The original documents are located in Box 14, folder "Intelligence - House Select Committee: Subpoenas - Kissinger (3)" of the Loen and Leppert Files at the Gerald R. Ford Presidential Library.

RED TAG

THE WHITE HOUSE

WASHINGTON

November 22, 1975

MEMORANDUM FOR: JACK MARSH

FROM: CHARLES LEPPERT, JR. CLJ.

SUBJECT: Rep. Dave Treen

Attached is a rough draft copy of Rep. Dave Treen's dissenting views on the contempt resolutions from the House Select Committee on Intelligence.

Rep. Treen has requested that we provide him with any suggestions or revisions. Treen is driving to Louisiana and will be calling back to his Washington office Monday, November 24th for our suggestions or revisions.

Can we have Duvall and Wilderotter make suggestions and revisions and get them back to me for transmittal to Treen? Keep in mind that Treen must file his views on November 28th and will need our suggestions or revisions not later than noon, Wednesday, November 26.

cc: Friedersdorf
Loen
Loeffler

NOT FOR RELEASE

DRAFT (ROUGH)

DISSENTING VIEWS OF

DAVID C. TREEN

TO THE RESOLUTIONS OF THE

SELECT COMMITTEE ON INTELLIGENCE

Like every member of the committee I am interested in the committee receiving whatever information is necessary and appropriate to our function. It is of vital importance that our intelligence community operate efficiently, economically, prudently and with proper regard for the rights of individuals.

I differ with the majority on the question of what is "necessar and appropriate" to our function. I also differ with the majority as to the wisdom of our attempts to hold the Secretary of State in contempt.

and appropriateness in these circumstances,

The issue of a congressional committee's authority to obtain testimony and materials from the executive branch of the government is a most important and, indeed, most interesting issue. This is a legal issu a constitutional issue. It is the view of some, if not all, of the major that this fundamental issue must be thrashed out here and now.

In my view, neither this committee nor any other congressional committee should feel compelled to assert its legal rights just for the s of flexing its muscles or to prove a point. The assertion and prosecutic of a congressional committee's "rights" to an ultimate disposition by the Supreme Court should only occur when it is vitally necessary to our legislative function to obtain the testimony or materials and when there no other way to serve that legislative function.

Thus, it is my hope that the distinction between what the Select Committee, or what the Congress may legally be entitled to, on the one hand, and the appropriateness and necessity of asserting and prosecuting those rights, will be kept clearly in mind in the debate on the issues raised by the resolutions of contempt.

through the mode of a criminal Contempt proceeding

I am not saying that the legal and constitutional questions should not be considered and debated. Indeed they should, because the legal and constitutional questions bear on the question of the appropriateness and wisdom of pursuing the contempt process. What I am sayir is that one should not vote in favor of the resolutions of contempt just because that individual concludes that the committee has the better side of the legal argument.

All factors, legal and otherwise, should be weighed by us in making this decision: is it wise for the House of Representatives to vote favorably on the resolutions? Our decision could have far-reaching consequences.

I would now like to give my own views on this question. I offer them without pretense of sagacity, But with assurances to my colleagues in the House that they have been arrived at sincerely, honest and with as much ~~profound~~ reflection as time has permitted.

The Wise Course of Action is for the House to Disapprove the Resolutions of Criminal Contempt

It is my opinion that it was not wise of the Select Committee to vote the resolutions of criminal contempt against the Secretary of State. Thus, I believe it to be the better part of wisdom for the House to disapprove t

resolutions. I say this for three reasons:

a) To lay down the legal gauntlet now runs the risk of hostility on both sides. This will lead to a freezing of positions. A conciliatory approach will probably result in the committee getting more information. H.Res. 591, which established the Select Committee, directs the committee to report to the House no later than January 31, 1976. If we send this matter to the courts there is no way that the issue can be resolved prior to that date nor prior to any reasonable extension of the life of the committee.

