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Subgroup/Office of Origin: Communications

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Subseries:

OA/ID Number: 7549

FolderID:

Folder Title:

Ireland [Folder 1]

Stack:

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Row:

90

Section:

4

Shelf:

11

Position:

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AMBASÁID NA hÉIREANN

TELEPHONE: (202) 462-3939

FAX: (202) 232-5993



EMBASSY OF IRELAND

2234 MASSACHUSETTS AVE., N.W.

WASHINGTON, D.C. 20008

21 July 1993

The Honorable Thomas F McLarty
Chief of Staff to the President
The White House
1600 Pennsylvania Avenue NW
WASHINGTON DC 20500

*Mark
Many thanks, as
always, for your
advice - guidance and
help. It is greatly
appreciated.*

— — — — —

Dear Chief of Staff

I know how exceptionally (and very successfully) busy you have been in recent times. I therefore decided to send you this short letter rather than ask to call on you.

I know you will be aware that an issue of the deepest worry and concern to the Irish Government in recent times has been the Administration's tax deferral proposals; these would impact very largely on Ireland - though Singapore would also be affected to some degree.

A key element in Ireland's economic strategy, and in our competitiveness within Europe, has been our low (10%) rate of corporation tax; this makes us attractive to U.S. companies seeking to establish a base in the large European Community market. As a result, almost 400 U.S. companies have established in Ireland and have very successful operations there. Moreover, due to the raw materials which they import from their parent plants in the U.S., this - what might be called - strategic alliance between our two countries is creating jobs both in Ireland and in the U.S.; it has also resulted in your having a very favourable trade balance with us.

This 10% rate of corporation tax has, exceptionally, been allowed to Ireland by the European Community in order to enable us to counter our distance from the main European markets and to help reduce our high (almost 20%) rate of unemployment. The rate of corporation tax in other European countries is as high as, and sometimes higher than, the U.S. rate; they therefore would not be affected by the deferral proposals.

As a result of the understanding and support shown by the President, and with the direct intervention of Senator Moynihan, two helpful amendments have been introduced to the Senate version of the Bill. We would very much hope that these will be maintained and that, as discussed with the Senator and with Chairman Rostenkowski, some further measures helpful to Ireland might be agreed in the Reconciliation Conference. Your support on this would be invaluable.

The Irish Prime Minister and Government consider deferral to be the most critical and vital issue that has arisen in a very long time - indeed perhaps ever - in our relationship with the United States. They are however very pleased and reassured that we have worked so well and so positively with the Administration on the issue. I have spoken to Mark at some length on it and also had the opportunity, at a dinner in Ethel Kennedy's, to speak directly to the President. I have in addition, as I mentioned, had very positive personal discussions with Chairmen Rostenkowski and Moynihan.

I cannot overestimate the importance of the above for Ireland and for our economy. The Government is deeply appreciative of all your support to date, and hope very much that this will continue in the coming critical days.

With renewed appreciation and best wishes.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Dermot Gallagher', with a long horizontal line extending to the left and a stylized flourish to the right.

Dermot Gallagher
Ambassador

AMBASÁID NA HÉIREANN
EMBASSY OF IRELAND
2234 MASSACHUSETTS AVE., N. W.
WASHINGTON, D. C. 20008

BY HAND

INSPECTED BY

*The Honorable Mark Gearan
Assistant to the President
The White House
1600 Pennsylvania Avenue NW
WASHINGTON DC 20500*

✓

DERMOT GALLAGHER
Ambassador of Ireland

Washington D.C.

MDG: Done;
now file?

ROUTING SLIP

FROM: Mark Gearan
Communications Director

DATE: 21 June 93

TO:

Rahm Emanuel	_____	Howard Paster	_____
David Gergen	_____	John Podesta	_____
Marcia Hale	_____	Carol Rasco	_____
Alexis Herman	_____	Bob Rubin	☒
Nancy Hernreich	_____	Eli Segal	_____
Anthony Lake	_____	George Stephanopoulos	_____
Bruce Lindsey	_____	Christine Varney	_____
Mack McLarty	☒	David Watkins	_____
Regina Montoya	_____	Maggie Williams	_____
Roy Neel	_____	OTHER	☒
Bernie Nussbaum	_____	<u>Leon Panetta</u>	_____

FOR YOUR:

Action _____
See me _____

Information

COMMENTS:

I don't
understand. Do I
have a chron file &
a name file?

AMBASÁID NA HÉIREANN

TELEPHONE: (202) 462-3939

FAX: (202) 232-5993



EMBASSY OF IRELAND

2234 MASSACHUSETTS AVE., N.W.

WASHINGTON, D.C. 20008

2 June 1993

Mr Mark Gearan
Assistant to the President and
Deputy Chief of Staff
The White House
1600 Pennsylvania Avenue NW
WASHINGTON DC 20500

*cc: Mark
Leah
Robi-*

Dear Mark

I do hope we can meet very soon as there is an exceptionally serious situation developing in relation to deferral.

As you know, we were deeply appreciative of the President's understanding and concern when he received President Robinson and our Deputy Prime Minister (and also Foreign Minister), Dick Spring, recently. In particular, we took great encouragement from the President's assurance that the tax deferral proposals were not intended in any way to damage U.S. investment in Ireland. However, as you will see from the attached letter from Dick Spring to Lloyd Bentsen, the proposals have now been modified in a way that will, we believe, be even more dramatically damaging to the Irish economy.

I cannot overestimate the deep concern in Ireland about the above. I do very much hope that we can find a compromise way forward. The proposals, I should emphasise, essentially impact on Ireland and have we believe, little, if any, significance in financial terms.

With best personal wishes.

Yours sincerely

Dermot Gallagher (T.H.G.)

Dermot Gallagher
Ambassador

P.S. I would like to thank you most warmly and sincerely for your exceptional help on President Robinson's visit. She was absolutely delighted at her reception in the White House, and came away from the meeting with even greater admiration for the President, Mrs Clinton and the Vice President.



OIFIG AN TÁNAISTE AGUS AN AIRE GNÓTHAÍ EACHTRACHA
OFFICE OF THE TÁNAISTE AND MINISTER FOR FOREIGN AFFAIRS

BAILE ÁTHA CLIATH 2
DUBLIN 2

28 May 1993

Mr Lloyd Bentsen
Secretary of the Treasury
Washington

My Dear Mr Secretary,

I am writing to thank you for meeting with me on 13th May, to discuss the tax deferral issue, and for giving me so much of your time on that occasion.

As you know, US companies - in particular in the high tech area - play a very substantial role in Ireland's economy, accounting for over 20% of our manufacturing workforce. Their presence in Ireland has been an extremely important factor in building up our economy. We are gratified to know that, for their part, the almost 400 corporations in question regard Ireland as a very successful location, both in terms of the competitive advantages which it brings and in the context of the Single European Market, which is, of course, of major and growing importance to American companies.

My Government greatly value this crucial and mutually beneficial alliance with corporate America and would, therefore, be deeply concerned about any development which might impact negatively on it. Regrettably, as you are aware, we and the US companies involved see the present deferral proposals very much in this light.

I fully appreciate that, in drafting the current proposals, your Administration did not intend that they would impact negatively on Ireland's economy. But having examined the proposals in detail, I am certain that, if they become law, they will - unintentionally but dramatically - undermine one of our core programmes to create investment and jobs in Ireland.

In particular, the proposed passive asset criterion of 25% of total assets, in tandem with the unexpected and very worrying new provision which would use a tax basis rather than fair market value for the valuation of assets, will discriminate, in our view, against high tech companies. As a consequence, the proposed changes would serve to greatly reduce Ireland's attractiveness as a location for US technologically based

subsidiaries; indeed, the negative reaction to the proposals of potential new investors is already concrete and very disturbing evidence to this effect. With this erosion of Ireland's tax advantage, US investment in Europe would shift from Ireland to other more developed European locations with rates similar to that of the US. (Indeed, I suspect that, as a result, there would be a diminished tax return to the US Treasury compared with current projections.)

Against the above background, I would urge, even at this late stage, that you might reframe your proposals. In this regard, we would be very glad to work with you in seeking to establish a mutually satisfactory compromise which would restore the fair market value test and would ameliorate the 25% asset value criterion.

I fully appreciate the difficult budgetary climate within which these proposals have been framed. I am therefore particularly grateful for your Administration's openness to our concerns, both at my meeting with you on 13th May, and on the following day at the White House when President Clinton met with President Robinson and myself. As a follow-up to these helpful meetings, I am asking Ambassador Gallagher to continue the dialogue with your Department with a view to arriving at a mutually satisfactory resolution of this deeply worrying issue for Ireland.

Once again, many thanks for your forbearance and your openness to our concerns.

Yours sincerely,



Dick Spring TD
Tánaiste and Minister for Foreign Affairs

P.S. I am enclosing a memorandum which sets out our concerns in detail.

MEMORANDUM ON PROPOSAL TO LIMIT TAX DEFERRAL

1. The US affiliates in Ireland are supplying the European market which their parent companies could not do competitively from the US. They are not 'runaway' plants by any definition; in fact US Department of Commerce data indicate that these Irish subsidiaries, by importing raw materials and goods for further processing from their US parents, sustain over 30,000 jobs in the US. The US has a substantial trade surplus with Ireland.
2. The proposal would give the Irish affiliates of non-US parent companies a major competitive advantage over their US-owned counterparts. These non-US plants would still enjoy unlimited tax deferral, and in many cases full tax-sparing arrangements. This situation would jeopardise not only the 47,000 direct jobs in US-owned plants in Ireland (and an equal number in supporting sub-supply and service industries) but also the related jobs in US parent plants.
3. The proposal is likely to encourage, not discourage, investment outside the US. Companies with existing foreign operations would have an incentive to accelerate investment abroad, thereby reducing passive assets and avoiding US tax. Inevitably new investment would shift from Ireland to the larger European economies, with disastrous consequences for our jobs and investment programme.

There is already evidence that the proposal is producing this effect. One major corporation employing in excess of 1,000 people in Ireland at its sole European manufacturing subsidiary has strongly indicated to IDA that it will be forced to review the structure of its European operation in the event of the new proposals being adopted.

A second corporation whose Board has approved a project to provide 400 jobs has stated that it will not proceed in Ireland until the position in relation to deferral is clear. Indications are that it will locate elsewhere in a higher tax location in Europe if deferral is changed.

In addition, competing agencies in Europe are now claiming that Ireland has "completely lost" its tax advantage and urging reconsideration of decisions already taken to locate there. If diversion or relocation of any significant size occurs the national tax gain to the US Treasury would be commensurately reduced since the tax that Ireland foregoes (because of its 10% corporate rate) will be taken up by European tax authorities where the rate of corporate tax is equal to or higher than that in the US.

4. Ireland's low tax rate - which increases profits of US Corporations - inevitably creates more surplus income than would be the case where the taxes are higher e.g. 35%-50% which is typical for other locations. The very fact that Ireland "gives up" its tax rate for the benefit of US Industry will count against it under the proposed new regime.
5. Most of the US subsidiaries in Ireland are in the high tech sector. The proposal disproportionately affects high tech companies in two major ways.
 - (i) such companies invest heavily in technology assets which have no tax basis value
 - (ii) a 25% passive asset test is too low for successful high tech companies which typically earn annual returns on book assets of more than 20%, and thus would have only one year to reinvest their earnings in an active business.

The fact that the proposal discriminates against high tech companies would have a disproportionately negative effect on Ireland's economy.

fte: IRELAND

Document No. 047630

WHITE HOUSE STAFFING MEMORANDUM

DATE: 12-20 ACTION/CONCURRENCE/COMMENT DUE BY: 7

SUBJECT: ANSWERS TO IRISH TIMES QUESTIONS

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☒	PASTER	☐	☒
McLARTY	☐	☒	QUINN	☐	☐
NEEL	☐	☐	RASCO	☐	☐
PANETTA	☐	☐	RUBIN	☐	☐
BAGGETT	☐	☐	SEGAL	☐	☐
EMANUEL	☐	☐	SEIDMAN	☐	☐
GEARAN	☐	☒	STEPHANOPOULOS	☐	☒
GERGEN	☐	☒	TYSON	☐	☐
GIBBONS	☐	☐	VARNEY	☐	☐
HALE	☐	☐	WATKINS	☐	☐
HERMAN	☐	☐	WILLIAMS	☐	☐
LAKE	☐	☐		☐	☐
LINDSEY	☐	☒		☐	☐
McGINTY	☐	☐		☐	☐
MYERS	☐	☐		☐	☐
NUSSBAUM	☐	☒		☐	☐

REMARKS: This was forwarded to President tonight.

RESPONSE:

JOHN D. PODESTA
Assistant to the President
and Staff Secretary
Ext. 2702

THE WHITE HOUSE

WASHINGTON

93 DEC 2

December 20, 1993

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM:

ANTHONY LAKE

SUBJECT:

Presidential Response to Written Inquiry from
The Irish Times

Conor O'Clery from The Irish Times has posed several questions to you in a written interview that he hopes to run some time during the week of December 20, 1994. The answers we have drafted break no new ground, with one exception: the answer drafted for the question regarding Gerry Adams' visa.

The suggested answer hints that you might reconsider the issue of a waiver for Adam's visa if circumstances change. The British have indicated a willingness to talk openly to Adams if he renounces violence and if the IRA demonstrates such a commitment by a cessation of hostilities for a period of time. The Adams visa issue can be used as a carrot in helping the Irish and British press the IRA to move forward. We have thus not stated explicitly any exact conditions under which you might reconsider the Adams visa issue. The Irish Times is not the appropriate forum in which to reveal the exact conditions. Instead, we should address such details in the private negotiations continuing in Britain and Ireland. Such a strategy will enable you to get the most leverage from Adams on the issue.

In coordinating these responses informally with the Irish and British embassies, both suggested that this would be a proper course for us to pursue and urged you to indicate flexibility on the visa issue should conditions warrant (i.e., if Adams renounces terrorism and engages in political dialogue). Moreover, the Irish Ambassador here in Washington took pains to encourage us to take this line, fearing that an intransigent stance would be poorly received in Ireland and would contribute to Adams', Sinn Fein's and the IRA rejection of the Joint Declaration.

The article will make headlines across Ireland and Britain. While we would not ordinarily want to use an interview such as this one to make bold news in Ireland, the opportunity for signalling our willingness to reconsider Adams' visa presents itself now, at a critical time when Sinn Fein and Adams' are formulating their response to the Joint Declaration. We will reinforce the message in the interview with official contact in London and Dublin.

cc: Vice President
Chief of Staff

RECOMMENDATION

That you approve release of the response to The Irish Times at
Tab A.

Approve _____ Disapprove _____

Attachment

Tab A Draft Response to The Irish Times

RESPONSES TO CONOR O'CLERY QUESTIONS TO THE PRESIDENT
ON NORTHERN IRELAND

Q. How has the end of the Cold War changed the special strategic relationship between the United States and the United Kingdom, and is this reflected in U.S. policy on Northern Ireland?

A. I have made clear that as long as I am President, the United States' relationship with the United Kingdom will indeed be special. Our relationship with the United Kingdom is unique and historic and we continue to share a common strategic world vision and a commitment to acting on common values. We are working closely together on issues ranging from trade negotiations to NATO reform.

U.S. policy on Northern Ireland is made in the context of the deep ties of friendship and history the American people enjoy with the peoples of both Ireland and Britain. In a time in which the headlines remind us daily of the folly of violent nationalism in Europe and, at the same time, the new hope for peace in the Middle East, I want to add America's voice, and my personal support, to the forces of peace in Northern Ireland.

Q. You have said you are prepared to work aggressively to promote efforts to achieve peace and reconciliation in Northern Ireland. In what way will you do this and in the future?

A. In the early weeks of my Presidency, I reviewed in detail the situation in Northern Ireland. I discussed the issue with Prime Minister Major in February and Prime Minister Reynolds in March. Taking these discussions and our own review into account, I have kept the idea of a special U.S. representative under active consideration. At the same time, I have strongly supported Irish and British government efforts to restart a serious political dialogue involving the two governments and the parties to the conflict in Northern Ireland.

I also committed the Administration to taking the initiative, for the first time, in seeking funding in our budget request for the International Fund for Ireland and Northern Ireland.

Throughout this year, we have reiterated on numerous occasions our rejection of violence by any side and our support for the political process. I again underscored publicly my strong interest in promoting peace and reconciliation on October 30 in support of the efforts of the Irish and British governments, and yet again when I met with Irish Deputy Prime Minister Dick Spring November 16.

I am convinced the December 15 Joint Declaration of Prime Minister Reynolds and Prime Minister Major offers an historic opportunity to end the cycle of bloodshed. I think the best approach for the U.S. now is to continue to encourage this courageous and visionary initiative.

At this crucial time in the search for peace, let me reiterate a central message of my own statement welcoming the Joint Declaration: The time has come for all those who claim a legitimate stake in the future of Northern Ireland to stop the killing and the violence and pursue peace through constructive dialogue.

Q. What would you say to Irish-Americans who feel you have not fulfilled election promises made to them (e.g., a visa for Sinn Fein leader Gerry Adams; appointment of a special envoy; raising human rights issues with Britain)?

A. I would say to them: Look at our record of engagement on Northern Ireland. Look at our support for the process which lead to the historic December 15 declaration. Look at the attention we devote to Northern Ireland in our annual human rights report. And look at the extraordinary opportunity that now presents itself for peace.

Q. Given that the British Government has established ongoing contacts with Sinn Fein with a view to establishing peace, is there not a case for granting a U.S. visa to Mr. Adams now, so that Irish-Americans can hear first-hand what his peace proposals are?

A. As you know, Gerry Adams was refused a U.S. visa earlier this year. That decision followed a careful review of his case and was consistent with our own immigration laws regarding terrorist activity. We will, of course, keep the issue under review as the developing situation warrant especially in light of events flowing from the December 15 Joint Declaration by Prime Minister Reynolds and Prime Minister Major.

Q. Do the Irish and British governments have a veto on the appointment of a special envoy? If the current peace process breaks down, would you consider appointing a U.S. envoy?

A. The Irish and British governments do not have a veto on the special envoy, nor has either of them suggested they should. However, we must work constructively with both governments in the cause of peace. In this regard, the notion of a special envoy remains very much alive. As I have said many times, the United States stands ready to contribute to peace in any appropriate way.

The December 15 Joint Declaration by the Irish and British Prime Ministers offers the best hope for progress. At this stage, we believe the U.S. energies should be directed to support progress toward peace within the framework on which the British and Irish governments are working together.

Q. Are you going to visit Ireland on your trip to Europe next June and will you visit Northern Ireland if you do?

A. I would very much like to visit Ireland during my Presidential tenure and look forward to arranging mutually convenient dates.

file: IRELAND

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RESPONSES TO CONOR O'CLERY QUESTIONS TO THE PRESIDENT
ON NORTHERN IRELAND

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The December 15 Joint Declaration by the Irish and British Prime Ministers offers the best hope for progress. At this stage, we believe the U.S. energies should be directed to support progress toward peace within the framework on which the British and Irish governments are working together.

Q. Are you going to visit Ireland on your trip to Europe next June and will you visit Northern Ireland if you do?

A. I would very much like to visit Ireland during my Presidential tenure and look forward to arranging mutually convenient dates.



United States Department of State
Deputy Secretary of State

May 14, 1993

TO: Mark Gearan
Deputy Chief of Staff to the
President

FROM: William Montgomery
Executive Assistant to the
Deputy Secretary

Per your conversation this
afternoon with Tom Donilon.

Ireland
Ray Flynn
file



United States Department of State

Washington, D.C. 20520

May 14, 1993

MEMORANDUM

TO: The Deputy Secretary
FROM: L - James H. Thessin *JHT*
SUBJECT: Ambassadors Whittlesey's and Von Damm's Gift Funds

Attached is a collection of investigative and newspaper reports concerning the use of gift funds by Ambassadors Whittlesey and Von Damm.

Ambassador Whittlesey raised approximately \$85,000 in private donations during 1985 and 1986. She was accused of making expenditures of these funds for food, lodging and entertainment of individuals who did not qualify to be hosted by official funds. Among these persons were personal friends of the Ambassador, contributors to her gift fund who were entertained because of their donations, and U.S. government employees. Questionable expenditures included the purchase of sporting and recreational equipment, personal gifts for embassy and residence staff personnel, and plane tickets for a sympathetic congressional staffer.

Ambassador Whittlesey was also accused of accepting donations from individuals in circumstances that created a conflict of interest. Several donors were found to have requested the Ambassador to take official action on their behalf. She was cleared of allegations that a donor had made his contribution in connection with the hiring of his son.

Ambassador Von Damm raised more than \$97,000 in private donations during the same period. She was accused of making improper expenditures, including gifts to high-ranking executive branch officials, payments for a \$13,000 cruise on the Danube, and a gift of a \$600 bathrobe for the wife of Vienna's mayor. She was also investigated for conflicts of interest by using gift funds to pay for a \$6000 reception at a Vienna hotel owned by her husband.

On January 8, 1987, the Department barred the further acceptance of donations for official entertainment. Justice considered criminal charges against both but declined.

AUDIT REPORT NO. 7 FM-006

GIFT FUNDS

· JUNE 1987

This Department of State report is intended solely for the use of the Department, or of any agency or organization receiving a copy from the Office of Inspector General. No secondary distribution may be made outside of the Department, by it or by other agencies or organizations, in whole or in part, without prior authorization by the Office of Inspector General.

REPORT OF AUDIT

GIFT FUNDS

I. OVERVIEW

The Department of State has two separate authorities to accept and use gifts. Title 22 U.S.C. 2697 (Basic Authorities Act) authorizes the Secretary of State to accept gifts on behalf of the United States for the benefit of the Department of State and its official operations. Gifts may be accepted in the form of real property, personal property, and cash. Title 22 U.S.C. 300 (a)(3) (Foreign Service Buildings Act) also authorizes the gift of property or services of any kind to be accepted for acquisition, construction or other purposes involving Foreign Service buildings. Both authorizations contain some restrictions regarding the acceptance of gifts and under certain circumstances both require the notification and approval of Congress.

