama: University of Alabama Press, 1971.

Hess, Stephen. Organizing the Presidency. Washington, D.C.: The Brookings Institution, 1976.

Seidman, Harold. Politics, Position, and Power. 2d. ed. New York: Oxford University Press, 1975.

Articles

Berg, Clifford. "Lapse of Executive Reorganization Authority." Public Administration Review, (March-April 1975, No. 2), pp.195-199.

Cross, Mercer. "Revamping Government: Usually Tough." Congressional Quarterly, (October 16, 1976), pp. 3009-3013.

Mansfield, Harvey C. "Federal Executive Reorganization: Thirty Years of Experience." Public Administration Review, (July-August 1969, No. 4), pp. 332-345.

Mansfield, Harvey C. "Reorganizing the Federal Executive Branch: The Limits of Institutionalization," Law and Contemporary Problems, (summer, 1970, No. 3), p. 461.

Miles, Rufus E., Jr. "Considerations for a President Bent on Reorganization." Public Administration Review, (March-April 1977, No. 2), pp. 155-162.

Legislative Materials

Reorganization Plans (1949-1973).

U.S. Congress. House. Extension of Reorganization Authority of the President. H. Rept. 105 To Accompany H.R. 5045, 95th Cong., 2d sess., 1977.

U.S. Congress. Senate. Extension of Reorganization Authority of the President. S. Rept. 32 To Accompany S. 626, 95th Cong., 2d sess., 1977.

Other Materials

Moe, Ronald C., Government Division, the Library of Congress, Congressional Research Service, Major Issues System. "Executive Reorganization: Issue Brief Number IB75014." Updated November 22, 1976 (computer print-out report).

National Academy of Public Administration. "The President and Executive Management: Summary of a Symposium." October 1976 (mimeograph).

U.S. Office of Management and Budget. Papers Relating to the President's Departmental Reorganization Program. Washington, U.S. Government Printing Office, March 1971. (Revised Edition, February 1972).

## REORGANIZATION PLAN AUTHORITY BACKGROUND

A. Summary of Reorganization Plan Authority

(The 1949 Reorganization Act, as amended)

The Reorganization Act of 1949, as amended, requires the President to examine the organization of all agencies and to determine changes in organization that may be necessary.

It authorizes the President to submit reorganization plans to the Congress in order to accomplish those purposes enumerated in Section 901(a) of the Act, which include:

1. Promoting better execution of the laws and more effective management of the executive branch.
2. Reducing expenditures and increasing efficiency and economy.
3. Reducing the number of agencies with similar functions by consolidation or abolishment.
4. Eliminating duplication and overlapping of functions and responsibilities.

Reorganization plans transmitted to the Congress take effect after 60 calendar days of continuous session of Congress, unless either House of Congress passes a resolution of disapproval. Rules governing the consideration of reorganization plans by each House are provided for in the Act. Plans may be amended or withdrawn by the President while they are before Congress.

Reorganizations Permitted

The Reorganization Act of 1949, as amended, permits reorganization plans to provide for:

1. Transfer or consolidation of the whole or parts of an agency or its functions to another agency.
2. Abolition of an agency or some functions thereof.
3. Consolidation or coordination of a part of an agency or functions thereof with another part of the same agency or with the whole or part of another agency.
4. Abolition of the whole or part of an agency which no longer has a function.

### Limitations on Reorganization

Reorganization plans may not provide for and a reorganization may not have the effect of:

1. Creating, abolishing or transferring an executive department.
2. Consolidating two or more executive departments or all of their functions.
3. Continuing an agency beyond the period authorized by law.
4. Authorizing an agency to exercise a function which is not permitted by law.
5. Increasing the term of an office beyond that provided by law.
6. Abolishing enforcement functions, independent regulatory agencies or a statutory program.

### Reorganization Plans

Reorganization plans must deal with one logically consistent subject matter. A limit of three plans can be pending before Congress at any one time. Reorganization plans that take effect are published in the Federal Register and included in the Statutes at Large. There are currently no provisions for amending a plan once it has been transmitted.

### A Reorganization Plan Must Include:

1. Provision for transfer or disposition of records, property, and personnel.
2. Provision for transfer of unexpended balances of appropriations considered necessary by the President.
3. Provision for terminating the affairs of an agency abolished. Special provisions are made for pending matters affected by a reorganization.
4. Identification of statutory authorities to be abolished and reduction of expenditures anticipated as the result of the plan.