b) It is questionable that we need <u>all</u> of the information called for by the subpoenas. I am convinced that we can obtain, on a negotiated basis, sufficient information to carry out our legislative mandate. We should insist on our "legal rights" only when the information sought to be withheld from Congress is absolutely necessary to its legislative function. Especially is this true when the insistence of asserted legal rights involves the dissemblir and enormously disruptive criminal contempt proceedings against an executive official with heavy responsibilities. Whatever our views may be of the policies pursued by Secretary Kissinger and/or the President, we should have a decent reg for the effects of a judicial confrontation on the ability of the Secretary of State to carry out his duties. Requiri the Secretary of State to direct his time and energy to a judicial battle causes a corresponding diminution of the

time that he can devote to his other responsibilities. This is an important element to be placed on the scales in resolving the equation of wisdom.

c) Thirdly, I believe it is unwise to pursue contempt becaus there are serious legal questions as to whether the actio proposed by the committee will be ultimately successful. The committee has chosen a course of action which will pl the judicial branch in the position of being the arbitor. If the judicial proceedings are unsuccessful, because ~~the~~ weaknesses in the committee's case, it behooves the House to proceed for at least two reasons. First, we should se to avoid the substantial expenditures of money and human effort, by both sides. Second, we should seek to avoid t possible establishment of an adverse precedent because of weak case.

Let us now turn to the specifics of the three resolutions and the subpoenas on which they are based. For the convenience of the membe I will discuss each separately following a description of each of the subpoenas.

I. Subpoena and Contempt Citation No. 1

Subpoena served: (insert date) NOV 7, 1975

Return date: November 11, 1975

Directed to: Henry A. Kissinger, Secretary of State, or any subordina officer, official or employee with custody or control items described in the subpoena.

For the following: All documents relating to State Department recommend
covert action made to the National Security Council a
the Forty Committee and its predecessor committees fr
January 20, 1961 to the present.

On November 14 the committee voted, 10-2, to bring contempt act
against Secretary Kissinger for non-compliance with the subpoena.

delivered to the Chairman of the Select Committee respectfully declining compliance. The letter reads, in part, as follows:

> "The subpoena sought 'all documents relating to State Department recommending covert action made to the National Security Council and the Forty Committee and its predecessor Committees from January 20, 1961, to present.' The Committee staff has made clear that this is intended to cover recommendations originating with the State Department. An examination of our records has disclosed ten such documents, dating from the period 1962 through 1972. These consist of recommendations from officials in the State Department, sometimes the Secretary of State, to the Forty Committee or its predecessor, 303 Committee, or to the President himself in connection with consideration by one of those Committees.
>
> "The documents in question, in addition to disclosing highly sensitive military and foreign affairs assessments and evaluations, disclose the consultation process involving advice and recommendations of advisers to former Presidents, made to them directly or to Committees composed of their closest aides and counselors."

Quote Bucher letter to HAK re EP

It is my understanding that a very extensive effort was required to identify documents meeting the description in the subpoena. This was no small undertaking considering that a period of more than 14 years was involved. As of November 14, the date of the letter referred to above, the staff of the Secretary of State had discovered ten documents, dating from the period 1962 through 1972. They were described as "recommendations from officials in the State Department, sometimes the Secretary of State, to the Forty Committee or its predecessor, 303 Committee, or to the President himself in connection with consideration by one of those Committees." It is my understanding that none of the ten documents involve the administration of President Ford, and that nine of the ten documents originated during the administrations of Presidents Kennedy and Johnson. Thus, any notion that the

on the period of time in which Henry Kissinger was Secretary of State.

--or any similar documents subsequently located--

documents are being withheld to avoid embarrassment to the present administration should be discarded.

I question the need of the committee to have recommendations by the State Department of covert actions. I admit that this is an interesting inquiry. But what pertinence do recommendations for covert actions have to the business of the Select Committee?

WH has provided # of times staff initated a recommendation to HSC has point of comparison to, Eg, C/A initiations)

H.Res. 591 established the Select Committee "to conduct an inquiry into the organization, operations and oversight of the intelligenc community of the United States Government." The recommendations of the Secretary of State, or the recommendations of anyone else for that matter, are not relevant to the "organization, operations, and oversight of the intelligence community." H.Res. 591 authorizes the Select Committee to inquire into "the necessity, nature, and extent of overt and covert intelligence activities by United States intelligence instrumentalities. While the authority of the committee extends to covert activities actually carried out, that authority does not give the committee the power to force anyone to disclose what recommendations he made for covert activites Perhaps there are some in the Congress who would like to know what the Secretaries of State from 1962 to 1972 were recommending. That would make fascinating reading and undoubtedly would make for some great headlines were the information divulged. But the mandate of the Select Committee is not to inquire into the imagination of our Secretaries of State; our mandate is to determine how our intelligence community operates.

