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WITHDRAWAL SHEET (PRESIDENTIAL LIBRARIES)

| FORM OF DOCUMENT | CORRESPONDENTS OR TITLE | DATE | RESTRICTION |
|------------------|--|--------|-------------|
| 1. Memo | Jim Fazio to Marsh and Attached Nixon briefing (11 pp.) | 7/2/75 | A |

FILE LOCATION Marsh Files
 General Subject File
 Nixon, Richard - Briefings and News Summaries

Box 24

RESTRICTION CODES

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WHM, 12/30/85

OCT 31 1974



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

OFFICE OF GENERAL COUNSEL

B-155950
B-149372

October 25, 1974

*File
Lundman*

The Honorable Donald Rumsfeld
Assistant to the President
The White House

Dear Mr. Rumsfeld:

We have received inquiries from several Members of Congress concerning reports that U.S. Air Force planes have been used to take materials to former President Nixon in California and that Mr. Nixon's daughter, Julie Eisenhower, has been permitted to fly to California at Government expense on at least one such flight, to visit her father. In order that we may respond to the questions raised, we request that you answer the following questions.

1. What is the authority for the periodic courier flights to Mr. Nixon?
2. How long is it anticipated that these flights will continue?
3. What is the authority relied upon for allowing a private citizen to travel as a passenger on a Government aircraft?
4. Will the Government be reimbursed for the value of Mrs. Eisenhower's flight?
5. Will such flights by Mrs. Eisenhower or others be allowed on subsequent occasions?

Your attention to this matter will be appreciated.

Sincerely yours,

John J. Higgins
John J. Higgins
Associate General Counsel



*File
Small elements*

THE WHITE HOUSE
WASHINGTON

Tom

November 18, 1974

MEMORANDUM FOR: JACK MARSH

FROM: DICK CHENEY *Dick*

Jack, we've had a request to provide briefings for former President Nixon in the economic and domestic areas similar to those now provided national security policy.

It strikes me we might be able to pull together some sort of package like the detailed legislative message that goes to the Hill and so forth.

I leave this one in your hands.



San Clemente

November 20, 1974

Dear Bill:

Your letter addressed to the Director, Congressional Liaison, requesting information on the ethics and cost of briefing former President Nixon on the United States policies has been referred to me for reply.

As you know, the briefings which were provided to Mr. Nixon are consistent with the policy which was established by the White House and which was afforded to all former presidents.

With regard to former President Nixon, there have been three courier flights which have transported briefing materials to San Clemente at a total cost to the government of \$20,000. I might point out that as of this date these flights have been deferred.

I trust that this information will allow you to be of help in responding to your constituent.

Sincerely,

John G. Marsh, Jr.
Counsellor to the President

The Honorable William L. Hungate
House of Representatives
Washington, D.C. 20515

JOM:HJK:kt



SELECT COMMITTEE ON
SMALL BUSINESS
CHAIRMAN, SUBCOMMITTEE ON
ENVIRONMENTAL PROBLEMS

Congress of the United States

House of Representatives

Washington, D.C. 20515

September 26, 1974

JUDICIARY COMMITTEE
CHAIRMAN, SUBCOMMITTEE ON
CRIMINAL JUSTICE

Director
Congressional Liaison
The White House
Washington, D.C.

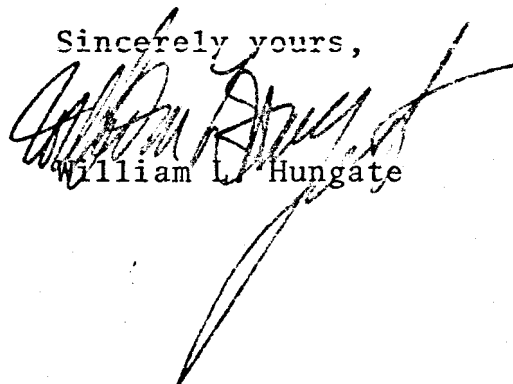
Dear Sir:

BT
I am writing in behalf of a constituent who is concerned about the ethics and cost of briefing Richard Nixon on U.S. policies. I would appreciate any information regarding this matter which may be helpful in responding to my constituent.

Thank you in advance for your cooperation and I look forward to hearing from you.

