

NLWJC - Kagan

Counsel - Box 022- Folder 006

Gibbons Contact

THE WHITE HOUSE

WASHINGTON

August 2, 1995

MEMORANDUM FOR JACK GIBBONS

FROM: ELENA KAGAN *EK*

SUBJECT: CONTACT WITH TREASURY CONCERNING IMPOSITION OF
DUTY ON GEMINI TELESCOPE

This is to inform you that the Counsel's office has no objection to your co-signing a letter apprising the Treasury Department of the implications of the Customs Service ruling on the Gemini telescope or to your engaging in further conversations with Treasury Department officials on that subject.

THE WHITE HOUSE

WASHINGTON

August 2, 1995

MEMORANDUM FOR ABNER J. MIKVA

FROM: ELENA KAGAN

SUBJECT: JACK GIBBONS' PROPOSED CONTACT WITH TREASURY

I approved the attached on the ground that the contact proposed did not involve an investigation, enforcement action, or adjudication.

*future
ccms
b/w
Jack &
DOT*

THE WHITE HOUSE
WASHINGTON

July 31, 1995

MEMORANDUM FOR ABNER MIKVA

FROM:

JACK GIBBONS 

SUBJECT:

CONTACT WITH TREASURY CONCERNING IMPOSITION OF
DUTY ON GEMINI TELESCOPE

The United States has entered into an international partnership with the United Kingdom, Canada, Chile, Argentina, and Brazil to build the Gemini 8-meter telescopes, an important international scientific project with enormous research and educational potential for all of the partner countries. Under the terms of the international agreement, the National Science Foundation (NSF) acts as the Executive Agency, carrying out the project on behalf of the partners. NSF has entered into a cooperative agreement with the Association of Universities for Research in Astronomy, Inc. (AURA) to act as Managing Organization for the Gemini project, but NSF retains ownership of the telescope that will be built on Mauna Kea, Hawaii.

AURA has arranged for the primary mirror of that telescope (the other telescope will be in Chile) to be produced in the United States, but the mirror will be polished in France, which has superior technology for that task. The U.S. Customs Service has determined that the mirror will be subject to duty when it returns to the United States. The \$2 million duty will drive the costs of the project over the congressionally established cap (\$176 million) and cause embarrassment for the United States, whose partners in this effort have waived all duties on components of the Gemini project.

The Customs Service has authority to review their determination, which involves interpretation of a regulation. I would like to co-sign a letter with Neal Lane, Director of NSF, apprising the Treasury Department of the implications of the Customs Service ruling for the Gemini project and other large-scale, international science projects (see attached draft). However, I do not want to run afoul of the November 10, 1994, memo from you that limits White House contacts with agencies and departments regarding adjudications.

Please advise me on how best to proceed in this matter. Howard Gobstein (6-6139) is the staff contact within OSTP.

THE WHITE HOUSE
WASHINGTON
COUNSEL'S OFFICE

FACSIMILE TRANSMISSION COVER SHEET

DATE: _____

TOTAL PAGES (INCLUDING COVER PAGE): _____

TO: Counsel's Office

ATTN: Elena Kagan

FACSIMILE NUMBER: 6-1647

TELEPHONE NUMBER: 6-7901

FROM: _____ at (202) 456-6611

COMMENTS: _____

PLEASE DELIVER AS SOON AS POSSIBLE

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From the desk of STEPHEN R. NEUWIRTH

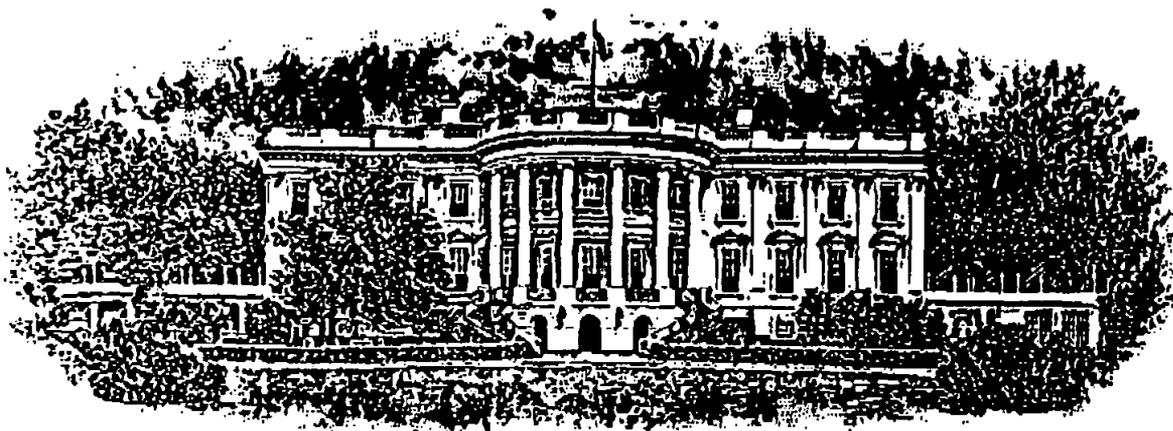
To Kathy Wallman Date 4/9

Odette asked me to send you another copy the attached materials. John Foster, OSTP General Counsel, called today to say he has a meeting tomorrow afternoon at which he'll be asked about this.

His number is 62735.

The White House

fax to Elena



COUNSEL'S OFFICE

FACSIMILE TRANSMISSION COVER SHEET

DATE: 4/4/96

TO: Kathy Wallman

FACSIMILE NUMBER: 66279

TELEPHONE NUMBER: 66611

FROM: Steve Neuwirth

TELEPHONE NUMBER: 67903

PAGES (WITH COVER): 75 As you will see in the attached documents,

COMMENTS: Elena Kagan gave OSTP the go-ahead on their
original contact with Treasury on the Customs

Office matter. Please let me know how you
want to proceed.