There isn't any need for our committee to look into the minds of the Secretaries of State over the last 14 years in order to determine how the intelligence community carried out its functions and to make recommendations about what we should do in the future.

Our inquiry begins with the process by which a decision is made to carry out a covert operation, not with a recommendation to the decision makers.

Thus, I submit that there is no real need for the committee to have the information sought by the subpoena. Regardless of our legal right, we should not pursue the criminal prosecution of the Secretary of State for something that we have no real need for in carrying out our legislative function.

But, there are also at least two serious legal impediments to the committee's right to obtain the information.

First, there is the legal question as to whether or not the subpoenaed materials seek information which is beyond the scope of our inquiry. In making this determination the courts will look to the scope of our authority as defined by H. Res. 591 and will also look to the fac of the particular case to determine if the subpoenaed materials are critical to the performance of the committee's function. The United States Court of Appeals for the District of Columbia (to which court suc an issue as we have before us would travel) spoke to this issue in Senat Select Committee v. Nixon, 498 F. 2d 725 (1974). The court said:

> " . . . we think the sufficienty of the Committee's showing must depend solely on whether the subpoenaed evidence is demonstrably critical to the responsible fulfillment of the Committee's functions.
>
> " . . . The sufficiency of the Committee's showing of need has come to depend, therefore, entirely on whether the subpoenaed materials are critical to the performance of its legislative functions. There is a clear difference between Congress's legislative tasks and the responsibility of a grand jury, or any institution engaged in like functions. While fact-finding by a legislative committee is undeniably a part of its task, legislative judgments normally depend more on the predicted consequences of proposed legislative actions and their political acceptability, than on precise reconstruction of past events; Congress frequently legislate on the basis of conflicting information provided in its hearings."

Thus, in order to have any chance of success in judicial proceedings which, it should be remembered, are criminal in nature, the committee must show that the recommendations of the various Secretaries of State during the 14 years in question are "demonstrably critical to the responsible fulfillment" of the committee's function. There is little doubt in my mind but that this test cannot be met.

Then there is a second, and perhaps even more formidable, legal hurdle. It is the hurdle of executive privilege asserted in this instance by the President of the United States.

It is important to keep in mind that the assertion of executi privilege was made by the President and not by the Secretary of State. By letter from the President's counsel to Secretary Kissinger, the Presi advised the Secretary that he ~~invoked executive~~ privilege as to the documents covered by the subpoena. The Secretary then ~~transmitted~~ communicated that decision to the committee. This procedure followed the method establish by the President several years before.

But the important question is whether or not the assertion of executive privilege is valid in this instance. That such a doctrine exists and has constitutional validity has been clearly recognized by ou courts including the Supreme Court of the United States. United States Nixon, 418 U.S. 683. Any member who is troubled about the limits and definition of executive or presidential privilege should afford himself the opportunity of reading the pertinent portion of that decision beginning at 418 U.S. 705.

In ~~the~~ United States v. Nixon, the Supreme Court was confront with a collision between executive privilege and the constitutionally

protected rights, as set forth in the other amendments, that every defendant in a criminal trial has the right "to be confronted with the witnesses against him" and "to have compulsory process for obtaining witnesses in his favor". The Supreme Court held that a generalized claim of executive privilege could not be invoked to prevent access by the judicial branch to material necessary in ~~bearing on~~ a criminal trial.

Although the Supreme Court in U.S. v. Nixon was not dealing with the issue of congressional access ~~versus executive privilege~~, nevertheless, the decision stands as a strong pronouncement as to the existence and extent of the executive privilege doctrine. When the privilege is asserted on the basis of national security interests it may even foreclose access in criminal cases.

For those who do not have the opportunity to read the decision of the Supreme Court in United States v. Nixon, the following pertinent portions thereof will be helpful:

> " . . . The first ground is the valid need for protection of communications between high Government officials and those who advise and assist them in the performance of their manifold duties; the importance of this confidentiality is too plain to require further discussion. Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decision-making process. Whatever the nature of the privilege of confidentiality of Presidential communications in the exercize of Art. II powers, the privilege can be said to derive from the supremacy of each branch within its own assigned area of constitutional duties. Certain powers and privileges flow from the nature of enumerated powers; the protection of confidentiality of Presidential communications has similar constitutional underpinnings."