With best wishes, I am

Sincerely yours,



William L. Hungate

WLH/pm
dbnr



THE WHITE HOUSE
WASHINGTON

Can set ~~the~~ ^{CCT team}
unit for
Larry Adams
briefings -
(2 refer not all - will
see dearam)



MEMORANDUM

THE WHITE HOUSE
WASHINGTON
January 20, 1975



MEMORANDUM TO: JACK MARSH
FROM: RUSS ROURKE
SUBJECT: CONVERSATION WITH BILL GULLEY
CONCERNING TRANSMISSION OF CERTAIN
POST TRANSITION MATERIALS AND BRIEFING
TO RMN

Gulley believes RMN will go all the way in requesting these briefings. Unless he achieves satisfaction, Gulley is sure RMN will personally call President Ford.

The following are available alternatives:

- 1) Courier flights (out of the question from a cost standpoint).
- 2) Putting the material on a military circuit for transmittal to Camp Pendelton (out of the question--not adequate security safeguards--Kissinger also opposed to this route).
- 3) Sending an individual courier aboard a commercial flight approximately once a week. This would present some security problems, but both Scowcroft and Kissinger believe this to be the best of the available alternatives. DOD would pick up the approximate \$330 per week round trip cost. It could come out of their WHCA communications budget.

Be aware that Moss of California has made a formal White House inquiry with regard to RMN being a security risk... Scowcroft is, of course, aware of this situation.



THE WHITE HOUSE OFFICE

REFERRAL

To: Thomas K. Latimer
Special Assistant to the Secretary of Defense

Date: November 23, 1974

Via: Military Assistant to the President

ACTION REQUESTED

- Draft reply for:
 - President's signature.
 - Undersigned's signature.
- Memorandum for use as enclosure to reply.
- Direct reply.
- Furnish information copy.
- Suitable acknowledgment or other appropriate handling.
- Furnish copy of reply, if any.
- For your information.
- For comment.

NOTE

Prompt action is essential.

If more than 72 hours' delay is encountered, please telephone the undersigned immediately, Code 1450.

Basic correspondence should be returned when draft reply, memorandum, or comment is requested.

REMARKS:

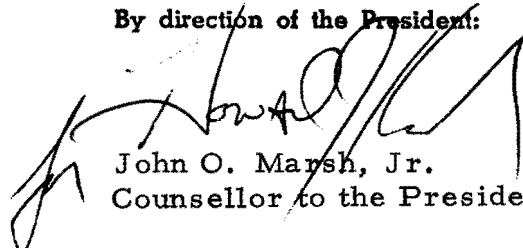
Please draft reply for White House.

Description:

Letter: Telegram: Other:

To: The Honorable Donald Rumsfeld, Assistant to the President, The White House
 From: John J. Higgins, Associate General Counsel, United States General Accounting Office, Washington, D.C. 20548
 Date: October 25, 1974
 Subject: Congressional inquiries re U.S. Air Force planes used to take materials and on one occasion Julie Eisenhower to former President Nixon. Questions raised on whether the government will be reimbursed for costs incurred on these trips.

By direction of the President:



John O. Marsh, Jr.
Counsellor to the President

(Copy to remain with correspondence)

OCT 31 1974



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

OFFICE OF GENERAL COUNSEL

B-155950
B-149372

October 25, 1974

Walt

The Honorable Donald Rumsfeld
Assistant to the President
The White House

Dear Mr. Rumsfeld:

We have received inquiries from several Members of Congress concerning reports that U.S. Air Force planes have been used to take materials to former President Nixon in California and that Mr. Nixon's daughter, Julie Eisenhower, has been permitted to fly to California at Government expense on at least one such flight, to visit her father. In order that we may respond to the questions raised, we request that you answer the following questions.

1. What is the authority for the periodic courier flights to Mr. Nixon?
2. How long is it anticipated that these flights will continue?
3. What is the authority relied upon for allowing a private citizen to travel as a passenger on a Government aircraft?
4. Will the Government be reimbursed for the value of Mrs. Eisenhower's flight?
5. Will such flights by Mrs. Eisenhower or others be allowed on subsequent occasions?

Your attention to this matter will be appreciated.