Due to allegations of improper use of gift funds by Embassy Bern, the Deputy Secretary of State requested the Office of Inspector General to make an audit of funds received by gift by overseas posts. The purpose of the audit was to gather information to assist the Department in formulating a policy and written procedures regarding the acceptance, management and control of gift funds. The audit covered eight posts and included gifts of funds of approximately \$5.2 million.

Gift funds from private donors have enabled the Department to renovate and refurbish Chief of Mission residences, rehabilitate offices, construct housing and recreation facilities for employees, and supplement appropriated representation funds. However, weaknesses in all aspects of the Department's management of gift funds have resulted in questionable practices. Specific examples are detailed in other sections of this report.

On December 22, 1986, the audit team recommended to the Deputy Secretary of State that the Department no longer accept gift funds for representation purposes. In the opinion of the auditors, questionable practices when using gift funds for representation outweighed any benefits in furthering U.S. interests abroad. This recommendation was implemented by the Department on January 6, 1987.

The decision to no longer accept gift funds for representation purposes is only the first step. The second step, which the Department recognized as needed a number of years ago but unfortunately never completed, is the development

and publication in the Foreign Affairs Manual of specific written procedures for the acceptance, management and control of funds donated to the Department. To this end, the Department should give the highest priority to developing and implementing the following:

- Solicitation procedures which do not: (1) create expectations by donors that they will receive something in return, (2) state the Department's view of the value of gifts, (3) state or imply an official position on the possibility of a tax deduction, and (4) provide donors with potentially greater tax benefits than the value of the gift;
- Collection procedures which make one office responsible for receiving and depositing gift funds in an orderly and timely manner;
- Allotment and accounting procedures which properly control and track gift funds in official records; and
- Procedures for the use of funds which provide adequate internal controls to assure that funds are spent for intended purposes.

In addition to the above procedural issues, the Department needs to: account for approximately \$830,000 in gift funds received by Embassy Lagos; determine the liability of employees who were reimbursed for, and certifying officers who authorized payments of prohibited expenditures at Embassy Vienna; and establish a policy regarding the acceptance of blocked funds as gifts from U.S. firms. Lastly, the Department needs to strengthen and improve its procedures and regulations for control and use of appropriated representation and official residence expense funds.

II. PURPOSE AND SCOPE

Due to allegations of improper use of gift funds by Embassy Bern, the Deputy Secretary of State requested the Office of Inspector General (OIG) to make a worldwide audit of funds received by gift by overseas posts. The purpose of the audit was to gather information to assist the Department in formulating a policy and written procedures regarding the solicitation, collection, allocation, accounting, use and control of funds donated to the Department of State.

At first, it was thought the audit should include a review of gifts of property as well as funds. Thus, the OIG telegraphically requested all diplomatic and consular posts to report for the period January 1, 1985 through September 30, 1986: all gifts received; their value; identity of donors; if gifts were unsolicited, or resulted from fund raising activities; if gifts were controlled and reported to the Department; and the disposition of gifts. However, based upon the responses received, the scope of the audit was limited principally to a review of gift funds. Nine posts were initially selected for further review: Embassies Bern, Bonn, Dublin, Lagos, Luxembourg, Moscow, Paris and Vienna and the U.S. Mission Geneva. Embassy Moscow was eliminated from this list due to the problems the post was experiencing with the host government regarding the number of Americans allowed in country.

For the eight posts selected, the auditors reviewed gifts of approximately \$5.2 million as shown in Exhibit A. About \$4.8 million of this total were donations to Embassy Lagos by U.S. firms doing business in Nigeria. Because Nigerian law blocked the removal of funds from the country, U.S. firms were willing to contribute their blocked funds to the U.S. Government. Exhibit B shows a summary of donors to Embassy Lagos and the amounts contributed.

For the eight posts selected for review, the auditors visited all but Bern, Dublin and Geneva. Embassy Bern was not visited due to the concurrent investigation of allegations of improper use of gift funds. However, the auditors were able to obtain and review Embassy Bern gift fund vouchers in Washington, D.C. Records pertaining to Embassy Dublin and the U.S. Mission Geneva were reviewed in the Department and at the Regional Administrative Management Center (RAMC) located in Paris. In addition, both posts were requested to respond to further questions and to submit copies of post policies regarding appropriated representation funds.

At the posts visited, the auditors interviewed mission officials and staffs, reviewed gift fund reimbursement vouchers,

guidelines and procedures, and other gift fund control documents and records. In addition to gift fund records, the auditors reviewed selected vouchers and procedures regarding appropriated funds for representation allowance and official residence expenses (ORE).

In the Department, the auditors reviewed gift fund, representation, and ORE records and interviewed personnel in the Office of the Under Secretary for Management (M), the Executive Office of the Bureau of European and Canadian Affairs (EUR/EX), the Office of the Comptroller (M/COMP), and the Offices of Foreign Buildings (A/FBO) and the Allowances Staff (A/OPR/ALS) located in the Bureau of Administration. In addition, the auditors coordinated and discussed aspects of the review with the Department's Office of the Legal Adviser (L), the General Accounting Office (GAO), the Internal Revenue Service (IRS), and the Department of Justice (DOJ).

The audit was performed in accordance with generally accepted auditing standards and included appropriate tests to evaluate the adequacy of internal controls and procedures used to protect funds and assets from waste, fraud, and mismanagement.

III. BACKGROUND

A. Gifts

The Department of State has two separate statutory authorities to accept and use gifts.

Title 22 U.S.C. 2697 (Basic Authorities Act) authorizes the Secretary of State to accept gifts on behalf of the United States for the benefit of the Department of State and its official operations. Gifts may be accepted in the form of real property, personal property, and money. Subject to certain restrictions, both conditional and unconditional gifts may be received. One major restriction provides that Congress must approve any gift conditioned upon expenditures which will not be met by the gift or income from it. Also, this Act states that such funds (meaning gift funds) are hereby appropriated.

Title 22 U.S.C. 300 (a)(3) (Foreign Service Buildings Act) authorizes the gift of property or services of any kind to be accepted (interpreted by the Department's Legal Adviser's Office to also include the gift of money). It requires that proceeds of gifts be applied to acquisition, construction, or other purposes authorized by the Act or be held in the Foreign Service Buildings Fund. Finally, it requires that all transactions, including gifts, be reported annually to Congress with the Department's budget estimates.

In May 1976, the Department issued guidance on the receipt and use of official gifts. The guidance, airgram Reference No. A-2545, to all diplomatic and consular posts, delegated broad authority to posts to receive and use gifts. It provided that contributed funds or property may be accepted by posts abroad provided they could be used for the same purpose as appropriated funds or Government-owned property. In addition, the airgram indicated that contributions need not be referred to the Department so long as the donors attached no formal condition as to their use. However, posts were cautioned to seek Departmental advice when there was doubt the gift could be used for the indicated purpose, or when the amount or circumstances of the gift were exceptional. All proposed gifts of real property or funds to alter, repair, or improve real property required advance approval of A/FBO. The airgram also provided instructions for accounting and recording the receipt of gift funds and property. Funds received abroad would generally be deposited abroad; funds received in Washington would be handled by the Office of Financial Services (currently a part of the Office of the Comptroller). The airgram also advised that contributions for representational purposes, after initial receipt, may be allocated in accordance with existing guidelines.

The Department did not provide general instructions on using gift funds after the 1976 airgram. Although the Assistant Legal Adviser for Management (L/M) suggested in 1976, that the Department codify the airgram's instructions in its Foreign Affairs Manual (FAM), this was not done. In 1979, L/M reported to the Bureau of Administration that it had received sufficient inquiries about gifts to indicate that posts had retired the airgram. Once again L/M suggested that the airgram be codified and once again this was not done. In May 1984, the Office of Inspector General for Foreign Service, S/IG (since abolished) recommended that the Department (L and M) formulate and publish in the FAM specific guidelines for acceptance and utilization of contributions to the Department's gift funds. Very little action took place to comply with this recommendation until early 1986 when general guidelines concerning gift funds were drafted by a former employee of L/M under contract. These guidelines were pending at the time of the allegations of improper use of gift funds by Embassy Bern. As a result, the Department decided to await the outcome of this audit before finalizing and publishing its gift fund guidelines.

Some guidance has been provided on a case-by-case basis to posts. For example, in August 1983 L/M instructed the Deputy Chief of Mission Designate, Embassy Vienna to follow appropriated fund guidelines for representation in expending gift funds, unless M approved a broader use. Also, Departmental records allotting funds for some posts (for example, to Embassy Bern) stated that the funds were to be used "for representational purposes" or other specific uses. However, the records did not explicitly state that representation guidelines governing the use of appropriated funds must be followed.

Based on a review of the statutory provisions concerning the use of gift funds, the Department's Legal Adviser's office concluded in a November 4, 1986 memorandum to the OIG that: ... a principal limitation on the use of gift funds is that they must be used to further an official purpose of the agency and cannot be used solely for the benefit of individual employees.

In the case of gifts under the Foreign Service Buildings Act it should be noted that on September 25, 1985, the A/FBO Deputy Assistant Secretary issued an internal memorandum regarding the policy and procedures for gifts to the U.S. Government for overseas buildings. This document, which is quite detailed, was issued to the A/FBO staff but was not codified in the FAM. However, there is a short paragraph in 6 FAM 735 regarding procedures for reporting gifts of real property, improvements to real property, or furniture, furnishings or equipment.

B. Official Representation Allowance

Congress established in the Rogers Act of 1924 a representation allowance to be paid to diplomatic missions and consular offices out of any money which may be appropriated for such a purpose. The Department advocated the allowance substantially as a means to recompense officers the cost of entertaining foreign officials. Between 1924 and 1980, no substantive changes were made to the basic law. Section 905 of the Foreign Service Act of 1980 authorized representation allowances for official receptions, entertainment, and representational expenses to enable the Department and the Foreign Service to provide for the proper representation of the United States and its interests. Also, the Act authorized for the first time, the payment of expenses for family members acting with or on behalf of employees whose official positions entailed responsibility for establishing or maintaining relationships of value to the United States in foreign countries. In addition, on an exceptional basis, Foreign Service National employees were permitted such payments where deemed appropriate and with the approval of the head of agency or agency designee and consistent with guidelines on representation established by the Chief of Mission.

The Department has published guidance on the use of appropriated representation allowances in the Standardized Regulations (SR) Section 300 and in 3 FAM 340. The guidance is broadly written to enable posts to make local decisions on the proper use of funds. Generally, it allows expenditure of appropriated funds for entertainment, hiring temporary help for official functions, tips and gratuities, and flowers or similar tokens on important occasions. It prohibits certain expenditures such as: hire, purchase, operation or repair of motorized passenger vehicles, including aircraft; membership fees or dues in any society, club or association; expenses of printing or engraving; printing of Christmas cards, or other types of greeting cards; or purchasing recreation or entertainment solely for employees of the Executive Branch of the U.S. Government and their families. Instructions to employees for making claims for representation allowance are contained in 4 FAM 423.4.

C. Official Residence Expenses (ORE)

The Foreign Service Act of 1946 authorized an official residence expense to defray the unusual expenses incident to the operation and maintenance of an official residence suitable for the chief representative of the United States at the post. In 1956, the authorization was extended to include all principal representatives at post.

The Department has published guidance on the use of ORE in SR 400 and in 3 FAM 350. Allowable expenditures include wages, maintenance, and some transportation of household servants; the rent, installation, and repair of furnishings, equipment, and appliances; costs of renovation and redecoration; telephone costs in excess of one instrument; expendable supplies; and kitchenware, equipment, and other property supplies not over \$35 in value. Instructions for preparing reimbursement vouchers for ORE are contained in 4 FAM 432.3.

IV. RESULTS OF AUDIT

Although gift funds from private donors enabled the Department to achieve some desirable results, weaknesses in all phases of Departmental management of gift funds and largely uncontrolled expenditures of such funds by embassies resulted in questionable practices. Solicitation efforts were performed without adequate guidelines, and collections were not well controlled or accounted for. Accounting records did not completely show how funds were spent. In its manner of accepting large business donations of blocked foreign currency, the Department may have inappropriately involved itself in federal tax matters and may have provided an opportunity for more benefit to donors than enabling legislation intended. Some Ambassadors frequently used questionable judgment in disbursing funds donated for representation. These conditions occurred because the Department's written procedures were not adequate, controls at posts were inherently flawed, and Department involvement was incomplete.

A. Gift Funds

On December 22, 1986, the audit team briefed the Deputy Secretary of State on the tentative results of the audit. Included in this briefing was a recommendation that the Department no longer accept gift funds for representation purposes. This recommendation was an audit conclusion based on the many weaknesses enumerated herein. In the opinion of the auditors, questionable practices when using gift funds for representation outweighed any benefits in furthering U.S. interests abroad. The Department implemented this recommendation on January 6, 1987 when it posted an announcement in the press briefing room that stated "the acceptance of privately contributed funds for entertainment at U.S. Embassies is discontinued as of today." This change in policy was transmitted in a telegram to all posts on January 8, 1987 (STATE 4760).

As shown in the following sections of this report, the Department's lack of written procedures to accept and use gift funds was a significant contributing factor in the questionable practices which occurred. Implementation of the many recommendations in this report is paramount in the development of specific written procedures which should be given the highest priority. The Department (M and L) should formulate and publish in the FAM, specific procedures for the solicitation, collection, allocation, accounting, use and control of gift funds donated to the Department. Also, the procedures for gifts to the U.S. Government for the operation of overseas buildings should be published in the FAM. (Recommendation 1)

1. Solicitation

Despite producing gift funds for the Department, the manner in which solicitations were conducted indicates that some contributors may have believed that their donation entitled them to some special benefits. In addition, because some posts have indicated that donations are tax deductible, the Department may have inappropriately become involved in federal tax matters. Further, the need for some contributions appears questionable.

Five of the eight posts reviewed had aggressive gift fund solicitation programs. Bern, Dublin and Vienna used a private fund raiser. Paris had established a foundation through which contributed funds were directed. Embassy Lagos personnel had solicited donations from U.S. firms in Lagos with blocked Nigerian currency.

Some solicitation correspondence either implied or directly stated that donors would be entertained at the residences, and some letters went so far as to state that "appropriate" contributions would be recognized by events held in honor of the donor. The auditors were unable to identify all donors who were entertained, but did determine that at least 29 donors were house guests, guests at dinners or other events, or gift recipients at four embassies. Donors and their spouses, along with other relatives and guests, sometimes appeared on embassy guest lists and sometimes were honored with black tie dinners. One donor, who was also a principal fund raiser for several embassies, received lodging, food, entertainment and gifts from one embassy on at least six different occasions in a 25-month period. At another embassy, a donor was a guest over a 12-day period, received at least nine meals at the residence or outside restaurant, and was provided escort service by two embassy employees.

In short, the solicitation and acceptance of gifts created expectations that donors would receive something in return and obligations for embassies to provide it. This has also resulted in an unfavorable image for the Department, as witnessed by one recent periodical report that Americans living in a particular foreign capital believe they must donate \$1,000 or more to obtain an invitation to the U.S. Embassy. Moreover, donors potentially obtained the benefit of tax deductions for the amount of their contributions but received in return Government-paid lodging, meals, entertainment, transportation, and gifts. In order to eliminate the possibility for misuse of gift funds or the possible perception of impropriety, the Department (M and L) should include in its guidelines on gift

funds, procedures which assure that donors receive no preference, including rules regulating the entertainment of donors. (Recommendation 2)

The Department has also become inappropriately involved in the tax aspects of the gifts it receives. Correspondence soliciting and expressing appreciation for gifts sometimes represented gifts to be tax-deductible although this determination depends upon technical consideration of facts not always known or appreciated by Department representatives. The auditors found other instances where the fair market value of property gifts had been implied by reporting in letters of appreciation the unconfirmed values ascribed to gift items by donors. For example, Embassy Lagos accepted tools and equipment with an unconfirmed value ascribed by the donor of \$15,197.

Based upon Section 25 (d)(2)(e) of Title 22 USC 2697, the Department can rightfully acknowledge for federal tax purposes that gifts are accepted by and for the use of the United States. But, the auditors question whether it is proper or advisable for the Department to represent the tax deductibility or value of gifts, in view of technical tax considerations, and limitations of the Department's authority. These matters are the individual responsibility of donors and are subject to review and adjudication by the Internal Revenue Service. The Department (M and L) should include in its guidelines on gift funds, procedures that (1) discontinue the practice of making statements that imply an official position on the possibility of a tax deduction for an individual donor; and (2) only accept gifts by and for the use of the United States without stating the Department's view of the value of gifts. (Recommendation 3)

Also, the auditors noted that the Department was accepting gifts from employees in cases of questionable need and in so doing providing questionable tax benefits to the donors. One employee donated several oriental rugs to Embassy Vienna. The rugs were accepted and put to use. However, the auditors were told by Embassy operating personnel that initially no employees wanted the rugs for their residences and it was only after a period of time that some of the rugs were used in offices. The auditors question whether the rugs were needed and useful enough to provide a potential \$6,700 tax deduction as referenced in Departmental correspondence.

More disturbing is the Department's lack of oversight in regard to personal expenditures being made by a current Ambassador who is renovating the residence to improve its security. The Ambassador has indicated that when the work is complete, he would like to be reimbursed. The Department has made no decision on whether the Ambassador would be reimbursed,

although the Bureau of Diplomatic Security (DS) has recommended to A/FBO that the Department pay for items that are deemed needed or useful. However, because much of the work is being done without proper Department approval, this process could result in uncontrolled or, possibly unneeded, renovations to the residence; circumvention of regular procurement procedures; and questionable net benefits to the Government. For example, one questionable expenditure is remodeling of the residence basement in order to install a shooting range at a cost of \$12,423.

The above conditions occurred because the Department had not established and codified in the FAM specific rules, procedures, and limitations under which embassies were allowed to accept gifts of funds or property without applying a "needs" test that would help ensure that the Government as a whole benefitted. The Department (M and L) should include as part of its guidelines a procedure whereby a justifiable need must be established by the post and approved by the Department before a gift may be accepted. (Recommendation 4) Also, the Department (A/FBO and DS) should notify Embassy Vienna that further work on the Residence must be approved in advance. (Recommendation 5)

2. Collection

Collections of gift funds were not adequately controlled. The process was too decentralized, checks awaiting acceptance approval were not properly accounted for, and processing times were too lengthy.

The Offices of M, L, A/FBO, and the regional bureaus have all been involved in collections of gift funds. At the time of review, about \$186,000 in donations were on hand in the Department; M had custody of most checks, but EUR/EX had one check for \$500. One check for \$5,000 submitted by Embassy Bern was temporarily lost but later located after the auditors inquired about it. There was no record of the disposition of another check of \$1,000 submitted by Embassy Vienna in December 1983. The auditors brought this to the attention of the various offices involved and suggested that the status of the \$1,000 check be determined. In order to establish adequate internal control, the Department should designate one office to be responsible for receiving and controlling gift fund donations. (Recommendation 6) Also, since the Department has decided to no longer accept donations for representation purposes, checks for this purpose currently on-hand should be returned to the donors. (Recommendation 7)

Some of the checks had been on-hand for nearly one year. Delays in accepting donations were caused by the need to resolve whether conflicts of interest existed between donors and the

U.S. Government. This issue was not always easily resolved. On occasion, aging checks had to be returned for reissuance. A better procedure which would eliminate the need to account for and control checks would be to accept pledges for donations, which could then be processed for conflict of interest determination. When cleared, the donor could be asked to submit a check, for immediate deposit. (Recommendation 8)

In response to the draft report, the Department (M and L) indicated that they did not agree with this recommendation. As an alternative solution, they propose to include in the guidelines on gift funds a requirement for submission of information which would readily allow determination of conflict of interest. This information would be submitted with the gift (check) which then could be processed without delay. The auditors believe that this proposal may be an acceptable alternative but will hold in abeyance any opinion until the procedure is in place and can be evaluated.

The Department had not formalized procedures for collecting, recording, and processing donations. Donated checks were not recorded in a control log but merely filed with the donor's correspondence. During the audit, M established a log, began recording and tracking donations, and reviewed documents for prior donations to establish a record of what had transpired.

3. Allocation and Accounting

Weaknesses in the allotment and accounting procedures in A/FBO made it difficult to control and account for gift funds. Approximately \$830,000 equivalent in gift funds collected in Nigerian currency was unaccounted for at the time of audit.

Embassy Lagos collected the U.S. dollar equivalent of \$4,828,137 in local currency during the period July 1983 through August 1985. These donations were made by U.S. firms doing business in Nigeria because local law restricted taking funds out of the country. (NOTE: These funds were collected for Department of State purposes and do not include donations of approximately \$2.2 million collected for the U.S. Information Agency and for the U.S. Agency for International Development, see Exhibit B. The Inspectors General of these agencies have been notified of this audit.)

Based on available records at the post and in A/FBO, funds were used for the following Department of State purposes:

<u>Purpose</u>	<u>Amount</u>
-- Construction of 4 Townhouses for Employee Housing - Lagos <u>1/</u>	- \$1,570,085
-- Construction of Embassy Guest Quarters/Recreation Center - Lagos <u>2/</u>	- 1,359,619
-- Grant to American School - Lagos <u>3/</u>	- 223,464
-- Rehabilitation of Office Building - Kaduna <u>3/</u>	- 706,992
-- Additional Renovation Work Office Building - Kaduna <u>1/</u>	- 138,324
Total Accounted For	- <u>\$3,998,484</u>
Total Collected	- <u>\$4,828,137</u>
Difference (Unaccounted For)	- <u>\$829,653</u>

1/- These gift funds were allotted to post under the normal FBO "XJ" allotment not the unconditional gift fund allotment 19X8821.

2/- Donor gave 1,000,000 Naira to post and post on instruction from Department gave donor \$1,359,619, the equivalent dollar amount. Donor and Department signed a contract for a building at no cost to the Government. The building was valued at \$1,359,619.

3/- These gift funds were allotted to post as unconditional gift funds, 19X8821.