"The expectation of a President to the confidentiality of his conversations and correspondence, like the claim of confidentiality of judicial deliberations, for example, has all the values to which we accord deference for the privacy of all citizens and added to those values the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decisionmaking. A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for Presidential communications. The privilege is fundatmental to the operation of government and inextricably rooted in the separation of powers under the Constitution."

"In this case the President challenges a subpoena served on him as a third party requiring the production of materials for use in a criminal prosecution; he does so on the claim that he has a privilege against disclosure of confidential communications. He does not place his claim of privilege on the ground they are military or diplomatic secrets. As to these areas of Art. II duties the courts have traditionally shown the utmost deference to Presidential responsibilities."(emphasis supplied)

"Moreover, a President's communications and activities encompass a vastly wider range of sensitive material than would be true of any 'ordinary individual.' It is therefore necessary in the public interest to afford Presidential confidentiality the greatest protection consistent with the fair administration of justice. The need for confidentiality even as to idle conversations with associates in which casual reference might be made concerning political leaders within the country or foreign statemen is too obvious to call for further treatment."

Thus, the Supreme Court has given firm foundation to the doctr of executive privilege. Its applicability to the circumstances now bef us is hardly debatable. The claim of executive privilege is based on t assertion, set forth in the communication to the Select Committee, that documents subpoenaed "in addition to disclosing highly sensitive milita and foreign affairs assessments and evaluations, disclose the consultat process involving advice and recommendations of advisers to former Pres

made to them directly or to committees composed of their closest aides and counselors."

The argument is made that executive privilege may not be asserted by President Ford for communications directed to former President or to advisory committees of former Presidents. On this point, as far as I know, there are no specific legal precedents. However, if the rationale of United States v. Nixon is applied it becomes apparent that the doctrine must extend to communications involving former Presidents.

The doctrine of executive privilege is bottomed not on some legal technicality ~~brought~~ but on plain and simple logic: the need for confidentiality. This need can be served only if those who make recommendations to the President know that their expressions will be protected even after the President to whom those expressions were made has left office. No Secretary of State, no high government official, no aide to the President has any assurance that the man he speaks to as President today may not be gone from the scene tomorrow. How can we expect him to advise the President with that candor of which the Supreme Court speaks in U. S. v. Nixon if he knows that the very next day the protection of executive privilege may be shattered because of a change in the occupant of the Oval Office?

If the need for a confidential channel of communication exists, isn't that need just as great on the day before the Presidency changes hands in orderly fashion every four or eight years? It is just as important on the last day of a President's term as it is on the first day. But if we deny the application of executive privilege to conversations with a former President then we have to conclude that communications which are fully protected on January 19 have absolutely no protection on January 20.

Those who do not believe that the doctrine of executive privilege can be invoked by a current President as to occurrences prior to his administration contend that such a proposition would lead to the ridiculous result that a current President might invoke executive privilege as to communications to President Washington. The answer to that is quite simple: ~~the doctrine is applicable as far back as to communications which are requested~~ ~~reasonably necessary to protect the purpose of the privilege~~. After the passage of time has eliminated the dangers of exposure the need for confidentiality disappears and executive privilege dissolves.

I submit, therefore, that the resolution of contempt based on this subpoena be voted down because there is no critical need for the documents sought, and because there is very substantial doubt that prosecution for contempt in this instance would be successful.

the doctrine may be applied whenever it is determined that the requested documents contain the types of sensitive communications which the doctrine was intended to protect.

In any event, Secretary Kissinger is charged by this Select Committee with a criminal act -- violation of 2 USC 192 -- for obeying the lawful order of his superior, the President. It is unconscionable -- and indeed likely unconstitutional -- to prosecute a subordinate official for obeying the lawful direction of his superior.

II. Subpoena and Contempt Citation No. 2

Subpoena served: Friday, November 7, 1975

Return date: Tuesday, November 11, 1975

Directed to: The Assistant to the President for National Security Affairs, or any subordinate officer, official or employee with custody or control of the items describec in the subpoena.

For the following: All 40 committee and predecessor committee records of decisions taken since January 20, 1965 reflecting approvals of covert action projects.