Sincerely yours,

John J. Higgins

John J. Higgins
Associate General Counsel

1. Question What is the authority for the periodic courier flights to Mr. Nixon?
- Answer Since Mr. Nixon left Office there have been three courier flights to San Clemente at the direction of the Commander-in-Chief who in his role as Commander-in-Chief may direct flights by Department of Defense aircraft.
2. Question How long is it anticipated that these flights will continue?
- Answer The last courier flight was 4 October 1974. There are presently no flights scheduled.
3. Question What is the authority relied upon for allowing a private citizen to travel as a passenger on a Government aircraft?
- Answer The Commander-in-Chief, Secretary of Defense, Secretary of the Army, Secretary of the Navy and Secretary of the Air Force may authorize private citizens to travel via Government aircraft when it is of benefit to the United States Government or for compassionate reasons. This authority is inherent to the Commander-in-Chief and covered by Department of Defense regulations in granting authority to the Secretaries. Although infrequent, private citizens are authorized transportation for compassionate reasons. As an example, this was done for Margaret Truman during her father's illness and Lynda Johnson Robb during President Johnson's illness.
4. Question Will the Government be reimbursed for the value of Mrs. Eisenhower's flight?
- Answer There is no plan to ask the former President for reimbursement for the flight made by Mrs. Eisenhower to San Clemente since the aircraft was on a scheduled trip and an empty seat was available.
5. Question Will such flights by Mrs. Eisenhower or others be allowed on subsequent occasions?
- Answer There are no plans for Mrs. Eisenhower or others to utilize government air transportation at this time, however, should circumstances of an emergency nature arise, the President could, if he deemed appropriate, authorize such transportation.



November 29, 1974

MEMORANDUM FOR: JACK MARSH
FROM: RUSS ROURKE
SUBJECT: Daily News Summary to San Clemente.

Attached is a copy of the daily News Summary which is an example of what has been sent each day to former President Nixon at San Clemente since he left the White House. Mort Allin, Jack Warden's predecessor, started this practice and it has continued up to the present time.

Once each day the news summary is sent from the Situation Room through a vacuumtube to the communications center in the East Wing, where it is then sent by telecopier to San Clemente.

RAR:cmp



November 29, 1974

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JACK MARSH

FROM:

RUSS ROURKE

SUBJECT:

Daily News Summary to
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RAR:cmp



December 6, 1974

MEMORANDUM FOR:

DICK CHENEY

FROM:

JACK MARSH

The attached items should satisfy the purposes of your inquiry regarding San Clemente.

RR:rs



RR
sent
W


MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 6, 1974

MEMORANDUM FOR MR. ROURKE

FROM: S. Botsai 

SUBJECT: Information Sent to San Clemente from the
Situation Room

Since 9 August 1974, approximately 5,000 pages of material have been sent through the Situation Room to San Clemente, less than 100 of which contain sensitive information. Eight intelligence briefings averaging 12 pages each have been sent, four by courier and, beginning 19 October, four by facsimile transmission. The courier flights took place on 6 September, 13 September, and 4 October. One brief was sent with a courier on a commercial flight on 20 September.

Of the unclassified material, the preponderance has been news reports, including the daily Allin/Warden summary, which averages 35 to 40 pages. Additionally, particularly during the first two months of the new administration, 20 pages of newspaper reports were sent out each day by facsimile and between 20 and 40 pages of wire reports. One or two pages of radio/TV coverage were also sent daily during this time. Since mid-October, news reports to San Clemente have diminished to the point that the Allin/Warden news summary is now the only media material sent regularly.

Aside from media information, the Situation Room handled, on an irregular basis, messages containing schedules, constitutional issues, public documents, etc. The volume of such items, never high, declined to almost nothing by December. Finally, there were a few personal messages for the former President. All of this information was transmitted by facsimile.

Please let me know if you need additional information.



... (10) White House - Communications Agency personnel
... support of Secret Service at San Clemente. The estimate of cost
... operations is \$7,150 for the 90 day period covered. Salaries
... of this period is \$25,790. There is no per diem paid since these
... personnel are permanently assigned to this station.

Automobile operations cost at San Clemente consists of payment
for gasoline only -- the actual cost is unknown since all of the bills
have not been received. It is estimated that it would be less than
\$2,000 for the 90 day period covered.