### The Plan May Provide For:

1. Changing the name of an existing agency affected by a reorganization.

2. Appointment and pay of a Commission or individual to head an agency or other officers therein affected by the reorganization. Agency heads and Commissioners are to be appointed for a term of not more than 4 years.

#### Handling of Reorganization Plans

The President shall have a reorganization plan delivered on the same day to each House while it is in session. A reorganization plan is effective after 60 calendar days of continuous session of Congress unless a resolution disapproving the reorganization is passed by majority vote in either House.

#### B. History

The concept of executive initiative and Congressional review of reorganization was first written into the economy measure laws of 1932 and 1933. Presidential reorganization authority enacted in 1939 and 1945 substituted the use of reorganization plans for executive orders and changed the procedures for Congressional veto.

#### Current Act

The most recent legislation providing reorganization authority, the Reorganization Act of 1949 (5 U.S.C. 901-913), as amended, expired on April 1, 1973 and has not been renewed by Congress. Presidential authority to submit reorganization plans was extended for 2 year periods in 1953, 1955, 1957, and 1961. The 1949 Act was extended for 1 year in 1964, for 2 years in 1969, and for 1 year and 4 months in 1971. Thus, the President has had continuous authority under the Act, as amended, except for lapses from June 1, 1959 to April 7, 1961, from June 1, 1963 to July 2, 1964, and from December 31, 1968 to April 1, 1969, and currently with the expiration on April 1, 1973. The most recent extension of the reorganization authority occurred with the passage of P.L. 92-179 on December 10, 1971, which extended the authority until April 1, 1973.

#### Modifications to Authority

Over the years, a number of significant modifications were made to the 1939 and 1949 Reorganization Act. The original Act (1939) required disapproval by both Houses of Congress, but the current authority permits disapproval by action of either House. From 1949 until 1964, the procedure was used to create and dismantle Cabinet-level Departments, a power no longer allowed. Other changes have required that only one plan be submitted within a 30-day period and that no new legal authorities be created through the plan mechanism.

### Use of the Authority

Since passage of the 1939 Reorganization Act, a total of 109 plans have been submitted, of which 86 were implemented, 22 were rejected and one was nullified. Under the 1949 law with subsequent extensions, some 97 plans have been submitted by the President to the Congress, which allowed 78 plans to take effect. Among the recent significant creations have been the Office of Management and Budget, Office of Telecommunications Policy, National Oceanic and Atmospheric Administration, and the Environmental Protection Agency.

The Department of Health, Education, and Welfare was created by a reorganization plan and subsequent efforts to create a Department of Urban Affairs and Housing, now HUD, in 1962 led to amendment of the basic 1949 Act to prohibit the use of reorganization plan authority for reorganizing Cabinet Departments.