Because A/FBO had commingled gift funds with appropriated operating funds, it was not feasible due to audit time constraints to determine what had happened to the \$829,653. During the audit, A/FBO operating personnel advised that they thought some of these gift funds may have been allotted to Lagos for other FBO purposes and/or used in Lagos substituting for planned appropriated fund expenditures thereby freeing such appropriated funds for FBO projects in other countries. A/FBO written comments to the draft audit report indicated that A/FBO may not have received these funds. In any event, because of the poor accounting procedures, control over gift funds generated in Lagos had been lost. In order to correct the accounting records and to assure that the unaccounted for gift funds were used for

proper purposes, the Department (A/FBO in coordination with M/COMP and Embassy Lagos) should account for the \$829,653. (Recommendation 9)

Additionally, weaknesses were noted in accounting for gift funds received for Embassy Paris. Although all such funds were collected for the purpose of renovation and refurbishing of the Ambassador's Residence, the post was allotted two allotments by A/FBO (19X8821, unconditional gifts, and 19X8822, conditional gifts) and one allotment by EUR/EX (19X8821, unconditional gifts). However, the total of all of these allotments did not agree with the total received and accepted in the Department (Exhibit A) because A/FBO kept some of the gift funds to make purchases for Paris in the U.S. Consequently, there was confusion in A/FBO and at Embassy Paris as to the exact status of funds.

The Department (M/COMP) should develop written procedures for allotting and accounting for gift funds. The procedures should include provisions to: assure that gift funds are recorded as gift fund allotments and are not recorded and commingled with appropriated funds; and ensure funds collected for one purpose are allotted by a single office. (Recommendation 10)

The Department (A/FBO in coordination with M/COMP, EUR/EX and Embassy Paris) should reconcile the accounts for gift funds received and accepted for Embassy Paris during the period July 1, 1985 through September 30, 1986. (Recommendation 11)

4. Use of Gift Funds

The audit identified a number of questions in the use of gift funds. First, the acceptance of gift funds of over \$4.8 million equivalent in local currency for the programs and construction projects of Embassy Lagos, although technically authorized, raises certain questions regarding the propriety of these transactions. Second, the use of gift funds for representational purposes raises questions about the expenditure of funds: for purposes specifically prohibited by law and/or regulations; under circumstances involving a possible conflict of interest; and in an excessive and lavish manner.

For the eight posts reviewed, the Department received and accepted \$5,228,623 in gift funds (Exhibit A). Of this amount, \$4,851,637 was intended for the acquisition or rehabilitation of real and non-expendable property and a grant to a school; \$220,950 was intended for renovation and refurbishing of an Ambassador's residence; and \$156,036 was intended for representation of U.S. interests abroad. The audit did not disclose serious weaknesses in the use of gift funds for renovation and refurbishing.

a. Funds Used for Property Acquisition/Rehabilitation
(\$4,851,637)

The below chart shows the uses of funds in this category.

<u>Use</u>	<u>Amount</u>
Purchase of Non-Expendable	
Property - Dublin	- \$ 5,000
- Vienna	- 18,500
Grant to American School - Lagos	- 223,464
Construction of 4 Townhouses for Employee Housing - Lagos	- 1,570,085
Construction of Embassy Guest Quarters/Recreation Center - Lagos	- 1,359,619
Rehabilitation/Renovation of Office Building - Kaduna	- 845,316
Unaccounted For (See IV.A.3)	- 829,653
Total	\$ 4,851,637

The chart shows that most funds were spent for real property construction/rehabilitation. Within the scope of this review, the auditors did not attempt to examine these construction/rehabilitation expenditures but instead reviewed the Department and Embassy Lagos policy of accepting and using gift funds for these purposes. In this regard several concerns surfaced:

- The acceptance of almost \$4 million by a single embassy for real property construction/rehabilitation, although technically authorized represents a substantial amount of funds of which Congress may not have been fully aware. Although the donations were reported in Departmental budgets for Fiscal Years 83, 84 and 85, the disclosures were not clearly explained to show that these funds were to be used for major construction purposes. However, in one instance (guest quarters/recreation center) it should be noted that M/COMP discussed the project with employees of the Office of Management and Budget (OMB) and the House Appropriations Subcommittee Staff, who had no objections.
- The acceptance of local currency in exchange for U.S. dollars was coordinated and approved by various staffs

within the Department, including the Office of the Legal Adviser. The Department concluded that the transaction was legal and that the acquisitions were needed. Because of Nigeria's sensitivities over foreign currency exchange, the auditors question whether continuation of this practice could create adverse relations with the host government.

- The exchange of large quantities of local currency for U.S. dollars created at least a temporary surplus of Nigerian currency within the U.S. Treasury. Whether or not this creates an adverse condition is arguable but it certainly could have a negative impact when the value of the local currency is declining, which was the case in Lagos.
- Gifts of buildings and housing units may entail future maintenance expenditures. The Embassy Lagos staff advised that in the case of the guest quarters/recreation center the maintenance needs and custodial services are to be covered by rental and restaurant charges to temporary duty personnel. The auditors question, however, whether the donations of real property facilities requiring future outlays should be accepted unless Congress is fully informed in advance.

The significance of accepting blocked funds from U.S. firms cannot be overemphasized. On the surface, what happened in Lagos appears to have benefitted the post and the Department. However, without consideration of the total affect on the U.S. Government, it is not certain that such a policy is appropriate and should be continued. The auditors believe that a U.S. Government policy is needed. The Department should consult with Congress, the Office of Management and Budget, the Department of Treasury, and the Internal Revenue Service with a view to establishing a U.S. Government policy regarding the acceptance of blocked funds as gifts from U.S. firms. (Recommendation 12) In this regard, it should be noted that the IRS has proposed a revenue ruling with respect to valuations of blocked currency.

Regarding the construction of the Embassy guest quarters/recreation center, the Department agreed, at the donor's suggestion, to enter into a business loss construction contract in lieu of a cash donation. The donor was to construct the center at a contract value of \$1,359,619 but at no cost to the Government. In July 1983, the donor gave the Embassy one million Naira, which the Embassy receipted and converted at the official exchange rate and returned \$1,359,619 to the donor. The donor began construction of the center in March, 1985 and substantially completed it in December, 1985. During the construction period, the donor gave the Embassy funds on five occasions totalling 445,630 Naira, which the Embassy receipted

as "donations" or "deposits" valued at \$505,283.62. The auditors were advised these deposits were for materials purchased by the Embassy from the U.S. and used in construction. In May 1986, the donor also deposited 94,370 Naira which the Embassy receipted for \$92,537.75 as "donations for recreation center".

Two aspects of these transactions were questionable:

- The Embassy provided the donor with potentially greater tax benefits by accepting a business loss contract in lieu of a charitable contribution. Tax laws regarding these issues are governed by separate sections of the Internal Revenue Code and are very complex (IRC 162). Generally, corporate operating losses could be carried back three years to offset net income and obtain immediate refund. Charitable contributions could only be carried forward and were limited to ten percent of adjusted taxable income in any taxable year, subject to other limitations (IRC 170). The actual tax value the donor derived was not accessible;
- The Embassy issued receipts which did not accurately reflect the nature of the actual transactions and overstated the donor's basis for tax purposes because: (1) the original deposit of one million Naira in 1983 was documented as a receipt rather than an exchange of currency; (2) the receipt implied a donation took place two tax years sooner than when actual deposits and construction began, in 1985; and (3) receipts implying total donations and deposits of 1,540,000 Naira (valued at \$1,957,440) were issued rather than the actual deposits of 540,000 Naira (valued at \$597,821).

As part of its written guidelines on gift formats, the Department (M and L) should take several actions to prevent recurrences of the above. It should not engage in business loss contracts in lieu of accepting gifts and should not exchange blocked currency for donors. Also, the Department (L) should consult with IRS to determine if it would be appropriate to refer large donations of blocked currency to IRS. (Recommendations 13 and 14)

In response to the draft report, the Department (L) indicated that the construction of the guest quarters/recreation center was pursuant to A/FBO contracting authorities and was not a gift transaction. Further, while one may disagree with the conclusion, the documentation at the time reflects full policy consideration, and Congressional consultation.

The auditors response to the above is as follows. The guest quarters/recreation center building technically was not donated to and accepted by the Department under the auspices of the A/FBO gift authority. However, regardless of how the building was obtained, it was obtained at no cost to the Department and in the opinion of the auditors was a gift and should have been handled as such. The use of the business loss contract mechanism is very creative and from the Department's perspective using it to obtain a building at no cost is no different than accepting a completed building under the A/FBO gift authority. However, from the U.S. Government perspective, it is significantly different because of the treatment for tax purposes. The auditors believe that the business loss contract method of obtaining buildings should not be used.

b. Funds Used for Representation of U.S. Interests Abroad
(\$156,036)

As shown in Exhibit A, Embassies Bern, Dublin, Luxembourg and Vienna and the U.S. Mission Geneva had funds for this purpose and at the time of the audit, all but Dublin had made expenditures. As previously indicated, some posts used these funds questionably.

Perhaps the most questionable use of funds were disbursements by a former Ambassador that involved at least the appearance of a conflict of interest. Title 18 USC 208 and Departmental regulations 3 FAM 620 provide that an employee shall not have a direct or indirect financial interest that conflicts, or appears to conflict, substantially with the employee's duties. The Ambassador disbursed about \$6,300 in gift funds and \$360 in official representation funds to a hotel owned by her husband. The disbursements were for a reception held at the hotel for about 150 persons (\$6,128); catered food served at the residence (\$360); an unstated purpose related to an outside reception (\$154); and a lunch with one guest (\$20). Expenditure of funds to family-owned interests creates the appearance of self-enrichment.

Although recognizing the potential for a conflict of interest when the \$6,128 reimbursement voucher was submitted, the certifying official approved the voucher. The other three expenditures may not have been detected; two were identifiable only by individual receipts among many others, and one involved only a \$20 expenditure.

The OIG is currently consulting with the Department of Justice regarding the above. Until it is determined if further action is appropriate and if so the nature of that action, no recommendation is being made.

The U.S. Embassies at Bern and Vienna spent gift funds and the Embassy at Lagos spent official representation funds totalling about \$10,000 for events attended exclusively by employees of the embassies or other Executive Branch agencies and their families. SR 330e prohibits appropriated representation expenditures for recreation or entertainment of this type.

Vienna held two luncheons costing \$1,440 for 40 to 50 embassy staff members on the occasion of departing fellow workers. Bern held numerous events costing about \$8,500. Most were intimate meals for high-ranking Executive Branch visitors, their families, visiting Ambassadors, and embassy staff members, but they also included a Christmas buffet dinner for 130 staff members and their families (\$3,000) and a farewell picnic barbecue attended by 157 embassy personnel (\$1,875). Lagos spent \$200 for beverages for its staff and U.S. Navy personnel from a visiting vessel. One of the Vienna luncheons, attended by 40 staff members, was apparently justified by the presence of one host country national. Vienna

Unauthorized in-house expenditures occurred for several reasons. Ambassadors apparently believed that gift funds were theirs to disburse as they saw fit. Certifying officers did not strenuously exert disapproval authority. Guidelines did not specify ratios of qualifying versus non-qualifying guests; therefore, liberal interpretation would permit largely in-house events with merely a token number of qualified guests. Also SR 320a implies that in-house events may be allowable upon visits of public vessels.

The Department (A in coordination with M/DGP and M/COMP) should clarify SR 300 by amending 3 FAM 340 and 4 FAM 423 to specify minimum guest ratios needed for qualifying representational events. (Recommendation 15) Also, the Department (A/OPR/ALS) should rephrase SR 320a to clarify that protocol entertainment (visits of noted persons, public vessels, etc.) is subject to the prohibition against entertaining only Executive Branch employees. (Recommendation 16)

✓ The Embassies in Bern and Vienna spent contributed funds to purchase gifts for Executive Branch employees and their families. The former Ambassador in Vienna gave 11 gifts costing \$770 to eight high-ranking members of the Executive Branch. The gifts were mainly small tangible property items up to \$50 in value and sets of opera or other entertainment tickets (from \$38 to \$317 per set). The Ambassador in Bern gave about 25 gifts costing over \$800 to various Executive Branch employees

including visiting Ambassadors and embassy staff. The gifts were given at Christmas, birthdays, during illness, at honoring dinners, and upon departure. Included was a \$270 appreciation gift to the Embassy Deputy Chief of Mission upon his departure. Prohibitions against spending appropriated funds for entertainment of Executive Branch employees would also apply to the purchase of gifts. Whereas instructions were given to Vienna to spend gift funds in the same manner as appropriated funds, the Department's guidance to Bern was not so clear. However, the auditors do question whether it was prudent to spend tax-deductible contributions to the U.S. Government for the exclusive use of persons on the federal payroll and whether such expenditures were effective in furthering representation objectives. The Department (A in coordination with M/DGP) should clearly state in representational guidelines (3 FAM 340) that any gift to an Executive Branch employee is prohibited. (Recommendation 17)

The Embassies at Vienna and Bern also spent gift funds on behalf of other federal government entities or organizations associated with the posts. These expenditures included two gifts (\$33 and \$82) to members of the U.S. Congress; a cash contribution to the American International School (\$118); and purchases of raffle tickets and tee shirts in support of the annual U.S. Marine Ball (\$95).

SR 320e allows use of appropriated representation funds for "entertainment of members of the Legislative and/or Judicial Branches of the United States Government". Although there may be representational value in hosted entertainment for such members, it can be questioned whether it furthers U.S. interests or creates an appearance of impropriety to expend funds for gifts or unhosted admission tickets. The auditors also question whether disbursements of donated funds should be made for organizations associated with posts.

The Department (A in coordination with M/DGP) should clarify SR 320e by stating in 3 FAM 340 whether allowable entertainment of Federal Legislative Branch members includes tangible gifts and unhosted admissions to events. The auditors advise against such uses on behalf of any public servant. (Recommendation 18) SR 340e should be clarified by addressing in 3 FAM 340 whether funds can be spent on behalf of organizations such as American Schools and U.S. Marine Guards. (Recommendation 19)

The Embassies in Bern and Vienna spent over \$4,000 for transportation purposes:

- . \$2,800 for two boat rentals for representation events;
- . \$1,122 for a trans-Atlantic air ticket for an

- entertainer; and
- \$109 in train tickets for American guests and embassy escorts.

Official representation guidelines prohibit expenditures to hire, purchase, operate, or repair any motor-propelled, passenger-carrying vehicle. In some cases above, the vehicle was hired; at other times tickets were purchased. In some of the cases it did not appear that the expenditures were effective in furthering abroad U.S. interests. The Department (A/OPR/ALS) should remind all posts that expenditure of representation funds for purposes of transportation are prohibited. (Recommendation 20)

The former Ambassador in Vienna was reimbursed \$920 from gift funds for five representation events (meals or receptions) that took place in New York, Texas, and Washington, D.C. At least two of the events were for expensive meals (dinner for 3 persons costing \$190 and lunch for two persons costing \$125) which would have exceeded allowable rates of subsistence while the Ambassador was in a travel status. The certifying officer stated she was unaware of prohibitions against spending representation funds outside an officer's country of accreditation.

The Department's guidance was unclear in several respects. 4 FAM 423.4 states an officer accredited to more than one country may expend representation funds in the countries to which accredited. The prohibition of spending funds in other countries to which the officer is not accredited is only implied. SR 320 lists allowable items "incurred in the foreign country or area of assignment or detail by employees "and can be interpreted to permit representation expenditures while in a travel status outside the accredited country.

In May 1983, the Department (L/M) issued a written opinion stating there was no basis for representation expenditures in the U.S. This opinion reversed an earlier 1976 legal opinion issued by the Legal Staff. Since 1982, at least four embassies have requested guidance on this issue, and the Department (A/OPR/ALS) has disallowed expenditures outside accredited countries. However, the Department has not codified this guidance in its representation guidelines for use by all posts. The Department (A in coordination with M and L) should clarify SR 330 regarding the use of representation funds outside the country of accreditation. (Recommendation 21) Note: This recommendation does not address the special circumstances of employees assigned to the U.S. Mission United Nations or employees attending international conferences. Care should be taken when implementing Recommendation 21, in order not to

preclude authorized representation in the U.S. by these employees.

Gift and official representation funds were spent by several embassies for the Ambassador alone or with spouse (no guest) or for otherwise qualified guests only (no host) to attend operas, concerts, and other types of performances. In Bonn, for example, tickets to four events costing \$723 for the Ambassador and spouse were charged to official representation. In Vienna, the former Ambassador apparently purchased tickets for herself and her spouse to attend concerts, but vouchered the expenditures as "contributions".

The only criterion for the purpose of representation funds is to further U.S. interests abroad. Whether "no host" or "no guest" expenditures achieve this objective is a debatable and judgmental matter. The auditors acknowledge that Ambassadors are expected to attend some events and that some representational value can be realized. However, there are statutory prohibitions against using funds for Executive Branch employees only and supplementation of their salaries.

In view of these considerations, it must be further stated that the Department had not clearly addressed these issues so embassies could apply a clear set of guidelines. Written instructions did not address "no host" and "no guest" functions. In response to individual inquiries, the Department (A/OPR/ALS) tended to discourage such expenditures because the officer did not control the guest list or agenda at "no guest" functions and was not present to achieve representational purposes at "no host" functions. To encourage the proper and consistent use of funds, the Department (A in coordination with M/DGP) should establish in 3 FAM 340 a clear set of guidelines regarding expenditures for "no host" and "no guest" events. (Recommendation 22)

Ambassadors in Bern and particularly Vienna used significant portions of donated funds to give gifts. The former Ambassador in Vienna spent about \$12,000 (roughly 16 percent) of gift fund expenditures for gifts to foreign official and private citizens, American private citizens, and employees of the U.S. Government. Individual gifts were sometimes excessive in cost, e.g. an original caricature costing \$430 and a dressing robe for \$592. Based upon interviews of embassy employees, it is the opinion of the auditors that many of the gifts appeared to be personal rather than official in nature. In Bern the Ambassador gave about \$2,600 in gifts. Gift occasions were often stated on Bern's reimbursement vouchers, but infrequently on Vienna's.

SR 320 permits gift expenditures as follows: (1) tips and gratuities (in addition to those related to entertainment) to persons not employed by the U.S. where customary and necessary and (2) flowers, wreaths, and similar tokens on appropriate occasions such as weddings, births, and deaths of important persons. The guidelines are vague regarding entertainment gifts, qualified recipients, and a value limitation. Although it set a \$30 to \$50 gift limitation policy in its messages to Vienna, the Department approved unjustifiable exceptions in Vienna, ultimately liberalized the policy to allow gifts up to \$165 under repeated requests from the Ambassador, and did not publish gift limitation policies for other posts to follow. Although required by 4 FAM Exhibit 423.4, reimbursement vouchers often did not state the occasion, recipient, or reason for gifts.

The Department (M and L) should strengthen controls over the giving of gifts. It needs to clarify in writing in the FAM what it means by gifts related to entertainment, who are qualified recipients, and establish a value ceiling. Also, it should reemphasize the required documentation for gifts. (Recommendation 23) In commenting on the draft audit report, M and L noted that P.L. 95-105, section 515(b) applies and should be considered when addressing this recommendation. The auditors agree.

The purchase of property items such as gifts and beverages in bulk quantity for stock purposes has been a control weakness with regard to official representation expenditures and was found to be a further problem in expenditures of gift funds. S/IGP issued Memorandum Report No. M-85-18, January 3, 1986 which showed that posts were making bulk purchases of wines and liquors using representation funds at the end of the fiscal year. These purchases were being made despite requirements in 4 FAM 423.4 and SR 340 which indicate that specific supporting data, such as, the event, recipient, occasion, and purpose be shown on the voucher in order for the employee to be reimbursed.

In this review, the auditors found that three embassies used gift or official representation funds to reimburse employees for bulk purchases without identifying recipients, events, or occasions. The total expenditures exceeded \$8,400 and included such things as:

- . \$2,150 for 100 pocket calculators;
- . \$1,761 for 168 neckties;
- . \$1,075 for 50 books, "The Liberal Crackup";
- . \$1,000 for 100 business card cases;
- . \$ 898 for 99 cigarette lighters; and
- . \$ 572 for 72 bottles of wine.

The certifying officer in one embassy advised that after approving the expenditures she continually pressed the Ambassador for identification of gift recipients but had little success obtaining it. When some names were provided, they included unqualified recipients such as family members and Executive Branch employees. Per the certifying officer the Ambassador advised that she was unable to provide names as the gifts or gratuities were given to policemen, doormen, and others who assisted her on trips. Of the total \$8,400 spent for bulk purchases, only \$3,600 was accounted for as required. One Ambassador left office without divulging the recipients of about \$3,750 in bulk purchases.

The Department has not properly dealt with this issue. Guidelines do not specifically address bulk purchases. In responding to specific embassy inquiries, A/OPR/ALS has held such purchases to be unallowable for reimbursement. However, other offices in the Department (L/M and M/COMP) have indicated in responses to the 1986 S/IGP report that bulk purchases are allowable expenditures of appropriated representation funds.

The use of funds under representation procedures requires that an event or occasion actually be held and the reason for the expenditure must be documented. Claims for reimbursement are made after the event or occasion has occurred. The auditors do not believe the purchase of bulk gifts to be given away at some point in the future or used at some future event or occasion meets the test of a justifiable representation expense at time of payment. Further, if bulk purchases are allowed, then procedures and records would have to be established in order to control the stock. The auditors do not believe this is worthwhile or practical and recommend that the Department (A in coordination with L and M/COMP) amend 3 FAM 340 to prohibit representation expenditures for bulk purchases either for stock or for gifts. (Recommendation 24)

When originally authorized by Congress in 1924, representation allowance was advocated by the Department to recompense officers the personal costs they bore in entertaining officials. Presently, SR 320 allows three types of entertainment for representation:

- . entertainment of a protocol nature on important occasions;
- . entertainment undertaken to promote personal relationships necessary in performing official duties; and
- . entertainment for members of the Legislative and Judicial Branches.

Furthermore, to impose a certain restraint and promote good taste in its representation activities abroad, the Department cautions its embassies to avoid ostentation. 3 FAM 344.5 instructs the Chief of Mission (COM) to establish dollar limits for representation activities.