Aircraft support has consisted of 3 hours and 20 minutes in Air
Force One on 9 August 1974. On that date, Mr. Nixon was enroute
to San Clemente when, at 12:00 noon, Mr. Ford became President.
At that time, the aircraft was directly over Jefferson City, Missouri,
and the cost of the remaining flight to San Clemente was \$8,440.
There were three courier flights from Washington, D. C. to San
Clemente, California and return -- at a total cost of \$19,500. A
total of six Nixon staff members and on one occasion, a family
member, were passengers on the courier flights. The other
passengers were members of the Military Office at the White House
and White House Communications Agency personnel required in
San Clemente for the phasedown of that station. Also, some
personal belongings of the Nixon family, delivered to Andrews Air
Force Base by General Services Administration, were placed on
an aircraft transporting Secret Service cars. These belongings
were off-loaded with the cars at El Toro Marine Corps Air Station,
California. The total cost of the aircraft was \$7,985, however I
know of no method of computing what portion of this would be
charged to Mr. Nixon since his property took a very small portion
of the space on the aircraft.

KEY BISCAYNE

All Department of Defense operations at Key Biscayne ceased on
1 November 1974 and all personnel were returned to Washington, D. C.
on 4 November 1974. The operational cost from 9 August 1974 to
1 November 1974 was \$6,000. The salaries of the six (6) personnel
assigned was \$17,816 and there was no per diem paid since these
personnel were permanently assigned to this station.

DATES OF COURIER FLIGHTS:

SEPT. 6, 1974

SEPT. 13, 1974

OCT. 4, 1974



MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 10, 1975

MEMORANDUM TO: JACK MARSH

FROM: RUSS ROURKE

Jack, we discussed the question of sending economic briefings to President Nixon. I was reminded today that all of WHCA's operations will shut down as of January 14. That will mean, of course, that even the Daily News Summaries will no longer be forwarded to San Clemente after that date. It would appear, therefore, that the economic briefings would also be out the window as of that date. Please advise if you have a contrary view.

R-



This is something
to spend some
time on to come
up with some
alternatives
RM.

JAN 14 1975

Sent FBI by T. Max 1-14

THE WHITE HOUSE
WASHINGTON

January 14, 1975

MEMORANDUM FOR: Brent Scowcroft

FROM: Phil Buchen

P.W.B.

Correspondent Les Kinsolving called on January 13, 1975, to advise me that Congressman Moss had raised with him the issue of how the NSC, within its responsibilities under Sec. 7 of E. O. 11652, could justify allowing former President Nixon to continue to be given access to classified information despite the requirements of Sec. 6(A) of that E. O., which imposes a test of predetermined "trustworthiness."

He also referred to E. O. 11456, which does cover the relationships between an incumbent and a former President, but he argued that the later E. O. 11652 imposes a paramount test of qualification for access to classified information.

The inquirer stated he would call me within a few days for a response. I would like to be able to refer his inquiry to you, or, if you prefer, to have a statement from you that I could relay to him.

This may prove to be a very troublesome inquiry and could result in problems for President Ford and Secretary Kissinger, so I would be glad to discuss the matter with you.

cc: Don Rumsfeld
Jack Marsh ✓



set up meeting

THE WHITE HOUSE
WASHINGTON

January 14, 1975

*To Jack
Marsh - Please
work with
Brendt -
1-14-75*

MEMORANDUM FOR: Brent Scowcroft

FROM: Phil Buchen *P.W.B.*

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cc: Don Rumsfeld
Jack Marsh



January 20, 1975

MEMORANDUM TO: JACK MARSH

FROM: RUSS ROURKE

**SUBJECT: CONVERSATION WITH BILL GULLEY
 CONCERNING TRANSMISSION OF CERTAIN
 POST TRANSITION MATERIALS AND BRIEFING
 TO RMN**

Gulley believes RMN will go all the way in requesting these briefings. Unless he achieves satisfaction, Gulley is sure RMN will personally call President Ford.

The following are available alternatives:

- 1) Courier flights (out of the question from a cost standpoint).**
- 2) Putting the material on a military circuit for transmittal to Camp Pendelton (out of the question--not adequate security safeguards--Kissinger also opposed to this route).**
- 3) Sending an individual courier aboard a commercial flight approximately once a week. This would present some security problems, but both Scowcroft and Kissinger believe this to be the best of the available alternatives. DOD would pick up the approximate \$330 per week round trip cost. It could come out of their WHCA communications budget.**

Be aware that Moss of California has made a formal White House inquiry with regard to RMN being a security risk... Scowcroft is, of course, aware of this situation.