On November 14 the committee voted, 10 to 2, to bring contempt action against Secretary Kissinger for non-compliance with this subpoena. This was done even though some of the subpoenaed material had been suppl and the staff of the National Security Council were expressing willingne: to continue to try to work with the staff of the Select Committee to provide information which it hoped would ultimately prove to be sufficie: for our purposes. The record does not indicate that there was ever a refusal to supply additional information.

On November 6, 1975 the Select Committee voted to issue seven subpoenas covering a substantial number of documents and, in most cases, covering extensive periods of time. Five of these subpoenas were direct to the Assistant to the President for National Security Affairs. These subpoenas were served on Friday, November 7 with return dates of Tuesday November 11 at 10:00 a.m. Thus, only two working days were provided to the respondent to sort out materials, to consult with the staff of the committee for clarification in some instances, and to try to work out a

Mrs. Jeanne Davis, Staff Secretary of the NSC, on

means of supplying sufficient information for our purposes without compromising some of the concerns of the executive branch.

(Here consider inserting a chronology of events pertaining to attempts to comply and to negotiate.)

There is no question but that the executive branch has been reluctant to surrender to the Select Committee the complete records of the Forty Committee pertaining to approved covert actions since January 20, 1965 to date. This reluctance is not at all surprising in view of certain events which create strong suspicion that there have been leaks of important information by the committee and/or its staff.

Nevertheless, some information regarding approvals of covert a projects was supplied to the committee, and it is my understanding that an effort was made to determine exactly that which the committee wished prove or demonstrate so that the needs of the committee might be satisfi without complete disclosure of all covert actions over the last eleven years. It is also my understanding that this effort to satisfy the comm was continuing right up to the time the committee voted, on November 14, the resolution of contempt, and has continued since that date to a point where our staff agrees that

Thus, there never was a discontinuance on the part of the executive branch to try to satisfy the committee. I make no representat that there was compliance with the committee's subpoena as written pric to the time of the contempt resolution. The point I do make is that contempt action on November 14 was not warranted by the circumstances existing at that time. This is not only important in order to make a judgment as to whether the committee was justified in taking contempt ac on November 14, it is important in a determination as to whether the act taken was valid in a legal sense.

the NSC is in substantial compliance.

On the legal question there are precedents to guide us. First, it would be useful to remind ourselves that what the committee has recommended is a criminal prosecution of Secretary Kissinger. The committee has elected to proceed under the provisions of 2 U.S.C. 192 and 194. Please see appendix B for the exact language of these provisio

A prosecution under 2 U.S.C. 192 was before the United States District Court for the District of Columbia in United States v. Kamp, 102 F.Supp. 757 (1952). The court observed that the defendant was entitled to the usual presumption of innocence, and that it was necessar for the prosecution to prove that the defendant had failed and refused to produce certain records. The court acquitted the defendant stating:

> "Committees of Congress must conduct examinations in such a manner that it is clear to the witness that the Committee recognizes him as being in default, and anything short of a clear cut default on the part of the witness will not sustain a conviction for contempt of Congress."

In Quinn v. United States, 349 U.S. 155 (1955), the Supreme Court approved the Kamp decision. In the Quinn case the court was considering the refusal of a witness before a congressional committee to say whether he was or had been a member of the Communist Party. The Supreme Court ruled that the trial court should have entered a judgment of acquittal. The heart of the decision was that a prerequisite to prosecution under 2 U.S.C. 192 is a clear disposition of the objection of the witness. The court said:

> "Section 192, like the ordinary federal criminal statute, requires a criminal intent--in this instance, a deliberate, intentional refusal to answer. This element of the offense, like any other, must be proved beyond a reasonable doubt. Petitioner contends that such proof was not, and cannot be, made in this case.

"Clearly not every refusal to answer a question propounded by a congressional committee subjects a witness to prosecution under 192. Thus if he raises an objection to a certain question--for example, lack of pertinency or the privilege against self-incrimination--the committee may sustain the objection and abandon the question, even though the objection might actually be without merit. In such an instance, the witness' refusal to answer is not contumacious, for there is lacking the requisite criminal intent. Or the committee may disallow the objection and thus give the witness the choice of answering or not. Given such a choice, the witness may recede from his position and answer the question. And if he does not then answer, it may fairly be said that the foundation has been laid for a finding of criminal intent to violate 192. In short, unless the witness is clearly apprised that the committee demands his answer notwithstanding his objections, there can be no conviction under 192 for refusal to answer that question."