The audit showed that the original concept of entertainment has been enlarged and exaggerated and that present controls to prevent ostentation were not operating. Entertainment expenditures were found to encompass lavish outside activities, extravagant gifts, in-house events with excessive costs, and purchases of tangible items only tenuously associated with entertainment.

Ambassadors spent gift or official representation funds for themselves and others to attend a ballet performance (\$1,656); a palace ball (\$881); four opera seats (\$563); and a hospitality box at a horse show (\$537). Ambassadors hosted outside events such as a boat party with fireworks for about 400 persons (over \$15,000); a film and restaurant dinner for 46 persons (over \$2,000); a restaurant lunch for four persons (\$115 per person); train tickets, meals, and ski rentals for American guests and embassy staff escorts (\$487); and the rental of a theater for a premiere film showing (\$262). One ambassador spent \$4,000 for flower decorations at the residence for July 4th celebrations and rented two costumes for \$551 to attend a ball.

Although excessive expenditures were noted at most of the Embassies audited, patterns of particularly lavish entertainment occurred at Embassy Bern, Embassy Vienna, and the U.S. Mission to the Organization for Economic and Community Development (OECD), Paris. These conditions were caused by weak representation guidelines, incomplete Departmental oversight, and ineffective local controls at post.

The Department, Allowances Staff (A/OPR/ALS) advised that guidelines were broadly written to accommodate diverse representation programs at all posts. However in view of the problems discussed in this report, the Department needs to define allowable expenditures in more specific terms. "Entertainment" is too general to ensure direct, effective fund usage. The Department (A in coordination with M/DGP) should clarify SR 300 by defining in 3 FAM 340 what is meant by entertainment. (Recommendation 25)

There are several problems with the way the Department attempts to control ostentation. Most embassies established per

capita cost limitations for in-house and outside meals, but they typically did not address outside recreation activities, performances, events, personal gifts, or other forms of expenditures. Even where guidelines were published, they did little to control expenditures. The administrative approval authorities at posts interpreted the Department guideline on ostentation to permit Ambassadors not only to establish per capita cost limitations but also to exceed them at will. The auditors were told that expenses by Ambassadors in excess of local guidelines were, in effect, redefinitions of the limitations. This nullified the Department's attempt to control ostentation.

The auditors also found that the total cost of a single event could be ostentatious even though the cost per person was at or near the guidelines. An example of this was the boat party in Vienna which cost over \$15,000. The actual cost per person was about \$38, only slightly more than the embassy's \$30 guideline, but the total cost of the event itself was excessive.

3 FAM 340 provides posts with general guidelines for the effective use of available representation funds, including paragraphs on economy and good taste and planning and control. The Chief of Mission is charged with the responsibility of planning, controlling, and monitoring the use of these limited funds. The FAM indicates that lavish expenditures are questionable in most circumstances and ostentation is discouraged. Also, the FAM indicates effective use of representation funds entails a defined policy with a planned program including continued review in order to ensure effective utilization of available funds. Because of the conditions noted in this review, the auditors believe that Chiefs of Mission should be reminded of their responsibilities regarding effective use of representation funds. The Department (Under Secretary for Management) should include in the periodic "Management Issues" telegrams to posts a discussion on the effective use of representation funds including the importance of economy and good taste and the avoidance of lavish and ostentatious expenditures. (Recommendation 26)

Some embassies spent official representation funds for purposes that appeared to be, at least partially, membership fees or dues. For example, one Ambassador spent \$247 for a "mandatory contribution to the Diplomatic Corps" and was personally reimbursed.

SR 330b states that membership fees or dues in any society, club, or association are prohibited by Title 5 USC 5946. However, the Department's Legal Office concluded in 1982 that

where membership serves mission purposes, the mission itself may purchase membership provided: (1) the activities of the society or association are professional; (2) membership is for the mission and not an individual; and (3) payment is not reimbursed to an individual. The Allowances Staff has provided these guidelines to several embassies in response to specific inquiries, but has not updated SR 330b. As a result, certifying officers have improperly approved expenditures for membership fees.

The Department (A/OPR/ALS) should amend SR 330b to disclose the exceptional conditions pertaining to mission membership. In addition, in cases where embassies exercise the prerogative to purchase memberships, they, should be required to document that the three conditions have been met. (Recommendation 27)

5. Approval and Reimbursement

The review identified a number of deficiencies in the submission, approval, and reimbursement of vouchers. Discussed below are consolidated problems relating to both gift and official representation fund vouchers.

A serious and common weakness was the absence of adequate information explaining expenditures. Often vouchers did not fully identify the nature or recipient for the expenditure so its allowability could be judged. Also lacking were adequate descriptions of the events or occasions which necessitated the expenditures. Some apparent purchases of tickets to charitable events were mis-characterized as contributions. Here are some examples:

- . The Ambassador in Bern spent about \$1,800 for photographic film and development without divulging the disposition of the photographs;
- . The Ambassador in Bern spent \$487 transporting, entertaining, and feeding unidentified American guests on an apparent skiing excursion to Wengen;
- . The former Ambassador in Vienna spent \$280 for flowers to local officials and civic leaders with no stated occasion and made donations to charities that Embassy personnel could not identify;
- . The former Ambassador in Vienna purchased 4 opera tickets costing \$563 for the Ambassador, her spouse, and two others to attend a festival in Salzburg with no stated representational purpose; and

The Ambassador in Bonn rented a cine-center for viewing the film "The Color Purple" for \$262 but the purpose or intended audience were not disclosed on the voucher.

Certifying officers improperly accepted and approved incomplete reimbursement vouchers even though Department guidelines were clear. SR 341 required that vouchers for entertainment identify the types, purpose, and location of a function and names and titles of guests of honor. Other types of vouchers must be supported by stating the occasion, name and title of recipient, and reason for expenditure. Certifying officers did not enforce these guidelines.

In many cases, the purpose of entertainment expenditures was stated but other data was not. 4 FAM Exhibit 423.4 requires a statement of purpose and lists four types, such as "promotion of U.S. national interests", or "commemorative and ceremonial requirements." These purposes are useful in accumulating types of costs incurred in representation, but they do not alone adequately describe the specific detail of the expenditure. Nevertheless, many vouchers contained only these "canned" statements of purpose. The Department (A/OPR/ALS and M/COMP) should reemphasize representation documentation requirements to certifying officers, stressing that the purpose statements alone do not adequately describe expenditures and do not constitute a valid voucher for payment. (Recommendation 28)

Reimbursement vouchers often contained no receipts or other evidence of expenditure. Receipts which should have been available for miscellaneous purchases, restaurant meals, and gift items were frequently not submitted. For other expenditures not normally receipted such as donations to charities and purchases of admission tickets, other documents which would evidence payment such as cancelled checks or copies of the admission tickets were not submitted. In some cases, correspondence which merely solicited donations or invited officers to attend events with fees were submitted rather than evidence of payment. Also many receipts were not translated into English as required by 4 FAM 411.

The Department's receipt guidelines are weak and inconsistent. SR 342 states a supporting receipt shall normally be supplied for each expenditure of over \$35, but 4 FAM Exhibit 423.4, which shows how vouchers are prepared, generally requires receipts for expenditures over \$10. The latter reference has not been updated for 15 years. Both references allow an officer's certification where it is impractical to obtain receipts.

These guidelines should be strengthened. In many cases where receipts are not available, other documented evidence of payment can be provided. The guidelines should require proof of expenditure whether by receipt or copies of cancelled checks, credit card charges, or admission tickets; and should be amended to reconcile the dollar amount requiring receipts. (Recommendation 29)

There were instances where expenses related to a single event were scattered in several reimbursement vouchers. For example, expenses related to one event were claimed in five different vouchers. On another occasion, costs for a single event were claimed and reimbursed through two vouchers submitted months apart. The submission of multiple vouchers related to the same event complicates review, examination of per capita costs, and correct reimbursement. The Department (M/COMP) should amend 4 FAM 423.4 to include a procedure to require all expenses for one representation event to be submitted on a single voucher. (Recommendation 30)

Several vouchers did not properly identify guests at events. There were cases where guests were not identified, only honored guests were identified, or guest affiliations were not stated. A complete guest list, by guest affiliation, is needed to evaluate whether events qualify for reimbursement. 4 FAM Exhibit 423.4 requires only the names and titles of American and foreign guests of honor. This reference should be revised to require complete guest lists for entertainment events. (Recommendation 31)

B. Official Residence Expenses

The auditors examined selected ORE reimbursement vouchers processed primarily during 1986 at six posts and noted several questionable expenditures. For instance, Embassy Paris purchased 2,000 candles for \$ 1,306 and charged them to ORE. Embassy Bonn also purchased candles and flowers, sometimes on a daily basis. SR 453a permits the purchase of expendable supplies consumed in use such as paper, light bulbs, linen, nails, and wire, but does not specify a dollar limitation. Therefore expenditures for candles, flowers, and linen appear to qualify despite possibly excessive costs. There is a tendency on the part of posts to charge representational related items such as candles and flowers to ORE. This has the effect of expanding the amount available for representation by charging representational related expenses to a non-representation allotment. The Department (A in coordination with M and L) should clarify the items and cost limitations that apply under SR 453a. (Recommendation 32)

There is a conflict between SR 452 and 6 FAM 700 regarding the source of funds used to maintain official residences. SR 452 a and b indicate that the rent, installation, repair, upkeep and removal of furnishings, equipment, and appliances; and the purchase of services such as those required to renovate and redecorate the official residence are allowable as ORE and therefore can be charged to the post's salaries and expenses allotment. However, 6 FAM 700 (which is the procedure followed by the Department) states that these types of expenses are charged to the FBO allotment. 4 FAM 432 (which covers vouchering of ORE) does not clarify this conflict. The auditors realize that the SR applies to other agencies as well as State and that is the reason for the apparent conflict in these regulations. In order to clarify this situation, the Department (A/OPR/ALS in coordination with A/FBO and M/COMP) should notify all posts that SR 452 a and b do not apply to State operations which are governed by 6 FAM 700. Also, 6 FAM 700 and 4 FAM 432 should be cross referenced. (Recommendation 33)

C. Miscellaneous

A number of the vouchers reviewed in this audit evidenced expenditures prohibited by law or regulation. Examples are, gifts to Executive Branch employees and the boat trip in Vienna. The specific vouchers in question along with the auditors' analyses are being transmitted to the Department's Fiscal Irregularities Committee with a recommendation that the vouchers be reviewed to determine whether or not the employee or certifying officer involved should be required to reimburse the Government. (Recommendation 34)

REPORT OF AUDIT

GIFT FUNDS

LIST OF RECOMMENDATIONS

1. -- The Department (M and L) should formulate and publish in the FAM, specific procedures for the solicitation, collection, allocation, accounting, use and control of gift funds. Also, the procedures for gifts to the U.S. Government for the operation of overseas buildings should be published in the FAM.
2. -- The Department (M and L) should include in its guidelines on gift funds, procedures which assure that donors receive no preference including rules regulating the entertainment of donors.
3. -- The Department (M and L) should include in its guidelines on gift funds, procedures that (1) discontinue the practice of making statements that imply an official position on the possibility of a tax deduction for an individual donor; and (2) only accept gifts by and for the use of the United States without stating the Department's view of the value of gifts.
4. -- The Department (M and L) should include as part of its guidelines a procedure whereby a justifiable need must be established by the post and approved by the Department before a gift can be accepted.
5. -- The Department (A/FBO and DS) should notify Embassy Vienna that further work on the Residence must be approved in advance.
6. -- The Department (M and L) should designate one office to be responsible for receiving and controlling gift fund donations.
7. -- The Department (M) should return to donors all checks for representation purposes currently on-hand.
8. -- The Department (M and L) should include in its guidelines on gift funds, procedures whereby prospective donors are required to: make a pledge for donation which could be processed for conflict of interest determination; and submit a check for immediate deposit after the conflict of interest issue has been resolved.

9. -- The Department (A/FBO in coordination with M/COMP and Embassy Lagos) should provide to the OIG a full accounting for the \$829,653 in gift funds generated at Embassy Lagos.
10. -- The Department (M/COMP) should develop written procedures for allotting and accounting for gift funds which include provisions to: assure that gift funds are recorded as gift fund allotments and are not recorded and commingled with appropriated funds; and ensure funds collected for one purpose are allotted by a single office.
11. -- The Department (A/FBO in coordination with M/COMP, EUR/EX and Embassy Paris) should reconcile the accounts for gift funds received and accepted for Embassy Paris during the period July 1, 1985 through September 30, 1986.
12. -- The Department (M and L) should consult with Congress, the Office of Management and Budget, the Department of Treasury, and the Internal Revenue Service with a view to establishing a U.S. Government policy regarding the acceptance of blocked funds as gifts from U.S. firms.
13. -- The Department (M and L) should include in its guidelines for gift funds, procedures that prohibit engaging in business loss contracts in lieu of accepting gifts, and exchanging blocked currency.
14. -- The Department (L) should consult with the Internal Revenue Service (IRS) to determine if it would be appropriate to refer large donations of blocked currency to IRS.
15. -- The Department (A in coordination with M/DGP and M/COMP) should clarify SR 300 by amending 3 FAM 340 and 4 FAM 423 to specify minimum guest ratios needed for qualifying representational events.
16. -- The Department (A/OPR/ALS) should rephrase SR 320a to clarify that protocol entertainment (visits of noted persons, public vessels, etc) is subject to the prohibition against entertaining only Executive Branch employees.
17. -- The Department (A in coordination with M/DGP) should clearly state in representational guidelines (3 FAM 340) that any gift to an Executive Branch employee is prohibited.

18. -- The Department (A in coordination with M/DGP) should clarify SR 320e by stating in 3 FAM 340 whether allowable entertainment of Federal Legislative Branch members includes tangible gifts and unhosted admissions to events.
19. -- The Department (A in coordination with M/DGP) should clarify SR 330e by addressing in 3 FAM 340 whether funds can be spent for organizations such as American Schools and U.S. Marine Guards.
20. The Department (A/OPR/ALS) should remind all posts that expenditure of representation funds for purposes of transportation are prohibited.
21. The Department (A in coordination with M and L) should clarify SR 330 regarding the use of representation funds outside the country of accreditation.
22. -- The Department (A in coordination with M/DGP) should establish in 3 FAM 340 a clear set of guidelines regarding representation expenditures for "no host" and "no guest" events.
23. -- The Department (M and L) should strengthen controls over gifts by: clarifying in writing in the FAM what it means by gifts related to entertainment; identifying who are qualified recipients; establishing a value ceiling; and reemphasizing the required documentation for gifts.
24. -- The Department (A in coordination with L and M/COMP) should amend 3 FAM 340 to prohibit representation expenditures for bulk purchases for stock, or for gifts.
25. -- The Department (A in coordination with M/DGP) should clarify SR 300 by defining in 3 FAM 340 what is meant by entertainment.
26. -- The Department (M) should include, in its periodic "Management Issues" telegrams to posts, a discussion on the effective use of representation funds including the importance of economy and good taste and the avoidance of lavish and ostentatious expenditures.
27. -- The Department (A/OPR/ALS) should amend SR 330b to disclose the exceptional conditions pertaining to

mission membership. In addition, in cases where embassies exercise the prerogative to purchase memberships they, should be required to document that the activities of the society or association are professional, membership is for the mission and not an individual, and payment is not reimbursed to an individual.

- 28. -- The Department (A/OPR/ALS and M/COMP) should reemphasize representation documentation requirements to certifying officers, stressing that the purpose statements alone do not adequately describe expenditures and do not constitute a valid voucher for payment.
- 29. -- The Department (A/OPR/ALS and M/COMP) should update its representation guidelines to require proof of expenditure whether by receipt, copies of cancelled checks, credit card charges, or admission tickets. Also, 4 FAM Exhibit 423.4 should be amended to raise the dollar amount requiring receipts to \$35 to conform with SR 342.
- 30. -- The Department (M/COMP) should amend 4 FAM 423.4 to include a procedure to require all expenses for one representation event to be submitted on a single voucher.
- 31. -- The Department (M/COMP) should amend 4 FAM Exhibit 423.4 to require complete guest lists for entertainment events.
- 32. -- The Department (A in coordination with M and L) should clarify the items and cost limitations that apply under SR 453a.
- 33. -- The Department (A/OPR/ALS in coordination with A/FBO and M/COMP) should clarify SR 452 a and b to show that these two items do not apply to State operations which are governed by 6 FAM 700. Also, 6 FAM 700 and 4 FAM 432 should be cross referenced.
- 34. -- The Department (Fiscal Irregularities Committee) should review and determine for the vouchers received from the OIG whether or not the employee or certifying officer involved should be required to reimburse the Government.

GIFT FUNDS RECEIVED AND ACCEPTED 1/

<u>Post</u>	Total Amount Received and Accepted <u>1/1/85 - 9/30/86</u>	<u>Intended Purpose</u>		
		<u>Represent- tation Funds</u>	<u>Renovation and Refurbishing</u>	<u>Other 2/</u>
Bern	\$ 58,400	\$ 58,400	\$ -	\$ -
Dublin	20,000	15,000	-	5,000
Geneva	1,500	1,500	-	-
Lagos	4,828,137 <u>3/</u>	-	-	4,828,137
Luxembourg	2,500	2,500	-	-
Paris	220,950 <u>4/</u>	-	220,950	-
Vienna	<u>97,136 5/</u>	<u>78,636</u>	<u>-</u>	<u>18,500</u>
Total	<u>\$5,228,623</u>	<u>\$156,036</u>	<u>\$220,950</u>	<u>\$4,851,637</u>

NOTES:

- 1/ The donations shown in this exhibit are funds only. The exhibit does not include donations of property. It should be noted that no gift fund donations were received and accepted for Embassy Bonn for the audit period.
- 2/ Other includes funds intended for the acquisition or rehabilitation of real and non-expendable property and a grant to a school.
- 3/ Includes donations for the period July 27, 1983 through September 30, 1986 and was expended predominantly for real property in Lagos and Kaduna, Nigeria.
- 4/ Includes donations from July 1, 1985 through September 30, 1986.
- 5/ Includes donations from October 1, 1983 through September 30, 1986.

GIFTS ACCEPTED BY U.S. EMBASSY LAGOS
July 1983 through September 1986 1/

<u>DONOR</u>	<u>DATE OF DONATION</u>	<u>AMOUNT COLLECTED BY AGENCY</u>		
		<u>STATE</u>	<u>USIA 2/</u>	<u>AID 2</u>
1. Chester E. Norris	12-4-85	\$ -	\$ 10,840	\$ -
2. Pharma-Deko Limited	4-30-86	-	14,783	-
3. National Cash Register	8-11-86	-	750,300	150,06
4. Emerson Electric Co.	8-22-85	223,464	223,464	-
5. Butler Manufacturing Co.	4-1-85	138,324	-	-
6. Mobil Oil Corporation	9-8-83	2,719,239	-	-
	2-23-84	-	707,002	-
	3-6-84	-	217,539	-
7. Hawaiian Agronomics	3-29-85	-	41,802	-
8. C.T. Main Inter- national Inc.	7-27-83	1,359,619	-	-
9. PRC Nigeria Limited	12-19-83	387,491	-	-
10. J.P. Werner Sheet Metal Inc. 3/	2-24-84	15,197	-	-
	TOTALS	<u>\$4,843,334</u>	<u>\$1,965,730</u>	<u>\$150,06</u>

- NOTES:
- 1/ The information in this exhibit was compiled by review of records located in the Embassy Lagos Administrative Office, the Budget and Fiscal Office, the General Services Office, and the Ambassador's Office. The review did not include records located at USIS and AID.
 - 2/ Funds collected for USIA and AID are shown for information purposes only and were not reviewed in this audit.
 - 3/ Donation of equipment, tools, and materials which were accepted at post.

GLOSSARY OF TERMS

For the purpose of this report, various terms used herein, are defined below:

<u>REPORT TERMINOLOGY</u>	<u>DEFINITION</u>
Blocked Foreign Currency	Foreign currency which by legislation of the Foreign Government cannot be removed from the country.
Gifts	The conditional or unconditional contribution of real property, personal property, or funds, to the U.S. Department of State to be used for the benefit of the Department or for the carrying out of its functions.
- Conditional Gift	A contribution of funds or property to the U.S. Department of State in which the donor attached a formal condition that the funds or property must be used for a specified purpose.
- Unconditional Gift	A contribution of funds or property to the U.S. Department of State in which the donors, though possibly expressing an intention as to their use, attached <u>no</u> formal condition that the funds or property must be used for a specified purpose.
Property	
- Real Property	Property consisting of lands and all appurtenances to lands, such as buildings and attachments.
- Personal Property	Property other than real property.
- Non-Expendable Property	Personal property <u>not</u> normally consumed in use, or of sufficient value (cost) to justify maintaining property accountability records (as opposed to expendable property which is normally consumed in use).

REPORT TERMINOLOGY

DEFINITION

Official Representation
Funds

Funds appropriated by the U.S. Congress for furthering abroad the interests of the United States. These funds are intended to cover allowable items of expenditures by employees whose official positions entail maintaining relationships of value to the United States in foreign countries.

- No Guest Event

A term used by the Allowances Staff to describe an entertainment event or performance in which admission tickets were purchased for attendance by the embassy employee and/or spouse only.

- No Host Event

A term used by the Allowances Staff to describe an entertainment event or performance in which admission tickets were purchased for attendance by an embassy guest or guests without being accompanied by an embassy employee.

Official Residence
Expense Funds

Funds appropriated by the U.S. Congress for unusual expenses a principal representative is obliged to incur in the operation and maintenance of a suitable official residence.

REPORT OF AUDIT

GIFT FUNDS

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REPORT OF AUDIT

GIFT FUNDS

PREFACE

Audit reports are a means by which the Office of Inspector General meets the requirements of Section 2 of the Inspector General Act of 1978 as amended and the financial and management audit requirements of the Budget and Accounting Procedures Act of 1950, as amended and as implemented by Office of Management and Budget Circular A-73 (revised).