RAR:cb



April 18, 1975

Dear Mr. Higgins:

I have reference to your earlier correspondence wherein you make inquiry concerning the "use of courier flights to brief former President Nixon, and the presence of Julie Eisenhower on at least one of these flights".

Attached you will find the five questions set forth in your original letter to Mr. Donald Rumsfeld, together with the responses to those questions.

With all good wishes, I remain,

Sincerely,

William E. Casselman II
Counsel to the President

~~Mr. John J. Higgins~~
Associate General Counsel
Office of General Counsel
United States General Accounting
Office
Washington, D. C. 20548

RAR:cb



THE WHITE HOUSE

WASHINGTON

April 22, 1975

Dear Mr. Higgins:

I have reference to your earlier correspondence wherein you make inquiry concerning the "use of courier flights to brief former President Nixon, and the presence of Julie Eisenhower on at least one of these flights".

Attached you will find the five questions set forth in your original letter to Mr. Donald Rumsfeld, together with the responses to those questions.

With all good wishes, I remain,

Sincerely,

William E. Casselman II
Counsel to the President

Mr. John J. Higgins
Associate General Counsel
Office of General Counsel
United States General Accounting
Office
Washington, D. C. 20548



Attachment

1. Question What is the authority for the periodic courier flights to Mr. Nixon?

Answer After Mr. Nixon left office, there were three courier flights to San Clemente at the direction of President Ford acting as Commander-in-Chief. These flights carried up-to-date classified information to Mr. Nixon during the initial stages of the transition period. This method was subsequently replaced by an alternate means of secure electronic transmission.

Mrs. Eisenhower travelled on one of these flights which also carried six White House communications personnel who were to dismantle the extensive defense communications system at San Clemente.

These flights, therefore, at the direction of the President as Commander-in-Chief, were all operational flights of Air Force planes engaged in missions properly assigned to the military.

2. Question How long is it anticipated that these flights will continue?

Answer The last courier flight was October 4, 1974, and no further flights are contemplated.

3. Question What is the authority relied upon for allowing a private citizen to travel as a passenger on a Government aircraft?

Answer We are not aware of any statutory authority specifically granting the President the power to allow private citizens to travel on Government aircraft. Neither are we aware, however, of any specific limitation on the President's general command authority over military personnel and equipment which would bar him from



allowing private citizens in certain compelling situations to ride on a space-available basis in military aircraft otherwise engaged on official business. Department of Defense Regulations of long standing have authorized, in the absence of positive statutory law, the use of military aircraft to transport private citizens in order to save their lives or otherwise to benefit the nation; we believe the Congress has been aware of this practice. So also, it has been a settled practice to transport the children of former Presidents to their fathers when the latter were critically ill. In light of this settled practice, the absence of contrary law, and the fact that neither appropriated funds nor the defense mission would be affected, the President effectively authorized the carriage of Mrs. Eisenhower on the courier flight.

4. Question Will the Government be reimbursed for the value of Mrs. Eisenhower's flight?

Answer As has been the settled practice, both with regard to the children of former Presidents and with regard to other humanitarian missions, the carriage of Mrs. Eisenhower was not reimbursed. The policy of not seeking reimbursement on humanitarian missions is reflected in DOD Regulation 4515.13-R, P 6-4b. Of course, since Mrs. Eisenhower flew on a space-available basis, no expenditure of Government funds was involved.

5. Question Will such flights by Mrs. Eisenhower or others be allowed on subsequent occasions?

Answer There are no present plans for carrying any private citizens on such flights; but as emergency situations may arise, and in the absence of contrary law, the President will continue the traditional practice described above.



Attachment

1. Question What is the authority for the periodic courier flights to Mr. Nixon?

Answer After Mr. Nixon left office, there were three courier flights to San Clemente at the direction of President Ford acting as Commander-in-Chief. These flights carried up-to-date classified information to Mr. Nixon so that he would remain informed with regard to international and military affairs. President Ford, lacking a normal transition period for his Presidency, felt that he might well require consultation on an emergency basis with Mr. Nixon regarding these matters, and he desired that Mr. Nixon's advice be based on the most current information.