The court went on to say:

"Our view that a clear disposition of the witness' objection is a prerequisite to prosecution for contempt is supported by long-standing tradition here and in other English-speaking nations."

The holdings of Kamp and Quinn are clear. Before a person subpoenaed may be prosecuted under 2 U.S.C. 192 he must be given an opportunity to explain his position, must then be put on notice by the committee that compliance with the subpoena is demanded, and ~~the~~ given further opportunity ~~for the witness~~ to respond.

The record in the matter before us clearly discloses that no notice was given by the committee to the addressee of the subpoena that an answer was demanded. The record reflects that a motion made by this member (see record page) to provide an opportunity for an explanation by Secretary Kissinger and/or his representatives was voted down by the committee. The committee then voted the contempt citation without having the benefit of ~~the~~ any statement by the target of the contem

resolution. All that the members of the committee received was an explanation of why the committee staff felt that there was non-compliance with the subpoena.

Thus, whether or not there was compliance is an issue which we need not decide because the resolution of contempt, as a vehicle for prosecution under 2 U.S.C. 192, is fatally defective. That being true, it would be unjust and indeed outrageous to request prosecution of Secretary Kissinger by the United States Attorney for the District of Columbia.

It is true that an attorney was permitted to come before the committee on November 20, six days after the contempt resolutions were adopted, to offer an explanation. This apparently resulted from a written request by the President of the United States delivered to the chairman of the committee on November 19. This does not cure the defect because it is clear that the opportunity to advance an explanation must be given prior to the adoption of a contempt resolution by the committee Furthermore, the other prerequisites have not been met, to wit: a clear statement by the committee to the recalcitrant witness that, despite the explanation, the committee demands a response.

During the committee's meeting of November 20 a representative of the administration offered a method of access to the materials which, if implemented, would amount to substantial compliance with the subpoena of the committee. The offer was to permit the members of the committee and certain selected staff members, to review the records of the Forty Committee at the offices of the National Security Council. If this is accepted by the committee as substantial compliance the issues raised by the contempt resolution will be moot.

If that does not occur there is yet another legal impediment to proceeding under 2 U.S.C. 192. The subpoena in question was directed to the Assistant to the President for National Security Affairs. By letter dated November 19, a copy of which is attached hereto as Appendix , the President stated that:

> "After November 3, he (Secretary Kissinger) was no longer my assistant for National Security Affairs . . . ".

Inasmuch as the subpoena was voted on November 6 it could not possibly have applied to Secretary Kissinger. As a matter of fact, the subpoena was not served on Kissinger but that is of no real moment. The simple fact is that the subpoena could not possibly apply to Secretary Kissinger since he did not occupy the office of Assistant to the President for National Security Affairs after November 3, 1975.

III. Subpoena and Contempt Citation No. 3

Subpoena served: Friday, November 7, 1975

Return date: Tuesday, November 11, 1975, at 10:00 a.m.

Directed to: The Assistant to the President for National Security Affairs, or any subordinate officer, official or employee with custody or control of the items described in the subpoena.

For the following: All documents furnished by the Arms Control and Disarmament Agency's Standing Consultative Commissi the Central Intelligence Agency, the Defense Intell gence Agency, the National Security Agency, the Department of Defense, and the Intelligence Communi Staff since May, 1972 relating to adherence to the provisions of the Strategic Arms Limitation Treaty of 1972 and the Vladivostok agreement of 1974.

(To be completed similar to Subpoena No. 2)

NOT FOR RELEASE

DRAFT (ROUGH)

DISSENTING VIEWS OF

DAVID C. TREEN

TO THE RESOLUTIONS OF THE

SELECT COMMITTEE ON INTELLIGENCE

to: Charlie

Like every member of the committee I am interested in the committee receiving whatever information is necessary and appropriate to our function. It is of vital importance that our intelligence community operate efficiently, economically, prudently and with proper regard for the rights of individuals.

I differ with the majority on the question of what is "necessar and appropriate" to our function. I also differ with the majority as to the wisdom of our attempts to hold the Secretary of State in contempt.