This audit was performed in accordance with generally accepted U.S. Government auditing standards. Appropriate tests were made to evaluate the management of gift funds in the Department of State. The audit was performed in Washington, D.C.; Paris, France; Vienna, Austria; Bonn, Germany; Luxembourg, Luxembourg; and Lagos, Nigeria.

UNITED STATES COURT OF APPEALS

FILED 86-5

FOR THE

GEORGE A FISHER
CLERK

DISTRICT OF COLUMBIA CIRCUIT

INDEPENDENT COUNSEL DIVISION

NOTIFICATION BY THE ATTORNEY GENERAL
PURSUANT TO 28 U.S.C. §592(b)(1)
REGARDING ALLEGATIONS AGAINST
UNITED STATES AMBASSADOR TO
SWITZERLAND, FAITH RYAN WHITTLESEY

No.

86-5

In accordance with section 592(b)(1) of Title 28, United States Code, the Attorney General of the United States hereby makes the following report to the Court concerning allegations against the United States Ambassador to Switzerland, Faith Ryan Whittlesey, 1/ concluding that no Independent Counsel is warranted with regard to those allegations.

I. THE ALLEGATIONS

On September 2, 1986, the State Department Inspector General's Office (IG) received an allegation from the Subcommittee on International Operations of the House Foreign Affairs Committee that Faith Ryan Whittlesey solicited and received monies from the family of an individual she appointed to a high-level position in the Embassy in Bern. In support of its

1/ Ambassador Whittlesey is a "covered person" under the Independent Counsel statute by virtue of her prior employment in the White House.

86-192-26

U.S. DEPARTMENT OF STATE	
OFFICE OF INSPECTOR GENERAL	
OFFICE OF INVESTIGATIONS	
JAN 27 1988	
SEARCH	SERIAL
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allegation, on September 3, 1986, the Subcommittee turned over to the IG's Office correspondence between Ambassador Whittlesey and the family which had made a contribution to the Ambassador's gift fund. Thereafter, the State Department Inspector General's Office began an inquiry into the matter. At the request of the IG, the Department of Justice participated in the inquiry.

The initial inquiry soon was expanded to examine allegations received as to the use of the Ambassador's unconditional gift fund and potential conflicts of interest relating to gift fund contributions. The conclusion of the Attorney General, after reviewing the results of a thorough inquiry, was that the information disclosed by the inquiry was not sufficient to initiate a "preliminary investigation" under the statute, and that accordingly these matters should be closed. The Department was preparing its memorandum closing all the allegations 2/ when it received a copy of an October 27, 1986, cable from the Embassy in Bern. The cable related telephone conversations between Ambassador Whittlesey and her Deputy Chief of Mission from which it might have been concluded that Ambassador Whittlesey was attempting to prevent or interfere with the production of telephone toll records requested by the Inspector General's Office. Based upon this new allegation of a potential obstruction of justice, the Department initiated a preliminary investigation

2/ There is no evidence that Ambassador Whittlesey was aware of this fact.

with the joint assistance of the Federal Bureau of Investigation (FBI) and the IG.

The inquiry and preliminary investigation were conducted between September 10, 1986 and November 12, 1986. During that time more than fifty witnesses were interviewed in Bern, Zurich, Paris, Geneva, and six different cities in the United States. Ambassador Whittlesey was herself interviewed three times at length. Prior to discussing the obstruction allegation in detail, we include a summary of the initial allegations and the Attorney General's findings with respect to them.

A. The Initial Allegations

1. The Unconditional Gift Fund

a) The gift statute and funds raised under it

Title 22, United States Code, Section 2697(a) permits the Secretary of State to accept gifts made for the benefit of the Department of State. 22 U.S.C. §2697(b) states that "[s]uch funds are hereby appropriated," and that "such funds and the income from such investments shall be available for expenditure in the operation of the Department of State (including the Foreign Service) and the performance of its functions, subject to the same examination and audit as is provided for appropriations made for the Foreign Service by the Congress."

During the relevant time period, the State Department did not promulgate official regulations delimiting expenditures from the unconditional gift fund; however, State Department officials - charged with administration of the gift fund told investigators that departmental policies and practices required donated monies

to be used only with the same strictures applied to congressionally appropriated official representational funds. All internal State Department memoranda that investigators were able to locate supported that position. The inquiry was unable to demonstrate that the existing restrictions were ever communicated to Ambassador Whittlesey.

Since May 1985, Ambassador Whittlesey has raised a total of \$82,300 through the Title 22 Unconditional Gift Fund. For the ten-month period between May 1985 and March 1986, donors sent all funds directly to Ambassador Whittlesey, who then forwarded the funds to the State Department. For reasons unrelated to Ambassador Whittlesey's expenditures from the gift fund, on March 4, 1986, the State Department notified Fred H. Gottfurcht, Chairman of Ambassador Whittlesey's fund-raising committee, that thereafter he was required to send all funds directly to the State Department.

b) Questioned expenditures under the gift fund

A substantial proportion of Ambassador Whittlesey's expenditures from the gift fund appears to have been for items which could not have been appropriately vouchered against official representational funds. Representational funds are appropriated by Congress to defray entertainment expenses at the embassies. Their purpose is defined in chapter 300 of the State Department standardized regulations as "furthering abroad the interests of the United States." They are required to be used primarily to

entertain foreign officials and cannot be utilized solely to entertain United States Government employees. 3/

Most expenditures from Ambassador Whittlesey's gift fund have been for food, lodging and entertainment of individuals who did not qualify to be hosted with official funds. Among these persons were personal friends of the Ambassador, contributors to her gift fund (who were entertained because of their donations) and United States Government employees. The Ambassador charged the gift fund for such expenses, which ranged in cost from several thousand dollars for a black-tie formal dinner to \$25 for coffee at the residence. On one occasion, a \$385 embassy dinner party for the Attorney General and his staff was improperly vouchered as both an official representational expense and a gift fund expense. However, a comparison of the representation expense vouchers with the gift fund vouchers has revealed no other instance of double billing. 4/

3/ Entertainment of members and employees of the legislative and judicial branches, and other American citizens, not employees of the Federal Government, including business persons and state and local officials, is a permissible representational expenditure under §320(e) of the State Department standardized regulations. Past regulations appear to have prohibited the expenditure of representational funds unless fifty percent of those entertained were foreigners.

4/ The Ambassador's director of the residence staff stated that she was responsible for the double billing. She stated that both she and the Ambassador scrutinized every voucher prior to submission; however, this expenditure was simply overlooked by them.

Examples of other possibly improper expenditures vouchered to the gift fund are the purchase of sporting and recreational equipment, including four bicycles costing approximately \$800, a guitar costing approximately \$700, a badminton set, and two curling irons. (The Ambassador defended these purchases by stating that they were for use by her and her guests, and that they were properly inventoried and would remain the property of the United States Government on her departure.) In addition, expenditures were inappropriately reimbursed from the gift fund for the Ambassador's purchase of personal gifts for embassy and residence staff personnel. Finally, the purchase of a \$1,200 airplane ticket for a Senate Foreign Relations staff aide was vouchered against the gift fund so that he could entertain guests by singing and playing the guitar at a July 4, 1985, embassy party.

c) Vouchering procedures under the gift fund

Monies appropriated to the unconditional gift fund for Bern, Switzerland, were maintained under the control of the State Department's Regional Administrative Management Center in Paris, France. Requests for disbursement from the gift fund could be made only after the Ambassador had actually expended the monies, and were required to be made by official state Department voucher, which included the amount to be reimbursed and a detailed explanation of the purpose to which the funds had been put.

While, in practice, all reimbursements from the fund were automatically paid once the embassy Administrative Officer

approved them, there is no evidence that Ambassador Whittlesey was aware of that practice. During her interview of October 20, 1986, Ambassador Whittlesey maintained that it was her belief that her vouchers were not only reviewed in Paris, but also were subjected to further review by the legal and management offices of the State Department in Washington. While we could find no documentary support for such a belief, we found no information to demonstrate that the Ambassador was ever informed to the contrary.

Finally, there is no indication that Ambassador Whittlesey attempted to hide any of her gift fund expenditures. Her vouchers were very detailed and were processed according to State Department guidelines.

d) Factual and legal analysis

While investigators located some information suggesting that State Department employees administering the gift fund were aware that expenditures were to be utilized only in the same fashion as those expended pursuant to congressionally appropriated official representation funds, they were unable to demonstrate that such restrictions were communicated to Ambassador Whittlesey. Without evidence that she had knowledge that she was misusing the gift funds, it would not be appropriate on these facts to conclude that Ambassador Whittlesey committed a violation of federal law.

To prove knowledge sufficient to demonstrate the necessary criminal intent, there would have to be evidence that

- Ambassador Whittlesey had facts available to her, at the least, which would have placed a reasonable person on notice that the

acts were or could be illegal. While the Embassy Administrative Officer, Donald Lynch, 5/ has provided some information which suggests that he attempted to place the Ambassador on notice concerning certain improper expenditures, his warnings came too late in the history of the gift fund and were too vague to have significant import.

The statutory foundation authorizing donations to embassy unconditional gift funds is a factor militating against criminal treatment of Ambassador Whittlesey's actions with regard to these expenditures. Moreover, when that statutory authorization is combined with the absence of specific gift fund regulations and a failure on the part of the State Department, during the relevant vouchering time period, to place the Ambassador on notice that her expenditures were or could be improper, the conclusion is compelled that these facts are not sufficient to warrant the initiation of a preliminary investigation.

2. Potential Conflicts of Interest

a) Jewelcor

Investigators discovered several instances of gift fund donors requesting the Ambassador to take official action on their

5/ The Administrative Officer previously made allegations against the Ambassador which he later retracted. He alleged that Ambassador Whittlesey had used gift funds to purchase a present for her child and had been reimbursed from the fund for a present that had actually been paid for by embassy employees. Despite his retraction memorandum, Mr. Lynch still claims that one of the allegations was correct. He asserts, without apparent support, that a voucher was retyped to delete the questioned purchase after he raised the issue.

behalf. A Pennsylvania company called Jewelcor obtained space at a jewelry convention in Basel as the result of the embassy staff's intervention with Swiss authorities at the request of the Ambassador. Ambassador Whittlesey also attended a reception given by Jewelcor in Basel and gave a "welcoming speech" to the assembled business representatives. Jewelcor gave an initial \$4,000 contribution to the gift fund on May 16, 1985, prior to seeking the Ambassador's help. The Ambassador attended the Jewelcor reception on April 21, 1986. On May 7, 1986, Jewelcor made an additional \$5,000 contribution. The owner of Jewelcor, Seymour Holtzman, visited the Ambassador and stayed at the official residence on at least two occasions.

Ambassador Whittlesey and Seymour Holtzman were separately interviewed with regard to the Jewelcor donations. They both stated that they had been friends for a number of years. Mr. Holtzman said he made a donation to the gift fund to help Ambassador Whittlesey with her onerous entertainment expenses. He pointed out that he made his first donation approximately a year prior to his decision to exhibit jewelry at the Basel fair. Mr. Holtzman acknowledged that he had contacted the embassy and requested the aid of the Commercial Section in order to get space at the fair. He said he assumed that the purpose of the Commercial Section was to aid American businessmen in making contacts and sales abroad. Ambassador Whittlesey observed that her Commercial Section had aided a number of American businessmen in similar situations and that she considered such aid to be a

primary function of the embassy in general, and of the Commercial Section in particular.

According to Mr. Holtzman, while he was able to get space at the fair with the help of the embassy, his location was so bad that he did no business there at all. Mr. Holtzman stated that his second contribution of April 21, 1986, had no connection whatever with the help the embassy provided him in obtaining space, or with the Ambassador's presence at his reception. He said that he donated the entire \$9,000 to Ambassador Whittlesey's gift fund because he was her friend and because he was a patriotic American. Mr. Holtzman stated that while his company had gross business receipts in excess of \$250 million last year, Jewelcor did less than \$100,000 in business in Switzerland. He considered his business interests in Switzerland so meager that he was not even certain that he had transacted any business there in 1986. Mr. Holtzman was emphatic that his donations to Ambassador Whittlesey's gift fund were in no way related to any business interests he may have in Switzerland.

b) Mr. Boeckmann

Another donor, Herbert F. Boeckmann II, owner of Galpin Ford in Sepulveda, California, and Chairman of the Boeckmann Charitable Foundation, made donations to the Ambassador's gift fund of \$5,000 on July 20, 1985, and another \$5,000 on February 3, 1986. In addition to his business interests in California, Mr. Boeckmann owns gold and diamond mines in Sierra Leone, Africa. In January 1986, his son, who ran the family

business interests in Africa, became the subject of an investigation by local authorities in Sierra Leone.

Concerned that his son might be ordered to leave the country and that his business interests might be seized by the African Government, Mr. Boeckmann had his wife contact Ambassador Whittlesey to inquire what might be done to help them. Mr. Boeckmann stated that as a result of his wife's contact, Ambassador Whittlesey telephoned the American Ambassador to Sierra Leone to let him know that the Boeckmanns were "real people." Mr. Boeckmann also spoke about the problem with a State Department employee who had been referred to him by Ambassador Whittlesey. According to Mr. Boeckmann, he conducts no business in Switzerland, and neither of his donations was in any way related to his request for help from Ambassador Whittlesey. Mr. Boeckmann has never met Ambassador Whittlesey, and claims that he donated to her fund initially as a result of a contact from Fred Gottfurcht.

Ambassador Whittlesey's version of what occurred is different from Mr. Boeckmann's, but they agree that there was no connection between the donation and any requests made by the Boeckmanns. Ambassador Whittlesey recalled being contacted by the Boeckmanns at the embassy in Switzerland. The Boeckmanns were concerned about their son because there had been a coup in West Africa and they had not heard from him. Ambassador Whittlesey agreed to do what she could to obtain information about the son's whereabouts. Ambassador Whittlesey contacted the African Desk at the State Department and explained

the Boeckmanns' predicament. Ambassador Whittlesey gave the African Desk official's name and telephone number to the Boeckmanns. Ambassador Whittlesey described the contact and her reply as routine and stated she would have done the same for any American citizen. Ambassador Whittlesey denied that she had contacted the American Ambassador to Sierra Leone. She had no recollection of Mr. Boeckmann mentioning that his son was under investigation by local authorities in Africa.

c) Fred Gottfurcht and others

Fred Gottfurcht, Chairman of Ambassador Whittlesey's gift fund committee, was responsible for raising the majority of the funds collected. In September 1986, Mr. Gottfurcht and two California couples were entertained by the Ambassador at her Swiss residence. At Mr. Gottfurcht's request, Dr. and Mrs. Donald H. Rose and Dr. and Mrs. Edmund T. Dombrowski each donated \$5,000 to the gift fund. Dr. Dombrowski had previously donated \$5,000 in late 1985, at Mr. Gottfurcht's request, and was a member of the gift fund committee. Both doctors stated that Mr. Gottfurcht had promised them that if they contributed to the gift fund they could be guests of the Ambassador. That offer was also confirmed in writing to them by Ambassador Whittlesey in separate letters of thanks. The doctors stayed at the residence as guests of the Ambassador while they were in Switzerland, and Ambassador Whittlesey hosted a black-tie dinner in their honor. However, both doctors were adamant that their donations were not made in return for the offer to let them stay at the residence. They stated that their donations were the result of their

admiration and respect for the Ambassador and for the fine job she was doing in Switzerland. Neither doctor had met Ambassador Whittlesey prior to his donation.

Another individual solicited by Mr. Gottfurcht to make a donation was Arthur E. Engel, President of Southwest Marine, Inc., of San Diego, California. Mr. Engel donated \$5,000 on March 4, 1986. Mr. Engel had never met Ambassador Whittlesey prior to making his donation. On August 1, 1986, Mr. Engel wrote to Ambassador Whittlesey and requested that she intercede on his behalf with the Porsche factory in Stuttgart, West Germany, so that the automobile he had ordered in late June 1986 would be available for his use when he visited her in Bern in early October. On September 11, 1986, Ambassador Whittlesey wrote to Mr. Engel stating that it would not be appropriate for her, as a United States Government employee, to intercede on his behalf with Porsche. She did, however, ask Mr. Engel to provide her with the contemplated dates of his arrival in Bern so that the embassy could assist him with his travel plans. On October 4, 1986, Mr. Engel informed investigators that he was still planning a trip to Switzerland and hoped to meet Ambassador Whittlesey and be a guest at the residence.

Mr. Gottfurcht himself never made a cash contribution to Ambassador Whittlesey's gift fund; however, he hosted a fund-raising party for her in Palm Beach in January 1986. In late 1985, Mr. Gottfurcht wrote to the Ambassador requesting that she solicit Bern hotels for free hotel accommodations for him and other members of the gift fund committee (approximately five

individuals and their wives). The Ambassador declined that request in a letter dated October 28, 1985, saying that it would not be appropriate for a government official to solicit such a gift. She offered, however, to provide accommodations at the official residence, the home of the Deputy Chief of Mission, and the home of the Public Affairs Officer. Mr. Gottfurcht also requested prior to his September 1986 visit to Bern that his party be met at the airport, that appropriate ballet and opera entertainment arrangements be made, and that a "black tie" dinner be given in his honor. The Ambassador complied with several of these requests.

d) Factual and legal analysis

The primary federal criminal statute implicated by the various conflict of interest allegations is the gratuity statute, 18 U.S.C. §201(g). The gratuity statute is inapposite for two reasons. First, it requires that the public official "receive [something] of value for himself." Here, the donation was not received by Ambassador Whittlesey, but rather by the State Department. Moreover, the money was maintained in a State Department bank account in Paris, France. Second, there is no direct evidence that a donation was made to Ambassador Whittlesey's gift fund in return for the performance of an official act. While there need not be evidence that Ambassador Whittlesey performed an official act in return for a donation, or that she had a specific intent to violate the gratuity statute, there must be some evidence of a knowing acceptance of a gratuity to which she was not legally entitled. The facts

developed by the inquiry are insufficient to warrant initiating a preliminary investigation of a violation of the gratuity statute.

3. Appointment of Robert R. Reilly as
Executive Assistant to the Ambassador

a) Job offer and acceptance

Our inquiry was initially predicated upon the receipt of information suggesting improprieties in the appointment of Robert R. Reilly as Executive Assistant to Ambassador Whittlesey in Bern. Mr. Reilly stated that he first received a job offer from Ambassador Whittlesey on September 6, 1985. United States Information Agency (USIA) documents reveal that Mr. Reilly was officially offered the position in Bern, a foreign service limited non-career appointment with an annual salary of \$62,404, on October 3, 1985. 6/

At the time of his appointment, Mr. Reilly was serving as a Special Assistant to the President for public liaison. Prior to Ambassador Whittlesey's appointment as Ambassador to Switzerland, Mr. Reilly had worked for her at the White House. Mr. Reilly formally accepted the position on October 18, 1985. His father's \$5,000 contribution to the gift fund was made on November 12, 1985. Mr. Reilly was sworn in and entered on duty with the USIA

6/ Mr. Reilly was actually filling the position of Public Affairs Officer, a USIA slot. A USIA career employee had previously held the position, but was transferred at Ambassador Whittlesey's request not long after her arrival in Bern. Mr. Reilly did not keep the title of Public Affairs Officer, but was named Ambassador Whittlesey's "Senior Advisor for Public Diplomacy."

on November 18, 1985, and arrived in Switzerland on December 3, 1985.

b) Genesis of the gift idea

Mr. Reilly and his parents independently provided to investigators an explanation of the genesis of the gift fund contribution. They stated that after he had accepted the embassy position, but prior to his swearing in, Mr. Reilly had visited Bern in order to deliver a speech to a Swiss organization. During that visit, between October 29 and November 2, 1985, Mr. Reilly was accompanied by his parents, Mr. and Mrs. Frank E. Reilly of Lake Forest, Illinois. The gift fund vouchers verify that the Peillys were entertained in Bern on October 29 and 30, and November 1 and 2, 1985. While in Bern, Frank Reilly asked Ambassador Whittlesey whether she would send him information on the gift fund. When he returned to Illinois, he reviewed the materials and only then decided that he should contribute. He did not discuss the amount of the contribution with his son. Frank Reilly stated that the \$5,000 contribution to Ambassador Whittlesey was only one of many charitable contributions that he made that year.

c) Letters from Ambassador Whittlesey

On November 1, 1985, Ambassador Whittlesey wrote to Frank E. Reilly thanking him for his offer to help with her

representational fund. 7/ She enclosed information explaining how contributions are made, and that they were tax deductible. The letter concluded: "[w]e look forward to having Bob with us here. I can assure you we shall look after him with tender loving care. Until your next visit."

On November 25, 1985, the Ambassador wrote again thanking Frank Reilly for his contribution. This letter stated: "[y]our gift will be used to present the best possible image of our country here in Switzerland and as you can imagine Bob and I will be busy." Later, the letter stated: "[w]e are excited about Bob's arrival in early December. It certainly will be a relief to have him here to assist in the mountains of work we must do here in Europe."

d) Absence of proof of a quid pro quo

In separate interviews of Ambassador Whittlesey and Robert R. Reilly on September 16, 1986, both denied that the \$5,000 had in any way been a quid pro quo for Mr. Reilly's appointment. The Ambassador stated that she thought very highly of Mr. Reilly when he had worked for her at the White House. When she learned that he was looking for another position, she naturally considered him for the job in Bern. Ambassador Whittlesey stated that she was dissatisfied with the

7/ Frank Reilly left Switzerland for the United States on the same date this letter was written.

performance of the former Public Affairs Officer, 8/ but that her decision to remove him was not related to Mr. Reilly's later appointment. Mr. and Mrs. Frank E. Reilly vehemently denied that their donation was related to Robert Reilly's subsequent employment. They pointed out that Robert Reilly had been offered the job long before they had any knowledge of the gift fund. They also noted that he had officially accepted the position in writing prior to their donation.

e) Factual and legal analysis

Other than those previously provided to the State Department by the House Foreign Affairs Committee, no additional pertinent documents regarding this appointment have been located. A number of interviews were conducted in order to ascertain whether there was any evidence of a quid pro quo in the hiring of Robert Reilly. No such evidence was found. In the absence of such evidence, Robert Reilly's appointment near the time of his father's donation, in itself, is insufficient to turn an otherwise legal contribution into a gratuity. Moreover, the two letters, which mention the donation and the job, are entirely consistent with an innocent explanation.