In addition, at least the flight which carried Mrs. Eisenhower also carried six White House communications personnel who were to dismantle the extensive defense communications system at San Clemente.

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5. Question Will such flights by Mrs. Eisenhower or others be allowed on subsequent occasions?

~~*/ This bracketed sentence might be omitted.~~



Department of Justice

Washington, D.C. 20530

April 14, 1975

MEMORANDUM TO THE HONORABLE WILLIAM E. CASSELMAN II
Counsel to the PresidentRe: Reply to GAO Concerning Flight by
Julie Nixon Eisenhower

This is in response to your memorandum to this Office of March 5, 1975, requesting a review as to form and legality of a proposed response by the White House to a series of questions posed by the General Accounting Office (GAO). These questions concerned a series of "courier" flights from Washington to former President Nixon in San Clemente and the presence of Julie Nixon Eisenhower on one of those flights.

It is our opinion that the courier flights were properly authorized by the President as Commander-in-Chief, because they involved a proper military mission--that is, as we have been informed was the fact, transmission of military and diplomatic information and intelligence to a person whom the President would have had to call upon in the event of war or national emergency at that time.

The particularly abrupt elevation of Mr. Ford to the Presidency necessitated coordination with Mr. Nixon for a limited period of time. The need for such coordination is explicitly recognized in the Presidential Transition Act of 1963, Pub. L. No. 88-277, March 7, 1964, 78 Stat. 153. That Act (section 4) authorizes the provision of services and facilities to former Presidents for a period up to six months, in furtherance of the stated purpose "to promote the orderly transfer of the executive power in connection with the expiration of the term of office of a President and the inauguration of a new President" (section 2). In the absence of contrary statute, the determination by the President in his role as Commander-in-Chief that a particular mission is properly a military one would ordinarily be conclusive. In this light, the transmission of information to Mr. Nixon during this brief period is fully justifiable as a defense mission.

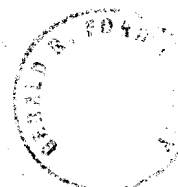


As for the President's authorization of Julie Nixon Eisenhower's unreimbursed travel on one of those courier flights: The proposed response to GAO which you sent to this Office states:

"The Commander-in-Chief, Secretary of Defense, Secretary of the Army, Secretary of the Navy and Secretary of the Air Force may authorize private citizens to travel via Government aircraft when it is of benefit to the United States Government or for compassionate reasons. This authority is . . . covered by Department of Defense regulations in granting authority to the Secretaries."

After discussion with the General Counsel's office in DOD, we have concluded that no regulations exist which would be applicable to Mrs. Eisenhower's travel. Certain regulations provide for the transportation of private citizens to save their lives, see DOD Reg. 4515.13-R, ¶ 11-7b, ¶ 14-6b; Memorandum from the Deputy Assistant Secretary of Defense (Supply, Maintenance & Services) to the Assistant Secretaries of the three branches, dated April 28, 1972 (hereinafter "Memo"). Others provide for transportation of specific DOD-related persons for compassionate or humanitarian reasons, see, e.g., DOD Reg. 4515.13-R, ¶ 4-5a(6), ¶ 4-6b(2). Regulations also provide for so-called "National Interest Traffic," but only when the head of an agency certifies that commercial air service is not available or readily obtainable and that such transportation serves the national interest, i.e., is "beneficial to the political or economic interests of the U.S." See DOD Reg. 4515.13-R, ¶ 2-3s, 6-1c(1); see also DOD Directive 4500.9, ¶ IV.F.1.b.; Memo. None of these regulations appear to apply to Mrs. Eisenhower's flight.

The types of transportation authorized by the above-mentioned regulations, however, have no more statutory basis than did Mrs. Eisenhower's carriage. They must be considered expressions of a reasonable approach to the exercise of the authority given to the President "to direct the movements of the naval and military forces placed at his command" Fleming v. Page, 9 How. (50 U.S.) 603, 615 (1850) (Taney, Ch.J.). That is, in the absence of an expression of a contrary intent by Congress, see, e.g., 18 U.S.C. § 1385, the President must be deemed authorized by the Constitution to utilize the troops and equipment under his command for reasonable purposes, even if they are not purely military



in nature. The carrying of a sick or injured person to a hospital to save his life, the carrying of supplies to a disaster-struck area, or even the carrying of a person to be with a seriously ill member of his or her immediate family may be considered reasonable under the circumstances of the particular case.