The issue of a congressional committee's authority to obtain testimony and materials from the executive branch of the government is a most important and, indeed, most interesting issue. This is a legal issu a constitutional issue. It is the view of some, if not all, of the major that this fundamental issue must be thrashed out here and now.

In my view, neither this committee nor any other congressional committee should feel compelled to assert its legal rights just for the s of flexing its muscles or to prove a point. The assertion and prosecutic of a congressional committee's "rights" to an ultimate disposition by the Supreme Court should only occur when it is vitally necessary to our legislative function to obtain the testimony or materials and when there no other way to serve that legislative function. The fact that this issue can — under current law — only be resolved through the extreme remedy of criminal contempt is evidence of the seriousness of this matter.

Thus, it is my hope that the distinction between what the Select Committee, or what the Congress may legally be entitled to, on the one hand, and the appropriateness and necessity of asserting and prosecuting those rights, will be kept clearly in mind in the debate on the issues raised by the resolutions of contempt.

I am not saying that the legal and constitutional questions should not be considered and debated. Indeed they should, because the legal and constitutional questions bear on the question of the appropriateness and wisdom of pursuing the contempt process. What I am sayi is that one should not vote in favor of the resolutions of contempt just because that individual concludes that the committee has the better side of the legal argument.

All factors, legal and otherwise, should be weighed by us in making this decision: is it wise for the House of Representatives to vote favorably on the resolutions? Our decision could have far-reaching consequences.

I would now like to give my own views on this question. I offer them without pretense of sagacity, But with assurances to my colleagues in the House that they have been arrived at sincerely, honest and with as much profound reflection as time has permitted.

The Wise Course of Action is for the House to Disapprove the Resolutions of Contempt

It is my opinion that it was not wise of the Select Committee vote the resolutions of contempt against the Secretary of State. Thus, believe it to be the better part of wisdom for the House to disapprove t

resolutions. I say this for three reasons:

a) To lay down the legal gauntlet now runs the risk of hostility on both sides. This will lead to a freezing of positions. A conciliatory approach will probably result in the committee getting more information. H.Res. 591, which established the Select Committee, directs the committee to report to the House no later than January 31, 1976. If we send this matter to the courts there is no way that the issue can be resolved prior to that date nor prior to any reasonable extension of the life of the committee.

b) It is questionable that we need all of the information called for by the subpoenas. I am convinced that we can obtain, on a negotiated basis, sufficient information to carry out our legislative mandate. We should insist on our "legal rights" only when the information sought to be withheld from Congress is absolutely necessary to its legislative function. Especially is this true when the insistence of asserted legal rights involves the dissemblir and enormously disruptive contempt proceedings against an executive official with heavy responsibilities. Whatever our views may be of the policies pursued by Secretary Kissinger and/or the President, we should have a decent re for the effects of a judicial confrontation on the ability of the Secretary of State to carry out his duties. Requir the Secretary of State to direct his time and energy to a judicial battle causes a corresponding diminution of the

already have received significant amount of info. By time Report is filed should be in substantial compliance w/ NSC subpoenas

time that he can devote to his responsibilities. This is an important element to be placed on the scales in resolving the equation of wisdom.

c) Thirdly, I believe it is unwise to pursue contempt becaus there are serious legal questions as to whether the actio proposed by the committee will be ultimately successful. The committee has chosen a course of action which will pl the judicial branch in the position of being the arbitor. If the judicial proceedings are unsuccessful, because tha weaknesses in the committee's case, it behooves the House to proceed for at least two reasons. First, we should se to avoid the substantial expenditures of money and human effort, by both sides. Second, we should seek to avoid t possible establishment of an adverse precedent because of weak case.

See. State never voted in contempt in the 199 years of our History

Let us now turn to the specifics of the three resolutions and the subpoenas on which they are based. For the convenience of the membe I will discuss each separately following a description of each of the subpoenas.

I. Subpoena and Contempt Citation No. 1

Subpoena served: (insert date) NOV 7, 1975 (Friday)

Return date: November 11, 1975, 10 a.m. (Tuesday)

Directed to: Henry A. Kissinger, Secretary of State, or any subordin officer, official or employee with custody or control items described in the subpoena.

For the following: All documents relating to State Department recommend
covert action made to the National Security Council
the Forty Committee and its predecessor committees f
January 20, 1961 to the present.