Finally, Mr. Reilly was qualified for the position to which he was appointed. He had previously worked for Ambassador Whittlesey in a high-level position at the White

8/ The Public Affairs Officer's performance evaluations at USIA provide some support for Ambassador Whittlesey's judgment.

House, and he has apparently done a good job in his embassy position. These facts militate against a theory that a payment was required to persuade the Ambassador to hire him. These facts are not sufficient to warrant the initiation of a preliminary investigation.

B. The Allegation Upon Which a Preliminary Investigation was Initiated

1. The Kunsman allegation

On October 27, 1986, Eric A. Kunsman, 9/ Deputy Chief of Mission (DCM), United States Embassy, Bern, Switzerland, sent a cable to the Inspector General's Office (IG) at the Department of State. In the cable, Mr. Kunsman detailed four telephone conversations held between himself and Ambassador Whittlesey from Wednesday, October 22, 1986, to Friday, October 24, 1986. During all four conversations, Ambassador Whittlesey was in Washington, D.C. and Mr. Kunsman was at the embassy in Bern, Switzerland. Mr. Kunsman made an allegation in the cable against Ambassador Whittlesey that he later affirmed in two separate interviews with investigators.

Because the cable contained facts sufficient to constitute a technical violation of Title 18, United States Code, section 1505, obstruction of a federal investigation, and of

9/ Mr. Kunsman is a career foreign service officer who had previously worked on the staff of former Senator John Tower at the START negotiations in Geneva. Mr. Kunsman was selected for the DCM position by Ambassador Whittlesey in April 1986. Mr. Kunsman played no role in the Whittlesey investigation prior to this incident.

Title 18, United States Code, section 1512, intimidation of a witness in a federal proceeding, the Attorney General determined that sufficient information existed to initiate a preliminary investigation under the Independent Counsel provisions of the Ethics in Government Act. A complete investigation of the allegation was accordingly conducted.

The subsequent interviews of Mr. Kunsman developed the following information about the telephone conversations with Ambassador Whittlesey. 10/ In their first conversation, on Wednesday afternoon, Ambassador Whittlesey told Mr. Kunsman she was aware that embassy telephone records were being photocopied and were to be sent to the embassy Administrative Officer, Donald Lynch, who was then in Washington. 11/ Ambassador Whittlesey ordered the photocopying stopped immediately, and questioned why Mr. Kunsman was permitting it to occur. Mr. Kunsman replied that he had no knowledge of the photocopying of embassy records, but that he would check into it and call her back. Ambassador Whittlesey ordered Mr. Kunsman to take control of any photocopies that had already been made. She also requested Mr. Kunsman to personally conduct an investigation, which was to include interviewing the embassy receptionist who was

10/ For present purposes, these conversations are related from Mr. Kunsman's perspective. Ambassador Whittlesey and/or her attorneys dispute many of the allegations.

11/ Mr. Lynch was in Washington, D.C. pursuant to a request to testify before the House Foreign Affairs Committee, which is pursuing its own investigation of events in Bern.

photocopying the documents. Finally, Mr. Kunsman was told to prepare a memorandum concerning this matter, which Ambassador Whittlesey stated she intended to use at a later time to "get Don Lynch."

Mr. Kunsman told Ambassador Whittlesey that if photocopies had been or were being prepared he would seize them and place them in his office safe until it could be ascertained whether they had been officially requested by the State Department. Mr. Kunsman pointed out that, if an investigation into the photocopying incident were warranted, it should be conducted by the embassy Regional Security Officer (RSO). Ambassador Whittlesey replied that her previous DCM had conducted investigations at her request, and she instructed Mr. Kunsman to conduct the investigation without the RSO. 12/ (Mr. Kunsman did use the services of the RSO in the investigation, however, despite this instruction.) Ambassador Whittlesey stated that Mr. Kunsman's personal conduct of the investigation would be a test of his loyalty to her.

During a second telephone conversation, early Wednesday evening, Mr. Kunsman informed Ambassador Whittlesey that he had taken possession of the photocopied telephone records and had placed them in his safe. Mr. Kunsman also informed the Ambassador that he had requested State Department assistance in determining whether the records were the subject of an official

12/ Regional Security Officers, in addition to other duties, often conduct investigations at the request of the IG's Office and, on occasion, report their findings directly to the IG.

request. 13/ Ambassador Whittlesey stated that she was certain that if the records had been requested officially, the request would have come through Mr. Kunsman and not Donald Lynch. Ambassador Whittlesey said that she was certain Mr. Lynch had initiated the action on his own, and she reiterated that she was going to "get Don Lynch."

On Thursday, October 23, 1986, Ambassador Whittlesey and Mr. Kunsman spoke for a third time. Mr. Kunsman informed the Ambassador that he had received official instructions from the IG's Office that he was to complete the photocopying project and send the records to the State Department as soon as possible. Mr. Kunsman stated that the receptionist was completing the project and that he would send the documents by diplomatic pouch the following day. Ambassador Whittlesey accused Mr. Kunsman of engineering the instructions from the IG's Office, said that he

13/ During an interview, Mr. Kunsman recalled that Mr. Lynch may have mentioned to him that the records had been requested when State and Justice Department investigators visited the embassy in September 1986. The records were in fact officially requested, along with others, by IG Special Agent H.R. Fuller in September. At the time, Ambassador Whittlesey personally had placed Mr. Lynch in charge of supplying any requested records. Because of their volume, photocopying of the telephone records had not been completed by the time the investigators returned to Washington. Mr. Lynch was requested to complete the photocopying and send the documents to the IG's Office as soon as possible. Mr. Lynch informed Mr. Kunsman of the request for telephone records at or about the time it was made. Mr. Kunsman did not recall the conversation with Mr. Lynch when Ambassador Whittlesey first asked him about the photocopying; therefore, he did not mention it to her. Mr. Kunsman's failure to recall the official request appears to have unintentionally fueled Ambassador Whittlesey's suspicions of Mr. Lynch.

was protecting Mr. Lynch, and stated that his personal loyalty to her was in doubt.

Ambassador Whittlesey told Mr. Kunsman that he was deliberately aiding the investigation. She reminded Mr. Kunsman that she had personally placed him in the DCM position and that he worked for her, not the State Department. The Ambassador instructed Mr. Kunsman to manage the embassy aggressively in order to prevent any adverse information concerning her from "getting out." Ambassador Whittlesey then told Mr. Kunsman, "your job depends on obeying my instructions, and assisting me in defeating those investigating me." Ambassador Whittlesey repeatedly asked Mr. Kunsman if she had his personal loyalty. When Mr. Kunsman failed to respond to that question, Ambassador Whittlesey asked to whom Mr. Kunsman owed his loyalty -- to her or to those investigating her.

Mr. Kunsman replied that as a foreign service officer his loyalty was to his oath of allegiance to the Constitution and not to any particular individual. Ambassador Whittlesey then observed that Mr. Kunsman was loyal to the State Department and not to her. Mr. Kunsman inquired whether Ambassador Whittlesey's remark meant that she wanted his resignation. Mr. Kunsman told the Ambassador that she could dismiss him if she desired, but that as long as he remained as DCM he would follow all regulations and official instructions from the State Department. Mr. Kunsman repeated that he intended to provide the photocopied records to the State Department on Friday. Ambassador Whittlesey responded that it was clear whose side Mr. Kunsman was on.

On Friday afternoon, Ambassador Whittlesey and Mr. Kunsman spoke by telephone for the final time. Mr. Kunsman informed the Ambassador that the photocopied telephone records had been sent to the State Department. Ambassador Whittlesey stated that she would be returning to Bern soon. She said that when she arrived they would have to have a "long conversation" concerning their working relationship. Ambassador Whittlesey then informed Mr. Kunsman that the Secretary of the Interior would be visiting Bern in November and that she had placed the Consul General in Zurich in personal charge of the visit. Ambassador Whittlesey concluded by asking Mr. Kunsman to work with the Consul General in making the necessary arrangements. 14/

2. Ambassador Whittlesey's Response

Ambassador Whittlesey and her attorneys, Michael J. Horowitz and Seymour Glanzer, agreed to be interviewed concerning the Kunsman allegations. The attorneys wished to be interviewed because they felt that they had overheard significant portions of several of Ambassador Whittlesey's conversations with Mr. Kunsman. 15/ Both attorneys felt that Ambassador Whittlesey's

14/ This task would normally fall to the DCM to supervise in the absence of the Ambassador. During his FBI interview of October 28, 1986, Mr. Kunsman stated that he believed Ambassador Whittlesey was sending him a message that his job services were no longer required.

15/ While neither of the attorneys was actually on the telephone, one or the other was present in an office with Ambassador Whittlesey during at least three of the telephone calls and claims to have overheard significant portions of Ambassador Whittlesey's side of the conversations.

conversations with Mr. Kunsman were mere innocent inquiries made as the direct result of their advice, and as a result of her legitimate concern that records were being photocopied and released from the embassy without official authorization. Neither Mr. Glanzer nor Mr. Horowitz recalled Ambassador Whittlesey threatening Mr. Kunsman in any fashion, and they asserted that the tone of the conversation was one in which the Ambassador was pleading with Mr. Kunsman, one of her subordinates, in order to have him take control of events at the embassy to prevent a possibly embarrassing leak of official records. Both attorneys denied that Ambassador Whittlesey's remarks to Mr. Kunsman could in any fashion be interpreted as an effort on her behalf to obstruct the pending investigation.

Ambassador Whittlesey denied making nearly all of the statements attributed to her by Mr. Kunsman. She stated that as a former Assistant United States Attorney she was well aware of the obstruction statutes and would never have threatened Mr. Kunsman in any way. Ambassador Whittlesey also pointed out several instances in which she felt that Mr. Kunsman had been inept in the performance of his official duties, and she was critical of him for appearing to take Mr. Lynch's side in the dispute. Ambassador Whittlesey categorically stated that she would never have raised the photocopying incident with Mr. Kunsman had it not been for the advice of her attorneys. Ambassador Whittlesey said that she was simply attempting to have - Mr. Kunsman check into what she thought might be both a security violation and a purposeful leak of embassy documents to the press

and others when she asked him to conduct his investigation. Ambassador Whittlesey vehemently denied that she ever threatened Mr. Kunsman with loss of his employment in order to prevent him from sending the telephone records to the State Department. In fact, Ambassador Whittlesey contends that the documents had already been sent at the time she had the conversation with Mr. Kunsman in which these alleged threats were made.

II. THE ATTORNEY GENERAL'S DETERMINATION
TO MAKE NO APPLICATION FOR THE
APPOINTMENT OF AN INDEPENDENT COUNSEL

A. Facts Relevant to the Attorney General's Determination

During the first two of the four telephone conversations with Mr. Kunsman, Ambassador Whittlesey expressed to Mr. Kunsman her suspicion of Mr. Lynch, and charged Mr. Kunsman with looking into the matter of the photocopying of telephone records. (There is some indication that Mr. Kunsman was somewhat reluctant to spend a great deal of time on a ministerial non-policy matter of this nature, preferring that the matter be handled principally by the State Department's Regional Security Officer in Bern.) During the third conversation -- but not before -- Mr. Kunsman told Ambassador Whittlesey that the copies of telephone records had been requested as part of an official State Department investigation, rather than via an unauthorized request by Donald

Lynch, and that he was going to pouch the documents to Washington the next day. 16/

Mr. Kunsman's careful notes of their conversation suggest that Ambassador Whittlesey at that point became irate over the telephone, harangued Mr. Kunsman, accused him of "engineering" the official request from the State Department, told him to manage the embassy more aggressively in order to prevent leaks of adverse information, questioned his personal loyalty to her, reminded him that she hired him and he worked for her, said he was obviously more loyal to the State Department than to her, said it was clear whose side he was on, and, according to Mr. Kunsman's notes and memory but not Ambassador Whittlesey's memory, 17/ said, "Your job depends on obeying my instructions, and assisting me in defeating those investigating me."

B. The Attorney General's Conclusion

It is an established policy of the Department of Justice not to recommend or institute criminal prosecution if there is no reasonable prospect that an unbiased jury would return a conviction. This circumstance is relevant to the determination committed to the Attorney General by the Independent Counsel provisions. The law provides:

16/ As noted, Ambassador Whittlesey recalls that the records had already been pouches at this point.

17/ Again, the Department for present purposes resolved the disputed facts in the light least favorable to Ambassador Whittlesey.

In determining whether reasonable grounds exist to warrant further investigation or prosecution, the Attorney General shall comply with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

28 U.S.C. §592(c)(1) (as amended through Pub. L. 97-409, January 3, 1983).

After a review of all the facts, the Attorney General finds that a thorough preliminary investigation of the obstruction/intimidation allegation has been conducted, and that a reasonable prosecutor would not seek an indictment on the basis of the results of that preliminary investigation, because of the absence of any reasonable prospect of conviction. No harm resulted from Ambassador Whittlesey's conduct, which occurred at a time of great personal stress for the Ambassador and concern over perceived efforts to discredit her. The Attorney General, therefore, concludes that it would be unjust to seek the appointment of an Independent Counsel because there is no reasonable ground to expect that further investigation or prosecution would produce a viable criminal case against Ambassador Whittlesey which could be maintained in keeping with the established policies applicable to federal prosecutive decisions.

Respectfully submitted,



EDWIN MEESE III
Attorney General
of the United States

Dated: 3 December 1986

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
INDEPENDENT COUNSEL DIVISION

IN RE NOTIFICATION BY THE
ATTORNEY GENERAL PURSUANT TO
28 U.S.C. §592(b)(1)
REGARDING ALLEGATIONS AGAINST
AMBASSADOR FAITH RYAN WHITTLESEY

)
)
)
)
)

Division No. _____

MOTION OF THE ATTORNEY GENERAL PURSUANT
TO 28 U.S.C. §592(b)(3) FOR
LEAVE TO DISCLOSE NOTIFICATION

Pursuant to 28 U.S.C. §592(b)(3), I hereby seek leave of the Division to disclose the contents of this notification concluding that there are no reasonable grounds to believe that further investigation or prosecution is warranted with respect to allegations against the United States Ambassador to Switzerland, Faith Ryan Whittlesey. The pendency of State Department, Justice Department, and Congressional inquiries regarding these allegations, and many of the details of the allegations, have been reported widely and repeatedly by the United States news media. In these circumstances, it is in the public interest for the Court to grant leave pursuant to 28 U.S.C. §592(b)(3) to permit public disclosure of the notification submitted to this Court.

Respectfully submitted,



EDWIN MEESE III
Attorney General of the
United States

Date: 3 December 1986

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
INDEPENDENT COUNSEL DIVISION

Ethics in Government Act of 1978, as Amended

IN RE NOTIFICATION BY THE	)	Division No. _____
ATTORNEY GENERAL PURSUANT TO	)	
28 U.S.C. §592(b)(1)	)	Order Granting Leave
REGARDING ALLEGATIONS AGAINST	)	to Disclose Notification
AMBASSADOR FAITH RYAN WHITTLESEY	)	

Before:

ORDER GRANTING LEAVE
TO DISCLOSE NOTIFICATION

Upon consideration of the motion of the Attorney General, pursuant to 28 U.S.C. §592(b)(3), for leave to disclose the contents of his notification concerning allegations against United States Ambassador Faith Ryan Whittlesey, filed with this Court on _____, 1986, and it appearing that the pendency of various inquiries regarding allegations contained therein, including the details of many allegations, have been widely reported by the news media, and that disclosure of the notification would be in the public interest, it is by the Court, hereby

ORDERED, that the Attorney General is granted leave to disclose publicly the notification filed on _____.

Per Curiam
For the Court:

George A. Fisher
Clerk

2 Departments Are Probing Whittlesey's Embassy Fund

By Howard Kurtz
Washington Post Staff Writer

Justice and State Department officials are investigating whether Faith Ryan Whittlesey, U.S. ambassador to Switzerland, mispent money from an \$80,000 entertainment fund raised from private donors, and are looking into her hiring of the son of a major donor, according to knowledgeable sources.

Illinois businessman Frank E. Reilly contributed \$5,000 to Whittlesey's "representational" fund last November, weeks before his son Robert, then a White House aide, joined Whittlesey's staff as the embassy's "senior adviser for public diplomacy." Robert Reilly was given a political appointment to the \$62,400-a-year post at the embassy

in Bern, although such jobs are almost always filled by career Foreign Service officers.

An ambassador's representational fund is intended to be spent primarily to entertain citizens of the host country, a senior State Department official said. Embassy records made available to The Washington Post, however, show Whittlesey spending nearly all the money to entertain leading American conservatives, businessmen and administration officials, including Attorney General Edwin Meese III, Assistant Attorney General William Bradford Reynolds, former interior secretary William P. Clark, Heritage Foundation President Edwin Feulner, Free Congress Foundation President Paul Weyrich, conservative activist Phyllis Schlafly, Chamber of



FAITH RYAN WHITTLESEY
... money spent on American guests

Commerce Vice President Richard Rahn and Teamsters union President Jackie Presser.

Moreover, several businessmen who were Whittlesey's guests or

See WHITTLESEY, A22, Col. 1

ate, Justice Depts. Investigating hittlesey's Entertainment Fund

WHITTLESEY, From A1

invited to meals at the ambassadorial residence had made tax-deductible contributions to the State Department fund. The fund, which had at least \$83,000, much of it in 1,000 checks, was then charged with entertaining the businessmen and their families in Switzerland. State Department spokesman Robert Reilly said yesterday that the department's inspector general is examining Whittlesey's entertainment fund. Sources familiar with the fund said a Justice Department investigator recently traveled to Switzerland with an official from the inspector general's office. Whittlesey served as ambassador to Switzerland at the beginning of the first Reagan administration. In 1983 he was named director of the White House public liaison office. He was reappointed ambassador to Switzerland last year. Whittlesey returned to Washington last week to try to deal with questions arising from the investigation, Reilly said.

Reilly could not be reached for comment yesterday.

Robert Reilly's father Frank, one of numerous businessmen solicited by the private committee raising money for the fund, was Whittlesey's guest at an embassy dinner Nov. 1, along with his wife.

On Nov. 12 he wrote Whittlesey from Illinois that "Bob is looking forward to his new assignment with you. He does have complete respect and admiration for your principals [sic] and convictions."

Frank Reilly also enclosed "the promised check" for \$5,000 and a letter to the State Department designating the money for Whittlesey's entertainment fund.

"We are excited about Bob's arrival in early December," Whittlesey told Frank Reilly in a Nov. 25 reply. "It will certainly be a relief to have him here to assist in the mountains of work we must do here in Europe."

The younger Reilly's appointment was made after Whittlesey called Charles Z. Wick, director of the U.S. Information Agency, to ask that Reilly be cleared for the senior USIA job at the Swiss embassy. Robert Reilly had been USIA's director of private-sector programs

and, at the time, was assigned to Whittlesey's public liaison office in the White House.

The political appointment was approved last September. A month earlier, the ranking USIA career officer at the U.S. Embassy in Switzerland was recalled to Washington, reportedly in the middle of his tour, and retired, making room for Reilly.

Frank Reilly was traveling yesterday and could not be reached for comment.

Bernard Woerz, chief of the State Department's post management unit, said that privately raised entertainment funds become part of the department's budget and are subject to the same restrictions as the federal appropriation that most embassies receive for entertainment.

In general, Woerz said, while representational funds often pay for dinners and entertainment for Americans and foreign citizens, such funds were not designed solely to entertain Americans. "We're representing the United States in a country abroad," Woerz said. "In my opinion the money should be spent that way." In the expense records made available to The Post, Whit-

tlesey charged the representational fund for dozens of breakfasts, luncheons and dinners when no Swiss citizens were listed as having been in attendance.

Los Angeles businessman Fred Gottfurcht headed the fund-raising committee, at one point sending Whittlesey \$10,000 in checks from donors. Last September, he wrote Whittlesey that "I have informed the members of our committee they are all invited to visit you in Bern and stay at the residence, they are delighted."

Gottfurcht suggested that since the residence has only three bedrooms, Whittlesey should ask a hotel in Bern to provide free lodging for the group. Whittlesey replied that it "would be a violation of our code of ethics to solicit such a gift," but said that "I will do everything I can to accommodate them at the residence, the home of the deputy chief of mission and the public affairs officer."

Before signing off with "warm regards," she added: "I cannot tell you how much I appreciate your undertaking this effort on my behalf!"

In January, Whittlesey flew to Palm Beach, Fla., to attend a party that Gottfurcht held at his residence there. He later wrote Whittlesey that he had named a committee "to concentrate immediately on all your silver and furniture needs" and urged her to begin visiting "department stores and silversmiths."

When Gottfurcht later planned a trip to Bern, he called the U.S. Embassy and asked that his party "be met at the train station, tours and sightseeing arranged and a black tie dinner," according to an aide's note to Whittlesey. Gottfurcht said the names of his guests would be supplied later.

In another phone call, Gottfurcht left the following message for Whittlesey: "From now on you will never

"We're representing the United States in a country abroad. In my opinion the money should be spent that way," not solely to entertain Americans.

—Bernard Woerz of State Department

have to worry." Gottfurcht could not be reached for comment yesterday.

Pennsylvania real estate developer Herbert Barness, who contributed \$5,000 to the fund, stayed at the embassy with his family in March and was escorted around Switzerland by embassy staff. He

said he was "old friends" with Whittlesey, a former Pennsylvania politician, and visited Bern at her invitation. Asked about his contribution, he said, "It was an entertainment fund, or for refurbishing. I don't really remember."

Former interior secretary Clark, now an attorney with the Rogers & Wells law firm, was entertained at the U.S. Embassy in Bern twice in the last year. Clark arranged for Rogers & Wells to contribute \$1,000 to the entertainment fund.

Christopher Manion, an aide to Sen. Jesse Helms (R-N.C.) on the Senate Foreign Relations Committee, was a guest at several embassy meals in late June and early July 1985. Whittlesey later charged her representational fund for Manion's plane fare to Bern, describing him as "Mr. Christopher Manion, singer and guitar player, who came for the 4th of July celebrations to entertain the official guests."