**PRESIDENT'S**  
**REORGANIZATION**  
**PROJECT**

WASHINGTON, D.C. 20503

**Proposals for Reorganization of the Executive Office of the President**

**Meeting Agenda - July 7, 1977**

Introduction

Background

EOP Today  
Findings

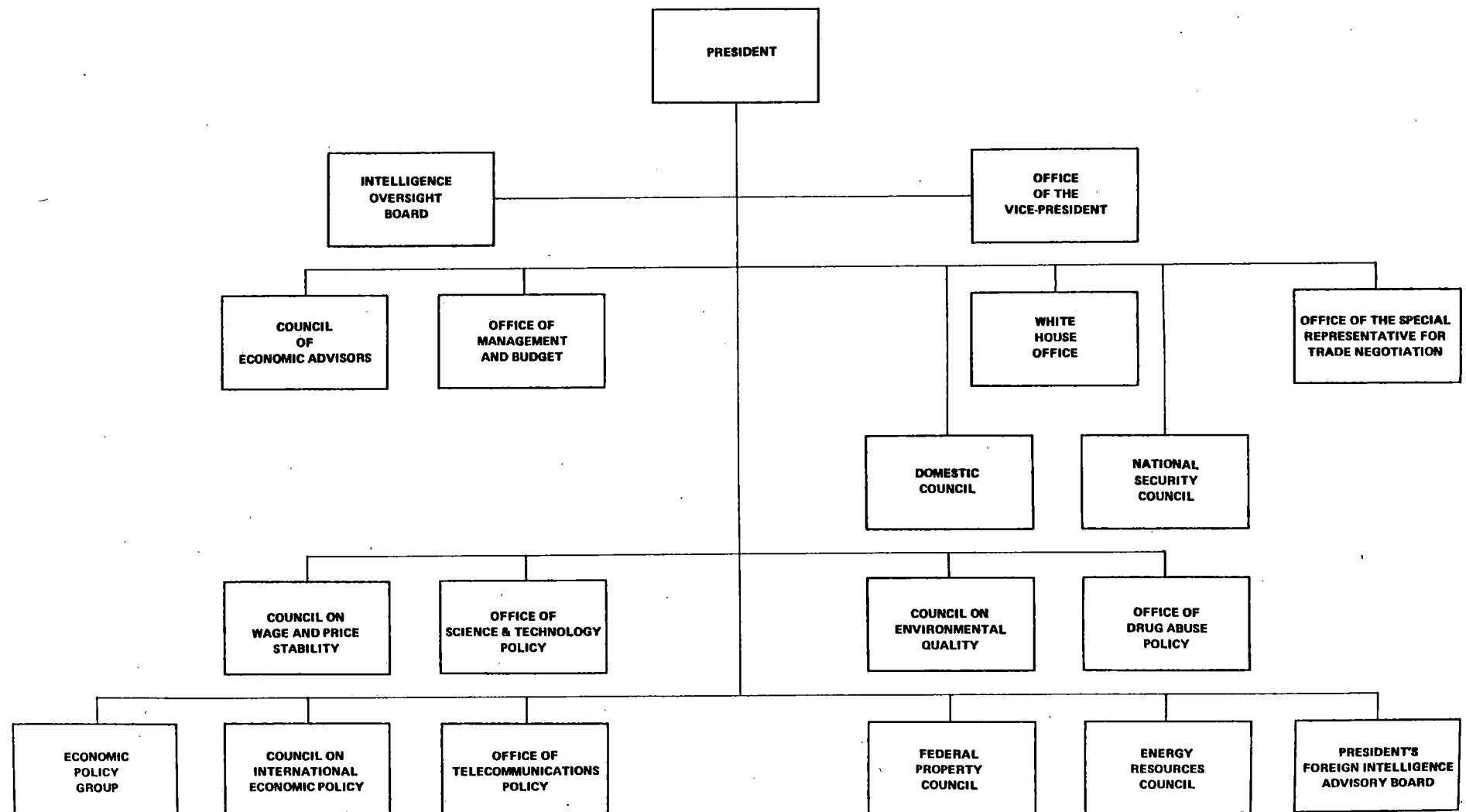
Proposals

Improved Process Management  
EOP Reorganization Options

Legislative Calendar

Discussion

**EXECUTIVE OFFICE OF THE PRESIDENT  
EXISTING EOP (1/20/77)**



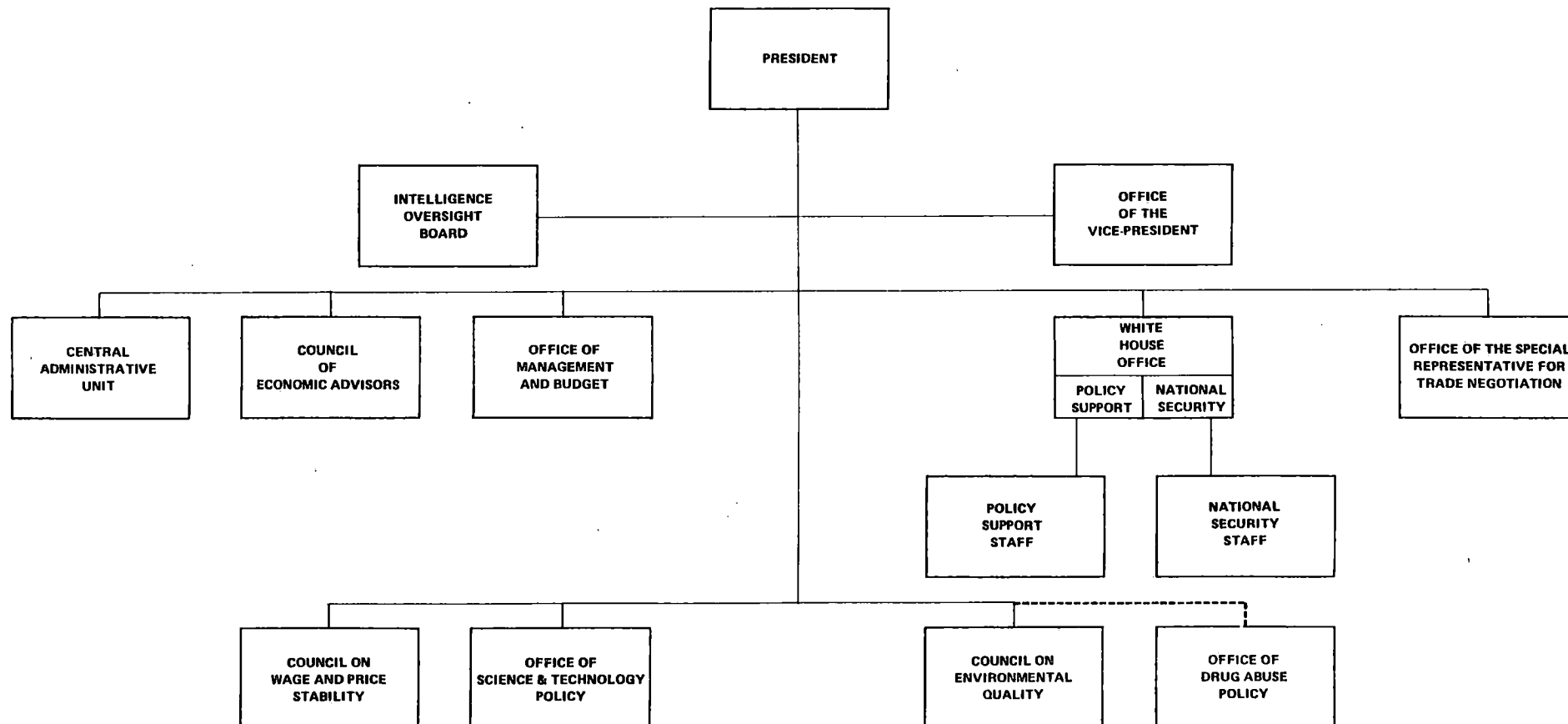
EXECUTIVE OFFICE OF THE PRESIDENT

July 7, 1977

|                                                           | <u>Current Authorization</u> |                  |
|-----------------------------------------------------------|------------------------------|------------------|
|                                                           | <u>Budget</u>                | <u>Positions</u> |
| Office of Management and Budget                           | \$ 29.2 M                    | 709              |
| White House Office                                        | 17.2                         | 485              |
| National Security Council                                 | 3.3                          | 70               |
| Council on Wage and Price Stability                       | 1.9                          | 57               |
| Office of Special Representative<br>for Trade Negotiation | 2.6                          | 49               |
| Council of Economic Advisors                              | 1.9                          | 42               |
| Office of Telecommunications Policy                       | 8.5                          | 41               |
| Council on Environmental Quality                          | 3.3                          | 40               |
| Domestic Council                                          | 1.8                          | 40               |
| Office of Science and Technology Policy                   | 2.3                          | 32               |
| Office of Vice President                                  | 1.3                          | 30               |
| Council on International Economic Policy                  | 1.5                          | 21               |
| Office of Drug Abuse Policy                               | 1.1                          | 10               |
| Intelligence Oversight Board                              | 0                            | 0                |
| Economic Policy Group                                     | 0                            | 0                |
| Federal Property Council                                  | 0                            | 0                |
| Energy Resources Council                                  | 0                            | 0                |
| Other                                                     | 3.5                          | 86               |
| Totals                                                    | \$ 79.1 M                    | 1,712            |

1500

EXECUTIVE OFFICE OF THE PRESIDENT  
OPTION I



UNITS ELIMINATED:

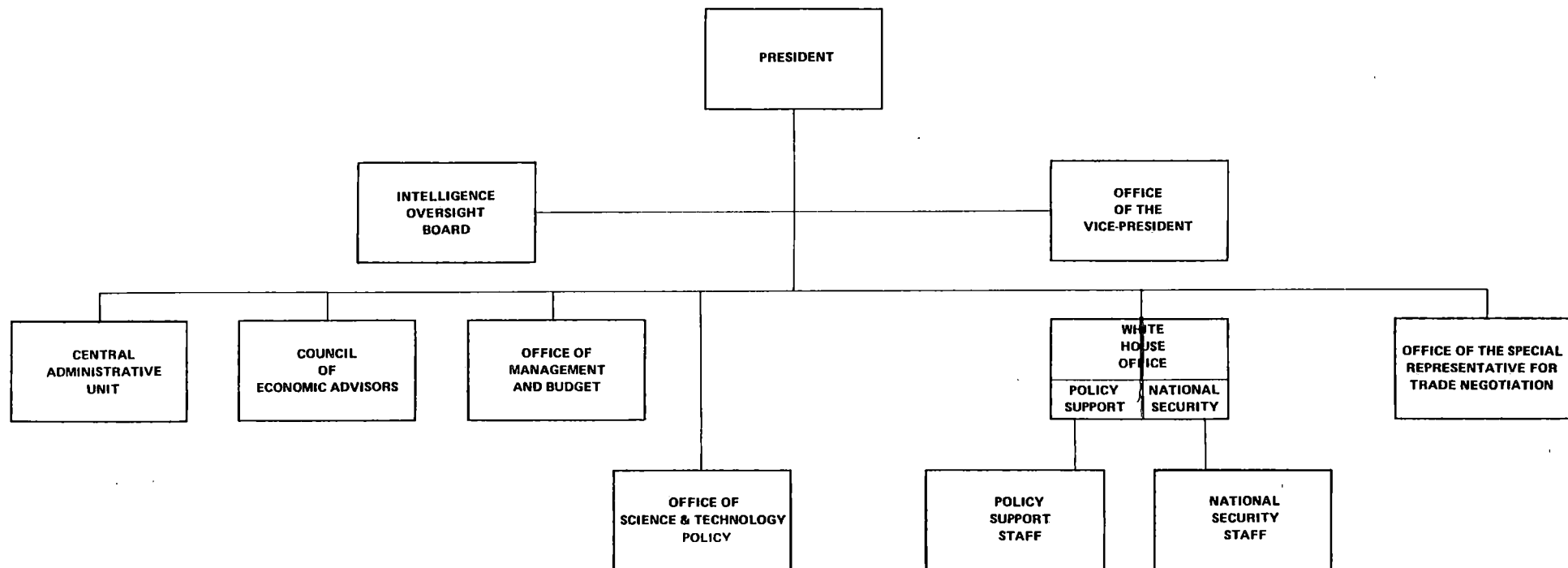
ECONOMIC POLICY GROUP\*  
COUNCIL ON INTERNATIONAL ECONOMIC POLICY  
OFFICE OF TELECOMMUNICATIONS POLICY  
FEDERAL PROPERTY COUNCIL  
ENERGY RESOURCES COUNCIL  
PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD  
OFFICE OF DRUG ABUSE POLICY (IN ONE YEAR)  
DOMESTIC COUNCIL\*

\*STAFF CONSOLIDATED WITH POLICY SUPPORT STAFF

NOTE:

NATIONAL SECURITY COUNCIL AND ECONOMIC POLICY GROUP ARE RETAINED AS CABINET LEVEL COMMITTEES.

EXECUTIVE OFFICE OF THE PRESIDENT  
OPTION II



UNITS ELIMINATED:

COUNCIL ON ENVIRONMENTAL QUALITY  
OFFICE OF DRUG ABUSE POLICY\*\*  
COUNCIL ON WAGE AND PRICE STABILITY

ECONOMIC POLICY GROUP\*

COUNCIL ON INTERNATIONAL ECONOMIC POLICY  
OFFICE OF TELECOMMUNICATIONS POLICY  
FEDERAL PROPERTY COUNCIL  
ENERGY RESOURCES COUNCIL  
PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD  
DOMESTIC COUNCIL\*