Section 638a(c) (2) of Title 31, United States Code, may be read as indicating that Congress does not disapprove such use at least of aircraft placed at the President's command for his official use. That paragraph generally makes it unlawful for government aircraft to be used other than "exclusively for official purposes." It provides, however, that "the limitations of this paragraph shall not apply to any . . . aircraft for official use of the President," thus indicating that aircraft dedicated to the official use of the President need not be used "exclusively" for official purposes. Inasmuch as the courier flight carrying Mrs. Eisenhower involved an aircraft which had been dedicated to the "official use of the President," as apparently all aircraft of the 89th Military Support Group are; and inasmuch as that aircraft was engaged primarily on official business; the authorization to allow Mrs. Eisenhower to fly on a space-available basis may be seen as within the contemplation of Congress that the President's planes need not be used exclusively for official purposes.

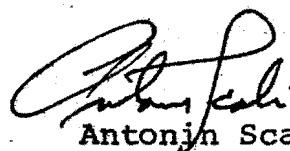
In a sense, therefore, the President's authorization of Mrs. Eisenhower's carriage has stronger presumptive validity than the types of transportation explicitly authorized in the DOD regulations cited above. The latter are not, as far as we are aware, supported by any implicit statutory approval. Nonetheless, there exists the problem of reconciling the President's authorization of Mrs. Eisenhower's flight with the DOD regulations, since ordinarily the executive branch cannot act in violation of its own regulations, even if it has the power to change those regulations. This problem exists not merely with respect to the authorization of Mrs. Eisenhower's carriage but also with respect to the issue of reimbursement for it. DOD regulations set forth the general rule that transportation of non-U.S. Government traffic is reimbursable, see DOD Reg. 4515.13-R, ¶ 6-1c2; DOD Directive 4500.9, ¶ IV. F.I.b. An exception is made "for any services of a humanitarian nature performed in certain emergency situations such as lifesaving transportation for non-U.S. Armed



Forces patients, search and rescue operations, and airlift of personnel and supplies to a site of disaster." DOD Reg. 4515.13-R, ¶ 6-4b. While the carriage of Mrs. Eisenhower to California might be termed "humanitarian," it probably was not performed within one of those "certain emergency situations" contemplated by the regulations, if only because of the existence of alternative commercial means of transportation.

In our view it can persuasively be argued that the problem of inconsistent regulations, as to both the authorization of Mrs. Eisenhower's flight and the waiver of reimbursement, is resolved by the fact that the regulations should not be deemed applicable to aircraft assigned to the President's own use. It is certainly unlikely that the President was meant to be bound, with respect to matters bearing immediately upon his own functions and activities, by the orders of subordinates in the chain of command. The regulations restricting use of aircraft generally, should therefore not be interpreted to apply to aircraft in actual use by the President, at least when he specifically directs an action that is contrary to them.

The above discussion sets forth what we regard as the best legal argument to support the action taken by the President. Except with regard to the propriety of the courier flights themselves, however, the Presidential authority is questionable enough that it would seem to us unfortunate to provoke its first test in a factual context which is so trivial and unappealing. We therefore recommend a low-keyed and conciliatory reply to GAO, avoiding use of the phrase "inherent power," which will only serve to excite those Members of Congress who initiated this inquiry. We would suggest a reply along the lines of the attached.



Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

Attachment



© 3-28

Higgins

February 25, 1975

MEMORANDUM TO: BILL CASSELMAN

FROM: RUSS ROURKE

Bill, I thought we went around this track before.

As I mentioned to you, I can only suggest that your staff check out the total accuracy of the responses given by Bill Galley to each of the five questions contained in Mr. Higgins' letter, and prepare a final response for Higgins.