Manion could not be reached for comment. Whittlesey, then a White House aide, joined 22 active Reagan-appointed ambassadors, who took the unusual step of endorsing Helms for reelection in a controversial letter in 1984.

Thomas F. Ellis, a Helms ally and president of the National Congressional Club in North Carolina, contributed \$1,000 to the embassy fund. A Winston-Salem bank president also contributed \$1,000 "courtesy of Sen. Helms," according to embassy records.

7/27/52

More Envoys Being Probed On Funds Use

By Howard Kurtz
Washington Post Staff Writer

State Department investigators looking into possible misuse of an embassy entertainment fund by U.S. Ambassador to Switzerland Faith Ryan Whittlesey are examining similar funds at U.S. embassies in Ireland and other countries, administration sources said yesterday.

The department's inspector general is examining whether the privately raised funds, which are added to State Department entertainment allowances and are supposed to be used primarily to entertain foreign citizens, were improperly spent on wining and dining Americans, the sources said. They said the preliminary evidence concerning the entertainment funds of U.S. Ambassador to Ireland Margaret M. Heckler and other envoys is less serious than that involving Whittlesey, which has sparked a Justice Department inquiry.

Rep. Dan A. Mica (D-Fla.), chairman of the House Foreign Affairs subcommittee on international operations, disclosed yesterday that his panel has been examining the U.S. Embassy fund in Bern, Switzerland.

According to informed sources, Deputy Secretary of State John C. Whitehead recently blocked an effort by other department officials to issue new regulations that would have restricted or barred the use of private donations for embassy entertainment on grounds that such funds could be subject to abuse. The sources said Whitehead concluded that the use of these donations was not improper.

Private contributions for the entertainment funds at the U.S. embassies in Switzerland and Ireland were raised by Fred H. Gottfurcht, a leading California fund-raiser for President Reagan and a presidential

See WHITTLESEY, A13, Col. 1

More Embassies Probed on Funds Use

WHITTLESEY, From A1

appointee to the board of United Service Organizations (USO). According to a Gottfurcht associate, the Los Angeles businessman also has raised private funds for former U.S. ambassador to Austria Helene von Damm.

Whittlesey this week sought an appointment with Rep. Mica, sending word through a friend that "it was very, very urgent that I talk with her and listen to her side," Mica said yesterday. He said he rearranged his schedule to meet with Whittlesey at 11 a.m. yesterday, but the ambassador did not show up.

"There's a clear question whether or not it was even legal to spend the money the way it was spent," Mica said. He said that privately raised embassy funds are "not a common practice" and that "we intend to follow this through to the end."

State and Justice Department investigators are also looking at Whittlesey's hiring of a White House aide for a \$62,400 embassy post weeks after the aide's father had contributed \$5,000 to the fund.

Embassy records show that Gottfurcht, who later was Whittlesey's guest in Switzerland, helped raised at least \$83,000 for Whittlesey in tax-deductible donations. Whittlesey used the fund largely to entertain administration officials and

U.S. conservatives and businessmen, several of whom had contributed up to \$5,000 to the fund, the records show.

"I've been in the Foreign Service for over 30 years, and the one rule we've always had in the use of those funds is that it was for foreigners," Gerald Lamberty, president of the American Foreign Service Organization, said yesterday. He said that expenditures primarily for Americans would generally be rejected by embassy administrative officers.

Whittlesey, former director of the White House public liaison office, has been unavailable for comment since returning to Washington this week. According to embassy records, Whittlesey has charged the private fund for:

- Silver serving pieces worth \$15,000 for her official residence, as well as cookbooks, "a book on wine," a badminton set, rubber boats and oars, hair dryers, potholders, towels and a \$370 ice cream maker.

- Fifty copies of "The Liberal Crack-Up" by R. Emmett Tyrell.

- A long list of Christmas gifts. These included \$32 watches for her two housekeepers, parlor maid, gardener, butler, laundry cleaner and assistant chef, as well as three bottles of liquor for her chauffeur and more than \$1,000 in Christmas cards with Whittlesey's picture.

- "Candy for people who assisted the ambassador during her trip to the United States," which included

an appearance at a Palm Beach, Fla., party hosted by Gottfurcht.

- Rental of cross-country skiing equipment for two visitors last January, Assistant Attorney General William Bradford Reynolds and Wall Street Journal editorial writer Seth Lipsky.

- Breakfasts and dinners for visiting Americans, including Attorney General Edwin Meese III, U.S. arms negotiator John Tower, Assistant Secretary of Defense Richard N. Perle, Heritage Foundation President Edwin Feulner, State Department interior decorator Maureen Murphy, New York decorator Charlotte Boline and two daughters of Rep. Bud Shuster (R-Pa.).

State Department spokesman Charles E. Redman said yesterday that "representational" funds can be used for "entertainment of a protocol nature" involving U.S. and foreign government officials. He said the department spends \$4.5 million a year on such entertainment funds, but did not say how much is allocated to individual embassies.

Officials were also unable to say how much the government paid for a recent renovation of the ambassadorial residence in Bern. Whittlesey wrote Gottfurcht last fall that State Department decorator Murphy "agrees that we need a complete redecoration from top to bottom and has persuaded the department to provide funds for that purpose."

Envoys' use of donations questioned

By George Archibald
THE WASHINGTON TIMES

State and Justice department officials are examining the use of private funds by U.S. ambassadors to supplement their embassy budgets, say government officials.

The inquiry was prompted by allegations from certain State Department officials that several of President Reagan's ambassadors have improperly raised and used donated private funds to entertain American visitors and to host seminars in foreign capitals, the officials said.

The officials said the inquiry has focused on the U.S. Embassy in Bern, Switzerland, where Ambassador Faith Ryan Whittlesey has used donated funds to host scores of

American visitors and to promote Reagan administration defense and foreign policies through an outreach program similar to one she previously headed as director of the White House public liaison office.

Officials of the American Foreign Service Organization, the State Department's union, have questioned Mrs. Whittlesey's use of the funds to entertain politically-oriented leaders in Bern, particularly individuals who contribute to the special fund.

Mrs. Whittlesey, like about a third of the U.S. ambassadors abroad, is a political appointment and did not come up through the ranks of career foreign-service officers.

The Foreign Service officers' union has also questioned the propriety of a \$5,000 donation to the special

State Department fund, earmarked for Mrs. Whittlesey's use, by Illinois businessman Frank E. Reilly.

Mr. Reilly's son, Robert, former director of the U.S. Information Agency's private-sector programs, was Mrs. Whittlesey's top assistant for several years at the White House and now serves as a senior attache to the ambassador in Bern.

Since Mr. Reagan took office, according to high-ranking administration officials, the Foreign Service union has been backing efforts to eliminate or severely restrict the State Department's long-standing practice of accepting privately-raised funds for entertainment purposes by U.S. ambassadors.

The funds become part of the State Department's budget and are

meant to be disbursed by the department according to the same restrictions placed on the use of congressional appropriations for embassy entertainment.

Earlier this year, Deputy Secretary of State John C. Whitehead was said to have blocked changes in the regulations that would bar or severely restrict the use of private donations for embassy entertainment and other representational activities.

Instead, the department issued new guidelines on embassy use of privately-donated funds, which require prior approval of payments from the fund by senior disbursing officials at both the embassies themselves and in Washington, officials said.

JACK ANDERSON and JOSEPH SPEAR

2nd Envoy's Use of Gift Fund Questioned

A government investigation of American embassy "gift funds" reveals that questionable use of the privately donated money by Ambassador Faith Ryan Whittlesey in Switzerland was matched by former ambassador Helene von Damm next door in Austria.

Both women worked in the Reagan White House before appointment to their diplomatic posts.

The State Department has ended the controversial embassy funds, which were an administration idea designed to supplement an ambassador's sometimes skimpy "representational fund" for entertainment and similar goodwill gestures. News stories last fall reported that Whittlesey had dipped into her embassy fund to play hostess to some of the same American big shots who had donated to the fund.

When the stories broke, a House Foreign Affairs subcommittee, headed by Rep. Daniel A. Mica (D-Fla.), ordered a General Accounting Office audit of all such privately financed embassy funds. Our associate Lucette Lagnado has seen the resulting report.

Here are some examples of the Vienna embassy's expenditures from the gift fund during the tenure of von Damm, who resigned as ambassador after marrying the owner of Vienna's famous Sacher Hotel:

- In September 1985, she spent more than \$13,000 to take some 400 guests on a "friendship cruise" on the Danube River. The tab included boat rental, restaurant meals, fireworks and a photographer to record the event.
- In August 1985, von Damm dipped into the em-

bassy gift fund to buy a \$600 coat as a birthday present for Dagmar Koller, wife of Vienna's mayor. Cable traffic between the embassy and Foggy Bottom revealed an initial reluctance in Washington to approve the expenditure; it was finally okayed after the fact.

■ In December 1985, von Damm played the gracious hostess to Attorney General Edwin Meese III, his son and their wives, who stopped off in Vienna while on a European tour. The ambassador, who worked in the White House while Meese was presidential counselor, threw a party for the visitors. She also arranged tickets to the Vienna Opera production of "Fidelio" at a cost of \$317.28 for five tickets. The purpose of the expenditure was "to further U.S. interests," according to the embassy voucher.

■ Also justified by the need to promote the national interest was the purchase of 10 pewter bowls from Cartier Inc. in New York at a cost of \$1,023.

Not all the embassies with gift funds spent the money on fripperies. The GAO auditors noted that the embassy in Lagos, Nigeria, which had received more than \$338,000 in donations, used the money to make badly needed improvements at a consulate, "such as retaining walls, fences and gates." In addition, the embassy donated a large chunk of the gift fund to the American International School in Lagos.

The Paris embassy also used its gift fund for such expenses as renovating the ambassador's residence, buying a piano, reupholstering furniture, installing drapes and painting light fixtures.

The Moscow embassy wouldn't let the GAO auditors see its gift fund vouchers on grounds of security.

Whittlesey Hired Assistant Despite USIA Chief's Warning

By Howard Kurtz
Washington Post Staff Writer

U.S. Ambassador to Switzerland Faith Ryan Whittlesey insisted on hiring Robert Reilly for a \$62,400 post in Bern last year despite being earlier warned that Reilly had been removed as director of the U.S. Information Agency's grant program after charges that he engaged in political favoritism.

Charles Z. Wick, director of the USIA, said in a letter to Sen. Edward Zorinsky (D-Neb.) that he had told Whittlesey "of Mr. Reilly's problems at USIA." This was a reference to a 1983 Senate investigation of questionable grants by Reilly's office to conservative groups.

Wick, who transferred Reilly to a

lesser USIA job, initially resisted Whittlesey's attempts to give Reilly a political appointment for the USIA embassy post, which is almost always filled by career Foreign Service officers.

The Justice and State departments are examining Whittlesey's hiring of Reilly as a "senior adviser for public diplomacy" last fall, weeks after his father, Illinois businessman Frank Reilly, contributed \$5,000 to an embassy entertainment fund being solicited by Whittlesey.

The two departments are also examining Whittlesey's use of the \$80,000 fund, and Wick said USIA's inspector general would conduct a separate probe.

See WHITTLESEY, A8, Col. 4.

WHITTLESEY, From A1

Zorinsky, who investigated Reilly's role as director of USIA's private-sector programs, had told Wick in a letter that he was "stunned" to learn that Reilly had been hired at the embassy in Bern.

"Reilly's conduct rightly led you to remove him from his post," Zorinsky wrote. "That he is now in ethical trouble was clearly predictable in light of his previous employment record with USIA."

Zorinsky added in an interview that "public information officers ought to be professionals. The jobs should not be filled through political chicanery and hackery . . . I don't think being an acquaintance of an ambassador should be tantamount to job security."

Whittlesey and Reilly, 39, a former Heritage Foundation official, have been unavailable for comment since returning from Switzerland last week.

In his letter, Wick said Whittlesey asked to replace USIA's career public affairs officer in Bern before assuming her post last year. Soon after her arrival, Wick said, Whittlesey again asked USIA to remove the Foreign Service officer, James Kirk, and replace him with Reilly.

In July 1985, Wick said, Kirk was reassigned to Washington, although he had been sent to Switzerland only eight months earlier. In September 1985, Wick said, he had been unable to find a qualified Foreign Service officer and approved Reilly as Whittlesey's spokesman, although another title was created

Wick said it was "unnecessary" to remind Whittlesey about Reilly's ouster at USIA because he had raised it when she previously hired Reilly at the White House office of public liaison.

On Nov. 12, Reilly's father wrote Whittlesey that he had enclosed "the promised check" for \$5,000 for the embassy fund and that "Bob is looking forward to his new assignment with you." Reilly was formally hired six days later.

Zorinsky said "questionable"

USIA awards made under Reilly included "grants of more than \$500,000 to a new organization, the Claremont Institute, apparently run by a group of Reilly's graduate school cronies."

Reilly's office also made a \$162,000 grant to bring 14 spokesmen of friendly Latin American governments, including two from Haiti, to Washington for seminars on dealing with the American media. The grant's subcontractor was a registered foreign agent for Haiti.

Whittlesey's use of her privately raised fund, which supplemented her official \$45,000 entertainment budget, has raised questions because records show that she spent it largely to entertain American conservatives and administration officials instead of Swiss citizens.

A department spokesman said that, when funds are spent solely to entertain Americans, ambassadors must submit a "description of the official business conducted." It is not known whether Whittlesey did this.



FAITH RYAN WHITTLESEY
envoy unavailable for comment

Benjamin Read, undersecretary of state for management during the Carter administration, said he had never heard of privately raised embassy funds.

"It's a very bad practice and obviously is an invitation to conflict of interest," he said. "To have a pot of money raised by investors or anybody who might expect favors is a terrible idea."

WASH Post
10/3/86

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Analyst:

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@ ^ AUDITORS SAY SOME U.S. AMBASSADORS ABUSE FUNDS@
^ BY NEIL ROLAND@

WASHINGTON (UPI) — U.S. AMBASSADORS IN WESTERN EUROPE HAVE SPENT OFFICIAL FUNDS ON EXTRAVAGANT PERSONAL ITEMS SUCH AS A \$12,423 HOME SHOOTING RANGE, A \$592 DRESSING ROBE AND A \$563 NIGHT AT THE OPERA, GOVERNMENT AUDITORS REPORT.

AN INTERNAL REVIEW BY THE STATE DEPARTMENT ALSO POINTS TO USE OF SUCH FUNDS — PRIVATE DONATIONS RESTRICTED TO DIPLOMATIC USE — FOR @@LAVISH AND OSTENTATIOUS'' ENTERTAINMENT INCLUDING A \$15,000 BOAT PARTY.

THE JUNE REPORT BY THE DEPARTMENT'S INSPECTOR GENERAL'S OFFICE, A COPY OF WHICH WAS OBTAINED BY UNITED PRESS INTERNATIONAL IN RECENT DAYS, ASSAILED SEVERAL AMBASSADORS FOR EXERCISING POOR JUDGMENT AND WEAK CONTROL OVER THE FUNDS, CITING IN ONE INSTANCE THE INABILITY OF THE U.S. EMBASSY IN NIGERIA UNDER FORMER AMBASSADOR THOMAS SMITH TO ACCOUNT FOR \$830,000.

IT PARTICULARLY FOCUSED ON EXCESSES IN 1985 AT THE U.S. EMBASSY IN AUSTRIA UNDER FORMER AMBASSADOR HELENE VON DAMM, WHO PREVIOUSLY HAD BEEN PRESIDENT REAGAN'S PERSONAL SECRETARY AND PERSONNEL DIRECTOR, AND AT THE U.S. EMBASSY IN SWITZERLAND UNDER CURRENT AMBASSADOR FAITH WHITTLESEY.

IN ONE CASE AUDITORS DESCRIBED AS A POSSIBLE CONFLICT OF INTEREST, VON DAMM SPENT \$6,300 FOR BANQUETS AT A VIENNA HOTEL OWNED BY HER HUSBAND. THE REPORT SAID THE INSPECTOR GENERAL HAD TOLD THE JUSTICE DEPARTMENT OF THAT FINDING.

AUDITORS ALSO ALLEGED ABUSES BY RONALD LAUDER, VON DAMM'S SUCCESSOR AS AMBASSADOR AND THE SON OF COSMETICS MANUFACTURER ESTEE LAUDER, AND EDWARD STREATOR, THE FORMER U.S. AMBASSADOR TO THE ORGANIZATION FOR ECONOMIC AND COMMUNITY DEVELOPMENT IN PARIS.

AUDITORS REVIEWED THE RAISING AND SPENDING OF \$5.2 MILLION IN @@GIFT FUNDS, '' THE PRIVATE DONATIONS TO EMBASSIES THAT ARE SUPPOSED TO BE USED STRICTLY FOR OFFICIAL DIPLOMATIC PURPOSES.

THE REPORT DID NOT IDENTIFY AMBASSADORS BY NAME BUT NOTED THE LOCATION OF THEIR EMBASSIES AND THE DATES DURING WHICH THE ALLEGED ABUSES OCCURRED.

A SEPARATE, UNPUBLISHED INVESTIGATION BY A HOUSE SUBCOMMITTEE STAFF HAS FOUND WHITTLESEY CONDONED A FUND-RAISER'S SOLICITATIONS FOR THE EMBASSY'S GIFT FUND AND MAY HAVE OFFERED

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POTENTIAL DONORS, ACCORDING TO A SUBCOMMITTEE AIDE.

THE FUND-RAISER, A CALIFORNIA MAN WHO HAD CAMPAIGNED FOR PRESIDENT REAGAN, RAISED NEARLY \$80,000 FOR THE EMBASSY IN SWITZERLAND, THE STAFF INVESTIGATOR SAID. WHITTLESEY HAS SERVED TWO TERMS AS AMBASSADOR, FROM 1981 TO 1983 AND FROM APRIL 1985 TO THE PRESENT.

THE LEGALITY OF SOME OF HER ACTIONS WERE REVIEWED LAST FALL BY ATTORNEY GENERAL EDWIN MEESE, WHO REJECTED THE IDEA OF APPOINTING AN INDEPENDENT PROSECUTOR TO INVESTIGATE ALLEGATIONS SHE IMPROPERLY REWARDED DONORS.

WHITTLESEY WAS ACCUSED LAST YEAR OF HIRING FORMER WHITE HOUSE AIDE ROBERT REILLY FOR A \$62,400 EMBASSY JOB AT ABOUT THE TIME HIS FATHER CONTRIBUTED \$5,000 TO HER GIFT FUND.

MEESE HIMSELF WAS ENTERTAINED BY WHITTLESEY AND VON DAMM, WHO SPENT MORE THAN \$2,000 IN GIFT MONEY TO ENTERTAIN THE ATTORNEY GENERAL AND HIS AIDES ON RECENT VISITS TO EUROPE, ACCORDING TO DATA COMPILED FROM THE STATE DEPARTMENT REPORT, A FEBRUARY CONGRESSIONAL REPORT AND AIDES ON CAPITOL HILL.

A DEPARTMENT SPOKESWOMAN SAID OFFICIALS ARE IMPLEMENTING ABOUT HALF OF THE LATEST REPORT'S 34 RECOMMENDATIONS AND ARE REVIEWING OTHERS. THE DEPARTMENT HAS TOLD ALL MISSIONS TO CEASE USE OF PRIVATE FUNDS FOR EMBASSY ENTERTAINMENT.

AMONG THE EXAMPLES CITED IN THE JUNE AUDIT:

LAUDER ORDERED INSTALLATION OF A \$12,423 SHOOTING RANGE IN THE BASEMENT OF HIS HOME AND REQUESTED REIMBURSEMENT FROM GIFT FUNDS.

AMONG VON DAMM'S UNEXPLAINED PURCHASES WITH GIFT FUND MONEY WERE A \$15,000 BOAT PARTY WITH FIREWORKS, A \$592 DRESSING ROBE AND A VISIT TO THE OPERA BY HER HUSBAND, HERSELF AND ANOTHER COUPLE AT A COST OF \$563.

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Whittlesey Case

STATE DEPARTMENT CURBS DONATIONS

In Wake of an Investigation,
It Bars Private Funds for
Embassy Entertaining

Special to The New York Times

WASHINGTON, Jan. 7 — The State Department announced today that it had sent a message to all posts barring them from accepting private donations for embassy entertainment costs.

The order followed an investigation into whether Faith Ryan Whittlesey, the envoy to Switzerland, had misspent such money. The Justice Department ruled last month that there were not enough grounds to ask for an independent counsel to look into allegations about the improper use of the \$80,000 fund solicited from companies and individuals.

But today, Phyllis Oakley, a State Department spokesman, said that the department's Inspector General's office was still reviewing the Whittlesey case, as well as the whole question of entertainment funds, "to determine what action might be appropriate."

In a message to all posts, Acting Secretary of State John C. Whitehead said, "The acceptance of privately contributed funds for entertainment at U.S. embassies is discontinued as of today."

"The possibility for misuse of these funds, or even the possible perception of impropriety, is simply greater than the potential benefits to the Government," he said.

'Questionable Benefits'

The State Department said that in recent years a number of embassies had received contributions from private citizens to be used at the discretion of the ambassador "for official entertainment in the host country." The contributions supplemented money appropriated by Congress for entertainment purpose.

The department said a review by the Inspector General's office had disclosed that "some contributors may have felt that their donation might entitle them to some special benefits and that some expenditures from the privately raised funds had questionable benefits to the Government."

"By ceasing to accept these funds," it said, "the department will resolve these potential problems."

But the department said it would still permit donations for specific, approved projects such as the recent renovation of the department's diplomatic reception rooms when they are "clearly deemed to be in the public interest and when no benefits can accrue to the donor."

BALLY OF SWITZERLAND

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Business Day helps you stay ahead

Science sees cure to AIDS, cancer early next century

By Joyce Price
THE WASHINGTON TIMES

By the start of the 21st century or soon thereafter, two-thirds of all cancer patients will be cured, brain transplants using fetal tissue will be accepted practice, and an effective AIDS vaccine will be on the market, medical researchers predict.