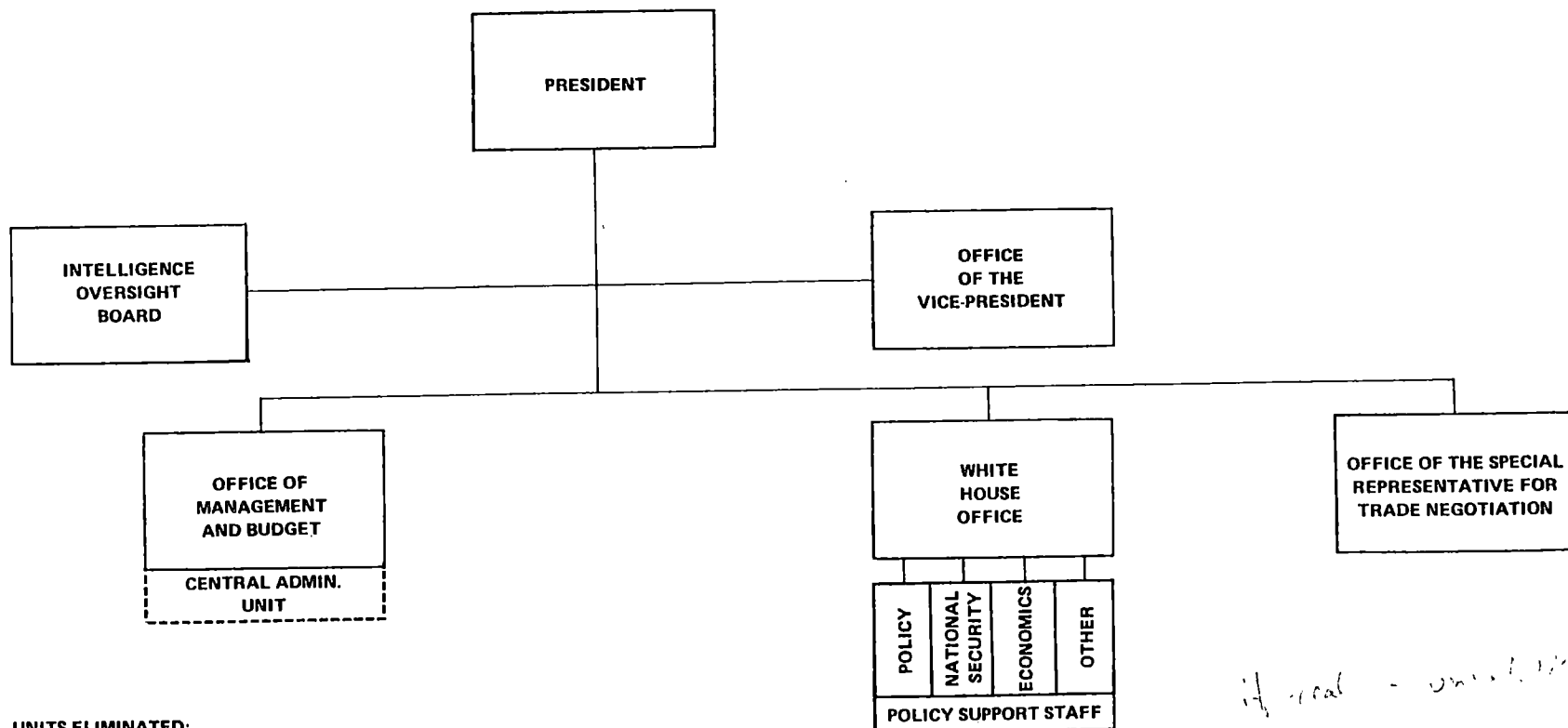
\*STAFF CONSOLIDATED WITH POLICY SUPPORT STAFF

\*\*ADVISER ADDED TO WHITE HOUSE OFFICE

NOTE:

NATIONAL SECURITY COUNCIL, ECONOMIC POLICY GROUP AND COUNCIL ON WAGE AND PRICE STABILITY RETAINED AS CABINET LEVEL COMMITTEES.

**EXECUTIVE OFFICE OF THE PRESIDENT  
OPTION III**



**UNITS ELIMINATED:**

COUNCIL OF ECONOMIC ADVISORS\* \*\*  
 NATIONAL SECURITY COUNCIL STAFF\*  
 OFFICE OF SCIENCE AND TECHNOLOGY POLICY\* \*\*

COUNCIL ON ENVIRONMENTAL QUALITY  
 OFFICE OF DRUG ABUSE POLICY\* \*\*  
 COUNCIL ON WAGE AND PRICE STABILITY

ECONOMIC POLICY GROUP\*  
 COUNCIL ON INTERNATIONAL ECONOMIC POLICY  
 OFFICE OF TELECOMMUNICATIONS POLICY  
 FEDERAL PROPERTY COUNCIL  
 ENERGY RESOURCES COUNCIL  
 PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD  
 DOMESTIC COUNCIL\*

\*STAFF CONSOLIDATED WITH POLICY SUPPORT STAFF

**NOTE:**

NATIONAL SECURITY COUNCIL, ECONOMIC POLICY GROUP AND COUNCIL ON WAGE AND PRICE STABILITY ARE RETAINED AS CABINET LEVEL COMMITTEES.

# PROJECTED LEGISLATIVE SCHEDULE FOR APPROVAL OF EOP REORGANIZATION PLAN

(ASSUMES AUGUST AND OCTOBER RECESSES)