RAR:cb

8/0 3/18



FEB 21 1975

THE WHITE HOUSE
WASHINGTON

February 21, 1975

MEMORANDUM FOR: JACK MARSH
FROM: JERRY JONES
SUBJECT: Response to Questions
Posed by GAO

At Tab A are two letters from John J. Higgins, Associate General Counsel of GAO, requesting some specific information about courier flights. Would you work with Phil Buchen to pull together an appropriate response to them.

For your assistance, at Tab B is a list of answers to these specific questions which was prepared by Bill Gulley for use by the Congressional Relations office. Also, if I can help, let me know.

Thanks very much.

cc: Phil Buchen







UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-149372
B-159835
B-155950

February 7, 1975

The Honorable Donald Rumsfeld
Assistant to the President
The White House

Dear Mr. Rumsfeld:

This refers to our letter of October 25, 1974 (copy enclosed), asking several questions concerning the use of courier flights to brief former President Nixon, and the presence of Julie Eisenhower on at least one of these flights. Our request was based on inquiries by Members of Congress. Additional inquiries have since been received, but we have so far received no reply to the questions.

A member of my staff who called in December concerning this matter was informed by Mr. Robert Linder of the White House staff that a reply was in process. However, since no reply has been forthcoming and in view of the fact that it is over 3 months since the original letter, we would appreciate any measures which might be taken to expedite the reply, so that we may respond to the Members of Congress without further delay.

Sincerely yours,

A handwritten signature in cursive script that reads "John J. Higgins".

John J. Higgins
Associate General Counsel

Enclosure





UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

OCT 25 1974

B-155950
B-149372

The Honorable Donald Rumsfeld
Assistant to the President
The White House

Dear Mr. Rumsfeld:

We have received inquiries from several Members of Congress concerning reports that U.S. Air Force planes have been used to take materials to former President Nixon in California and that Mr. Nixon's daughter, Julie Eisenhower, has been permitted to fly to California at Government expense on at least one such flight, to visit her father. In order that we may respond to the questions raised, we request that you answer the following questions.

1. What is the authority for the periodic courier flights to Mr. Nixon?
2. How long is it anticipated that these flights will continue?
3. What is the authority relied upon for allowing a private citizen to travel as a passenger on a Government aircraft?
4. Will the Government be reimbursed for the value of Mrs. Eisenhower's flight?
5. Will such flights by Mrs. Eisenhower or others be allowed on subsequent occasions?

Your attention to this matter will be appreciated.

Sincerely yours,

John J. Higgins

John J. Higgins
Associate General Counsel

djk

FILE COPY - COMP. GEN.





B



1. Question What is the authority for the periodic courier flights to Mr. Nixon?
- Answer Since Mr. Nixon left Office there have been three courier flights to San Clemente at the direction of the Commander-in-Chief who in his role as Commander-in-Chief may direct flights by Department of Defense aircraft.
2. Question How long is it anticipated that these flights will continue?
- Answer The last courier flight was 4 October 1974. There are presently no flights scheduled.
3. Question What is the authority relied upon for allowing a private citizen to travel as a passenger on a Government aircraft?
- Answer The Commander-in-Chief, Secretary of Defense, Secretary of the Army, Secretary of the Navy and Secretary of the Air Force may authorize private citizens to travel via Government aircraft when it is of benefit to the United States Government or for compassionate reasons. This authority is inherent to the Commander-in-Chief and covered by Department of Defense regulations in granting authority to the Secretaries. Although infrequent, private citizens are authorized transportation for compassionate reasons. As an example, this was done for Margaret Truman during her father's illness and Lynda Johnson Robb during President Johnson's illness.
4. Question Will the Government be reimbursed for the value of Mrs. Eisenhower's flight?
- Answer There is no plan to ask the former President for reimbursement for the flight made by Mrs. Eisenhower to San Clemente since the aircraft was on a scheduled trip, and an empty seat was available.
5. Question Will such flights by Mrs. Eisenhower or others be allowed on subsequent occasions?
- Answer There are no plans for Mrs. Eisenhower or others to utilize government air transportation at this time, however, should circumstances of an emergency nature arise, the President could, if he deemed appropriate, authorize such transportation.



Casselman
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THE WHITE HOUSE
WASHINGTON

February 21, 1975

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Casselman
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John J. Higgins
Associate General Counsel

djk

FILE COPY - OCT 25 1971





UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

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Associate General Counsel

Enclosure



ds 2/10



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