Although the common cold will still be striking in the new century, scientists foresee better treatment through development of better therapeutic anti-viral drugs.

The scientists anticipate that life expectancy for men will rise from 71 years to 75, and for women from 78 to 82 in the next 15 years. This would mean a slight narrowing of the eight- to nine-year longevity gap that now separates American men and women.

Consequently, the scientists believe the leading health problems will be those related to a growing elderly population — cardiovascular disorders, cancer, strokes and Alzheimer's disease — according to a poll conducted by Louis Harris and Associates Inc. for the Bristol-Myers pharmaceutical firm.

Results of the poll of 227 of the world's leading research scientists are included in a newly released report, "Medi-

see CURES, page 8A

Hill aide accused of misconduct in seeking evidence on Whittlesey

By George Archibald
THE WASHINGTON TIMES

A House Foreign Affairs Committee aide who went to Switzerland last week to gather evidence against Ambassador Faith Ryan Whittlesey violated federal regulations, according to State Department officials.

R. Spencer Oliver, the committee's chief counsel, violated State Department regulations by not obtaining advance clearance from the Swiss government before going to Bern last Monday to interrogate about 16 American and Swiss citizens who work at the embassy, the officials said.

"They [the Swiss] are very sensitive about doing that," said one official. "When the independent counsel people [investigating the Iran-Contra affair] were going to go down there to interview people in the embassy, they couldn't go for two or three days until they got the formal clearances. This sort of stuff jeopardizes ... ongoing in-

see PROBE, page 8A

SPRING SPORTS



Photo by Kevin T. Gilbert/The Washington Times

Bicyclists in the District took advantage of the spring-like weather over the weekend to hit the bike trails in Rock Creek Park. This one is near the Connecticut Avenue overpass. Weather story on page 5B.

Washington Times 3/9/87

ROBE

From page 1A

vestigations going on in Switzerland."

Most countries consider such inquiries "a violation of judicial sovereignty unless advance clearance has been obtained," according to the regulations, which are binding on congressional officials.

Failure to clear investigations with the host country "may have serious impacts on foreign policy," the regulations said.

The investigative purpose of the trip and Mr. Oliver's visit to Edouard Brunner, the Swiss foreign minister, were kept secret from the State Department and the embassy until Mr. Oliver's arrival, officials said.

Mr. Oliver said the probe was prompted by a letter from an embassy employee that leveled "personnel mismanagement" charges against Mrs. Whittlesey.

His trip to Bern was in preparation for a House Foreign Affairs subcommittee hearing tomorrow, for which Mrs. Whittlesey and several State Department officials have been called to testify, he said.

Mrs. Whittlesey expressed outrage over Mr. Oliver's actions.

"He was meeting with Swiss government officials without prior notification or consultation with the embassy or with the State Department. . . . The president is responsible for conducting foreign policy. We can't have the staff or members of Congress conducting their own foreign policy."

The dispute involving Mr. Oliver is the latest twist in the Democrats' yearlong series of probes of Mrs. Whittlesey.

The various probes of Mrs. Whittlesey over the past year have cost the taxpayers "hundreds of thousands of dollars," said government officials. No precise cost could be determined, they said.

Mrs. Whittlesey said her personal cost of the inquiries amounts to "a small fortune."

At the House committee's initiative, Mrs. Whittlesey was investigated for four months last year on her use of a State Department gift fund to supplement her public diplomacy budget.

The probe was requested after two embassy employees lodged allegations of impropriety against the ambassador.

One of Mrs. Whittlesey's accusers — the embassy's administrative officer — later recanted his allegations. On Dec. 23, Mrs. Whittlesey was cleared of improprieties by the Justice Department.

The House subcommittee's chairman, Rep. Daniel Mica, Florida Democrat, and ranking Republican, Rep. Olympia Snowe, of Maine, criticized the department's action,



Ambassador Faith Ryan Whittlesey

saying Attorney General Edwin Meese III should have disqualified himself because of his friendship with the ambassador.

Subcommittee Democrats have raised further questions by tying Mrs. Whittlesey to the Iran-Contra affair and fired National Security Council staff member Lt. Col. Oliver North.

In a Feb. 3 story in The Philadelphia Inquirer, Rep. Peter Kostmayer, Pennsylvania Democrat, said, "I think we [the House panel] also need to determine whether the embassy personnel had any involvement with the financial activities which took place surrounding the Swiss banks."

According to a committee source, Mr. Kostmayer "might be interested in damaging Ambassador Whittlesey for political reasons."

Said a longtime Republican activist in Pennsylvania: "Faith Whittlesey was the third-best Republican vote-getter statewide [in 1978] when she ran for lieutenant governor. She got more votes than Arlen Specter [now U.S. senator], who was running for governor. He [Mr. Kostmayer] would like to do anything he can to negate any image she may have as a possible strong Republican candidate in the future."

Mr. Kostmayer said in an interview last week that he now believes Mrs. Whittlesey is "home free" on those allegations.

The alleged Iran-Contra connection also was pressed by subcommittee staff director Richard McBride in the Feb. 16 issue of the Schweitzer Illustrierten, a German-language Swiss weekly.

Mrs. Whittlesey will certainly be asked about her relationship to Oliver North," Mr. McBride was quoted as saying. The subcommittee has "suppositions but no evidence" that Mrs. Whittlesey was involved in the Iran-Contra affair, he told the Swiss weekly.

The ambassador "will also have to justify her actions regarding improper dealings with embassy employees," Mr. McBride told the publication.

Mr. Oliver's efforts against Mrs. Whittlesey also have been attributed to political motives — a charge he strongly denies.

Mr. Oliver, the former national president of the Young Democrats, is motivated by "in-bred partisanship — a constant effort to get the other side," said a committee source.

Mr. Oliver scoffed at the argument. His continuing efforts against Mrs. Whittlesey stem from her replacement in 1985 of the previous ambassador's top public affairs officer — a careerist — with a political appointee, Robert Reilly, he said.

"It was a bad precedent," he said. At a time of streamlining in the foreign service, "if you allow her to put political appointees in career service slots, what's left for the career service?"

According to several sources, Mr. Oliver has a grudge against Mr. Reilly stemming from 1984, when the U.S. Information Agency official reportedly stopped Mr. Oliver from taking an overseas trip at taxpayers' expense for the American Council of Young Political Leaders. Mr. Oliver denies the claim.

Mr. Reilly's appointment was approved by USIA Director Charles Z. Wick, who said that a qualified career Foreign Service candidate, for the Bern post could not be found.

Mr. Oliver said his hurried trip last week to Bern was prompted by a letter received by the committee, in which a career Foreign Service employee expressed concerns about job security at the embassy after two of the post's top Foreign Service careerists were reassigned, he said.

The two officials — the embassy's deputy chief of mission and administrative officer — were reassigned "at their own request," said George S. Vest, director general of the foreign service.

The two men were Mrs. Whittlesey's main accusers in the previous gift fund probe.

"The subcommittee is siding with the career people to the extent they feel the career service should be protected from arbitrary action by political people," Mr. Oliver said.

Michael Horowitz, Mrs. Whittlesey's attorney, called the assertion of arbitrary personnel actions by the ambassador "bosh and nonsense."

The tours of only two officials among 120 embassy employees have been ended early during Mrs. Whittlesey's two tours as ambassador, Mr. Horowitz said.

James W. Dyer, deputy assistant secretary of state for legislative affairs, said the department will be "fully behind" Mrs. Whittlesey's position on all issues expected to be raised at tomorrow's hearing.

Envoy Who Was Probed Says North Offered Help

Whittlesey Asserts No Iran-Contra Role

By Howard Kurtz
Washington Post Staff Writer

U.S. Ambassador to Switzerland Faith Ryan Whittlesey said yesterday that Lt. Col. Oliver L. North offered to find her a lawyer when she came under Justice Department investigation last fall, but that she had no role in the Iran-contra affair and did not know that North had gone to Switzerland to set up secret bank accounts.

Testifying before a House Foreign Affairs subcommittee, Whittlesey said that when she worked in the White House she often arranged for North, then a National Security Council aide, to brief groups on U.S. policy toward Central America. But she said his two calls to her last fall, before the Iran arms sales were disclosed, were "purely personal."

"I had no part in the Iran-contra matter," Whittlesey said. "I never raised money for the Nicaraguan resistance."

Whittlesey declined to say whether the Central Intelligence Agency station chief in Switzerland talked to her about delays in the U.S. request to freeze the Swiss bank accounts, set up by North, to divert funds from Iran arms sales to aid the Nicaraguan contras. She said she would not discuss it in a public session.

Subcommittee Chairman Daniel A. Mica (D-Fla.) called the hearing following allegations involving an \$80,000 embassy entertainment fund that Whittlesey raised from private donors. Attorney General Edwin Meese III found in December that there was insufficient evidence to seek an independent counsel in the case.

Mica said he had been under intense "pressure to cancel this hearing" from Cuban-American activists and other Florida constituents who contacted him on Whittlesey's behalf. "I resent the kind of calls that indicate that this is a vendetta and that this hearing should be stopped," Mica said.

The ambassador said she had not orchestrated the calls, but Rep. Peter H. Kostmayer (D-Pa.) accused Whittlesey and her associates of trying to "intimidate the chairman of this subcommittee." He also said her appearance "reeks of partisan politics," citing leadoff testimony in praise of Whittlesey by Rep. Jack Kemp (R-N.Y.).

Whittlesey replied: "I have been subjected to a campaign of leaks, accusations by anonymous sources . . . While I am a good Christian, I don't relish the idea of being led into the arena for the sport of others. I am trying to defend myself."

Whittlesey said the Justice Department probe had "vindicated" her. She said the State Department



BY JAMES K.W. ATHERTON—THE WASHINGTON POST

Ambassador Faith Ryan Whittlesey hears praise from lead witness, Rep. Kemp.

had no rules for her embassy gift fund—which she used to entertain visiting U.S. officials and conservatives and to buy silver pieces and furnishings for the official residence—and had approved all expenditures. The department abolished such private entertainment funds in January.

Rep. Lawrence J. Smith (D-Fla.) questioned Whittlesey's acceptance of \$5,000 for the gift fund from businessman Frank Reilly during the same period that she hired his son, Robert Reilly, for a \$62,400 job as the embassy's public affairs officer.

"Four days before [Robert Reilly] was sworn in, you accepted a \$5,000 gift to the gift fund from his father," Smith said. "Do you think that's appropriate?"

"The check was not for my personal benefit," Whittlesey said. "It was made out to the United States Department of State, and therefore I thought it was appropriate to receive the money . . . It had no connection whatsoever with Mr. Reilly's hiring."

Kostmayer castigated Whittlesey, a former Pennsylvania politician, for inquiring about how to replace Reilly's predecessor, a career Foreign Service officer, before assuming her post in 1985 and without having met the man. Whittlesey later had the career officer transferred, and Reilly was given an unusual political appointment to the job.

Whittlesey said that she followed "institutional performance standards" in that and other personnel moves, but said she would not discuss such issues in an open session.

George Vest, director general of the Foreign Service, said his aides had found "poor morale" at the embassy in Bern. He said that two senior career officers who made allegations about Whittlesey's conduct were being transferred at their request, but defended such actions as routine in cases of personality clashes.

"Being a woman in a position such as this is fraught with great complexity," Whittlesey told reporters.

Foreign Service denies ambassador had role in personnel transfers

By George Archibald

The State Department's top two Foreign Service officers told a House subcommittee yesterday that Faith Ryan Whittlesey, the U.S. ambassador to Switzerland, played no role in the reassignment of two embassy employees who had accused her of wrongdoing last year.

Mrs. Whittlesey was accused of misusing a special embassy fund.

Flanking the ambassador at an acrimonious hearing called to challenge her for "possible abuse" of the Foreign Service personnel system, the two officials said the allegations were unfounded.

The embassy's deputy chief of mission and administrative officer in Bern requested early reassignment after the Justice Department cleared Mrs. Whittlesey of accusations that she had misused an \$80,000 representational fund raised from private donors, said Ronald L. Spiers, undersecretary of state for management, in testimony before the House Foreign Affairs subcommittee on international operations.

"The differences there [at the embassy in Bern] were a natural consequence of the turmoil over the gift fund," Mr. Spiers testified. "I have no reason to believe that there are any continuing difficulties in the personnel situation at the embassy in Switzerland."

Eric A. Kunsman, the embassy's former No. 2 official, and administrative officer Donald J. Lynch were reassigned to other posts "through normal procedures," said George S. Vest, director general of the Foreign Service.

"I have been carefully watching every transfer out of there [Switzerland] to make sure no one is penalized," Mr. Vest said. "I can't recall a single person who has been damaged" because his tour in Bern was ended early, he testified.

H. Byron Hollingsworth, the State Department's acting inspector general, told the committee that his office's investigation was ended when the Justice Department concluded Dec. 3 that "a criminal charge of misuse of funds could not be supported" against Mrs. Whittlesey.

"This audit has clearly shown that the de-



Faith Ryan Whittlesey

She was asked to explain telephone calls she reportedly received in Bern from fired National Security Council staffer Oliver L. North. She said Lt. Col. North was a friend from her days as a White House official who had called while she was in Washington to ask if she needed help finding a lawyer for the Justice Department probe. She said she thanked him for his concern and told him she already had a lawyer.

Subcommittee Chairman Daniel Mica of Florida, expressed dismay over "subtle pressures and not-so-subtle pressures" from constituents who he said had tried to block the hearing.

"I resent the types of calls that indicate that this is some type of vendetta and that this hearing ought to be stopped," Mr. Mica said. "We are extremely upset by the twist these hearings have taken."

Mrs. Whittlesey denied that she generated the political pressure. She said an embassy aide telephoned one Cuban-American businessman in Miami last October, only hours before the ambassador flew from Bern to Washington, to request the businessman's help in setting up a meeting with Mr. Mica.

"These people [the Cuban-Americans] thought that something was awry," Mrs. Whittlesey said. "What I wanted was a fair and impartial hearing."

"Why didn't you arrange the meeting yourself, or go through the State Department?" Mrs. Whittlesey was asked.

"It was late at night. I couldn't find the State Department's number," the ambassador responded.

Rep. Peter Kostmayer, Pennsylvania Democrat, criticized Mrs. Whittlesey for arranging a statement in her behalf at the hearing by Rep. Jack F. Kemp, New York Republican. "I am concerned about obvious partisanship," Mr. Kostmayer said.

In veiled criticism of the hearing's purpose, Mr. Kemp said: "I strongly believe ambassadors should have the right to gather a staff of their choosing. . . . Does a system that requires ambassadors to carry out the policies of the president, but does not allow them to choose their own staff, make any sense?"

"Bringing an obvious Republican candidate for president [to the hearing] does a disservice to you," Mr. Kostmayer told the ambassador.

Mrs. Whittlesey responded: "I have been subjected to a campaign by leaks, accusations by anonymous sources, for many months. While I am a reasonably good Christian, Mr. Kostmayer, I do not relish being led into the arena for the sport of others."

"I have no reason to believe that there are any continuing difficulties in the personnel situation at the embassy in Switzerland."

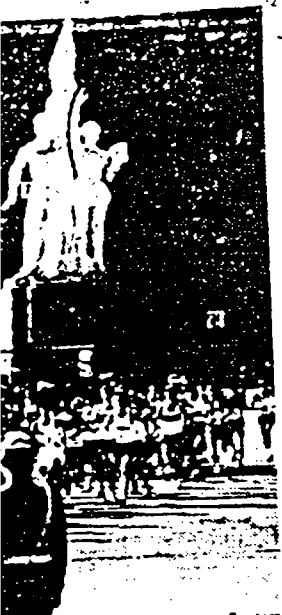
partment's guidelines and regulations concerning the solicitation and use of gift funds are inadequate," Mr. Hollingsworth said. The gift fund was discontinued in January as a result of the controversy, Mr. Spiers testified.

A House committee staff report issued later in the day said Mrs. Whittlesey exercised "poor judgment" in overseeing the fund, but violated no laws.

The staff report said Mrs. Whittlesey accepted contributions to the fund "when it was clear that her chief fund-raiser was promising special treatment to those contributors."

Mrs. Whittlesey denied any involvement in the Iran-Contra affair during the hearing. Asked by Rep. Chester Atkins, Massachusetts Democrat, what the CIA station chief in Bern told her about secret Swiss bank accounts used in the Iran-Contra affair, Mrs. Whittlesey said she would only answer in a closed committee session.

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— By Sergio R. Bustos

from her forehead, fell into the shaft Wednesday. Rescuers bored a 3-foot-wide shaft parallel to the well and then drilled and chipped a tunnel through extremely hard rock to the spot where she was trapped. Blood circulation in her right foot had been reduced by the way Jessica was jammed in the well. Doctors said yesterday that they still could not say definitely whether they would be able to save the foot from gangrene, which could force them to amputate.

skin.
Jessica received the fourth in a series of hyperbaric oxygen chamber treatments Saturday evening. The chamber contains oxygen at higher than normal pressure to force oxygen into a patient's blood and speed healing. Viney said there did not appear to be any hearing loss, despite the hours of listening to jackhammers and other equipment while rescue workers dug through rock.

Phila. Inquirer 10/19/87

Auditors cite abuses in spending at U.S. Embassies

By Neil Roland
United Press International

WASHINGTON — Several U.S. ambassadors in Western Europe have spent official funds on extravagant personal items such as a \$12,423 home shooting range, \$141 opera tickets and a \$592 dressing robe, State Department auditors have found.

In an internal report, they also said the funds were used for "lavish and ostentatious" entertainment, including a \$15,000 boat party and a July 4 celebration that included \$4,000 worth of flowers for decoration.

The auditors, who reviewed the raising and spending of \$5.2 million in gift funds, did not identify the ambassadors by name but cited the embassies involved and the dates during which the alleged abuses occurred.

Among those named was the Swiss mission headed by Faith Ryan Whittlesey, who before becoming ambassador to Switzerland was president of the Delaware County Council.

The report by the department's inspector general's office was completed in June but not released. United Press International recently obtained a copy.

The report assailed several embassies, and by extension their ambassadors, for exercising poor judgment and weak control over their gift funds — private donations that are supposed to be used only for official diplomatic purposes.

It focused particularly on excesses in 1985 at the U.S. Embassy in Austria under Ambassador Helene von Damm, who had been President Reagan's personal secretary and personnel director before taking charge of the embassy.

Von Damm spent a \$430 for an original caricature, \$592 for a dressing robe, \$15,000

for a boat party with fireworks and \$564 on a visit to the opera by her husband, herself and another couple, according to the report.

In a case that auditors described as a possible conflict of interest, the Austrian embassy spent \$6,300 for banquets at a Vienna hotel owned by von Damm's husband. The report said the inspector general's office has informed the Justice Department of the finding.

Auditors also alleged that abuses were made by Ronald Lauder, von Damm's successor and son of cosmetics manufacturer Estee Lauder, and Edward Streater, the former U.S. ambassa-

Later, Chip McClure told how they would explain the ordeal to Jessica: "We're going to try to keep it as a good memory, that she's alive. We're not going to concentrate on the time that she was in the hole."

Meanwhile, authorities said yesterday that an 11-year-old boy had drowned in a partially filled cistern in Slater, Mo. The body of Chris Brown was removed from the 20-foot-deep well about 2:30 p.m. Saturday.

dor to the Organization for Economic and Community Development in Paris. Lauder ordered installation of a \$12,423 shooting range in the basement of his house and requested reimbursement from gift funds, the report said. Streater's mission was cited for "particularly lavish entertainment."

According to an investigator for a House Foreign Affairs subcommittee, a separate investigation by the panel has found that a fund-raiser for Whittlesey's embassy, an elderly California man who had worked on the Reagan campaigns, offered donors the free

use of embassy rooms. The investigator said such an offer could constitute an illegal "quid pro quo" for donations. Michael Horowitz, a lawyer for Whittlesey, said this type of solicitation was "routine." Whittlesey has served two terms as ambassador, from 1981 to 1983 and from April 1985 to the present. The legality of some of her actions were reviewed last fall by Attorney General Edwin Meese 3d, who rejected a recommendation for appointment of an independent counsel to investigate allegations that she improperly rewarded gift-fund donors.

JFK alone reportedly opposed '62 attack

United Press International

BOSTON — President John F. Kennedy bucked the advice of all his top advisers when he decided not to attack Cuba during the 1962 missile crisis, according to documents from the JFK Library in Boston obtained by the Boston Globe.

The Globe reported yesterday that the documents showed that only the president favored the compromise solution suggested by Soviet leader Nikita S. Khrushchev in which the United States would remove Jupiter missiles from Turkey in exchange for the Kremlin's withdrawal of its nuclear missiles from Cuba.

JFK Library officials could not be reached for comment on the report. They plan to release the documents to the public Wednesday.

The Globe said the documents "transcripts of meetings held by the Executive

Committee of the National Security Council on Saturday, Oct. 27, 1962 — showed that all of Kennedy's closest aides, including his brother, Attorney General Robert F. Kennedy, supported an air strike or an invasion to remove the Soviet missiles in Cuba despite the danger of it leading to war.

Previously, several of President Kennedy's top aides were believed to have sided with the him in opposing an attack.

According to the official summary records of the meetings, the president noted, "We are now in the position of risking war in Cuba and in Berlin over missiles in Turkey which are of little military value."

The administration had already decided before the crisis to eliminate the missiles in Turkey, but it had not yet carried out the plan.

Khrushchev announced the withdrawal of

the missiles from Cuba on Sunday, after a night meeting between Robert Kennedy and Soviet Ambassador Anatoly Dobrynin during which the attorney general relayed the president's agreement to the Soviet premier's proposal.

The paper said the documents debunked previously held myths about the administration's handling of the crisis brought about when American spy planes discovered that Soviet missiles were being placed in Cuba.

One myth, said the Globe, is that the president had forced the Soviets to back down by imposing a naval blockade on Cuba.

The documents show that Kennedy agreed to Khrushchev's plan to resolve the crisis. That compromise involved an American promise not to invade Cuba and a Soviet vow not to attack Turkey, as well as the removal of each superpower's missile from those countries.