PLEASE DELIVER AS SOON AS POSSIBLE

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**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF SCIENCE AND TECHNOLOGY POLICY
WASHINGTON, D.C. 20500**

FAX COVER PAGE

TO: Steve Neuwirth

FAX NUMBER: 6-1647

FROM: Jonathan Foster
Phone: (202) 456-2735

NUMBER OF PAGES: 3 (including this cover sheet)

MESSAGE:

Steve -

Attached, per your request, is a copy of Jack Gibbons' October 13, 1995 letter to Secretary Rubin. I have not yet determined who OSTP contacted in your office at the time this letter was prepared (it was before I arrived at OSTP but after my predecessor had left). As soon as I find out, I will let you know.

Jon

THE WHITE HOUSE

WASHINGTON

August 2, 1995

MEMORANDUM FOR JACK GIBBONS

FROM: ELENA KAGAN *EK*

SUBJECT: CONTACT WITH TREASURY CONCERNING IMPOSITION OF
DUTY ON GEMINI TELESCOPE

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THE WHITE HOUSE
WASHINGTON

July 31, 1995

MEMORANDUM FOR ABNER MIKVA

FROM: JACK GIBBONS 

SUBJECT: CONTACT WITH TREASURY CONCERNING IMPOSITION OF
DUTY ON GEMINI TELESCOPE

The United States has entered into an international partnership with the United Kingdom, Canada, Chile, Argentina, and Brazil to build the Gemini 8-meter telescopes, an important international scientific project with enormous research and educational potential for all of the partner countries. Under the terms of the international agreement, the National Science Foundation (NSF) acts as the Executive Agency, carrying out the project on behalf of the partners. NSF has entered into a cooperative agreement with the Association of Universities for Research in Astronomy, Inc. (AURA) to act as Managing Organization for the Gemini project, but NSF retains ownership of the telescope that will be built on Mauna Kea, Hawaii.

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Please advise me on how best to proceed in this matter. Howard Gobstein (6-6139) is the staff contact within OSTP.

THE WHITE HOUSE
WASHINGTON

October 13, 1995

The Honorable Robert Rubin
Secretary of the Treasury
Washington, D.C. 20220

Dear Mr. *Rubin* Secretary:

I am writing in conjunction with Neal Lane, the Director of the National Science Foundation, to seek your advice and assistance in a U.S. Customs matter that may be affecting our ability to enter into international science and technology projects.

It has recently come to our attention that several recent US Customs rulings appear to be violating U.S. implementation of the "Florence Agreement." This international agreement dates back to 1950 and states that the contracting nations will not impose customs duties or other charges on, or in connection with, the importation of scientific instruments or apparatus intended exclusively for education purposes or pure scientific research. To date, the rulings have involved large optical telescopes, but would seemingly apply to other large, complex scientific facilities. If allowed to stand and serve as precedent, the decisions could unnecessarily drive up the cost of major scientific facilities and complicate or discourage international collaboration in the funding and operation of large scientific facilities within the United States.

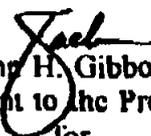
The most recent decision, which prompted this letter, was a Customs ruling to the Association of Universities for Research in Astronomy, Inc. (AURA), a nonprofit corporation that is currently acting on behalf of the National Science Foundation in an international project with Canada, the United Kingdom, Chile, Brazil, and Argentina to build two 8-meter telescopes in Hawaii and Chile. On March 30, 1995, U.S. Customs ruled that an 8-meter telescope mirror that was produced in the United States and sent to France for polishing was not a scientific instrument and therefore subject to customs duty upon reentry to the United States.

This ruling, if applied to all imported elements of the project, will add \$2 million to the cost of the project and could be extremely embarrassing to the United States. The governments of the other participating countries have taken steps to exempt work they perform on this project from value-added or similar taxes, and in the case of Chile--under a special long-term arrangement with AURA--from any duties. These actions were taken, in part, because the United States insisted that this project's tight budget would not allow work to be done outside the United States if large value-added taxes were imposed.

-2-

AURA has submitted the attached request to Customs for an administrative review of the earlier decision. We urge that you take appropriate steps to ensure that Customs gives a careful and thoughtful review to the validity of their previous ruling. If you or your staff wish to discuss this further, please do not hesitate to contact us.

Sincerely,


John H. Gibbons
Assistant to the President
for
Science and Technology

cc: Neul Lanc

Author: Deanna M. Behring at ostp

Date: 4/4/96 4:21 PM

Priority: Normal

Jonathan Foster

Subject: Re: 10/13/95 Letter from Gibbons to Rubin re Customs Issue

----- Message Contents -----

Jon:

On July 31, 1995, Jack sent a memo to Abner Mikva requesting his advice on whether he could send a letter to Rubin re: this project.

On August 2, 1995, Elena Kagan responded to Jack's memo stating that the Counsel's office has no objection to the letter or to engaging in further conversations with Treasury.

Will forward both to you.

← See attached

Deanna

----- Reply Separator -----

Subject: 10/13/95 Letter from Gibbons to

Rubin re Customs Issue

Author: Jonathan Foster at ostp

Date: 4/4/96 3:36 PM

Deanna -

Who in the White House Counsel's office did OSTP contact about the above-referenced letter? Did that person sign off on the actual letter, or did he or she simply concur with the concept of sending a letter? Thanks. ← NO

↑ YES Jon