On November 14 the committee voted, 10-2, to bring contempt ac
against Secretary Kissinger for non-compliance with the subpoena.

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> "The subpoena sought 'all documents relating to State Department recommending covert action made to the National Security Council and the Forty Committee and its predecessor Committees from January 20, 1961, to present.' The Committee staff has made clear that this is intended to cover recommendations originating with the State Department. An examination of our records has disclosed ten such documents, dating from the period 1962 through 1972. These consist of recommendations from officials in the State Department, sometimes the Secretary of State, to the Forty Committee or its predecessor, 303 Committee, or to the President himself in connection with consideration by one of those Committees.
>
> "The documents in question, in addition to disclosing highly sensitive military and foreign affairs assessments and evaluations, disclose the consultation process involving advice and recommendations of advisers to former Presidents, made to them directly or to Committees composed of their closest aides and counselors."

also, Hyland letter to S. Field dated (and delivered Monday 11/10 saying documents were to W.H. for decision.

It is my understanding that a very extensive effort was required to identify documents meeting the description in the subpoena. This was no small undertaking considering that a period of more than 14 years was involved. As of November 14, the date of the letter referred to above, the staff of the Secretary of State had discovered ten documents, dating from the period 1962 through 1972. They were described as "recommendations from officials in the State Department, sometimes the Secretary of State, to the Forty Committee or its predecessor, 303 Committee, or to the President himself in connection with consideration by one of those Committees." It is my understanding that none of the ten documents involve the administration of President Ford, and that nine of the ten documents originated during the administrations of Presidents Kennedy and Johnson. Thus, any notion that the

documents are being withheld to avoid embarrassment to the present administration should be discarded.

I question the need of the committee to have recommendations by the State Department of covert actions. I admit that this is an interesting inquiry. But what pertinence do recommendations for covert actions have to the business of the Select Committee?

H.Res. 591 established the Select Committee "to conduct an inquiry into the organization, operations and oversight of the intelligenc community of the United States Government." The recommendations of the Secretary of State, or the recommendations of anyone else for that matter, are not relevant to the "organization, operations, and oversight of the intelligence community." H.Res. 591 authorizes the Select Committee to inquire into "the necessity, nature, and extent of overt and covert intelligence activities by United States intelligence instrumentalities. While the authority of the committee extends to covert activities actually carried out, that authority does not give the committee the power to force anyone to disclose what recommendations he made for covert activites. Perhaps there are some in the Congress who would like to know what the Secretaries of State from 1962 to 1972 were recommending. That would make fascinating reading and undoubtedly would make for some great headlines were the information divulged. But the mandate of the Select Committee is not to inquire into the imagination of our Secretaries of State; our mandate is to determine how our intelligence community operates.

There isn't any need for our committee to look into the minds of the Secretaries of State over the last 14 years in order to determine how the intelligence community carried out its functions and to make recommendations about what we should do in the future.

Our inquiry begins with the process by which a decision is made to carry out a covert operation, not with a recommendation to the decision makers.

Thus, I submit that there is no real need for the committee to have the information sought by the subpoena. Regardless of our legal right, we should not pursue the criminal prosecution of the Secretary of State for something that we have no real need for in carrying out our legislative function.

But, there are also at least two serious legal impediments to the committee's right to obtain the information.

First, there is the legal question as to whether or not the subpoenaed materials seek information which is beyond the scope of our inquiry. In making this determination the courts will look to the scope of our authority as defined by H. Res. 591 and will also look to the fac of the particular case to determine if the subpoenaed materials are critical to the performance of the committee's function. The United States Court of Appeals for the District of Columbia (to which court suc an issue as we have before us would travel) spoke to this issue in Senat Select Committe v. Nixon, 498 F. 2d 725 (1974). The court said:

> " . . . we think the sufficiency of the Committee's showing must depend solely on whether the subpoenaed evidence is demonstrably critical to the responsible fulfillment of the Committee's functions.
>
> " . . . The sufficiency of the Committee's showing of need has come to depend, therefore, entirely on whether the subpoenaed materials are critical to the performance of its legislative functions. There is a clear difference between Congress's legislative tasks and the responsibility of a grand jury, or any institution engaged in like functions. While fact-finding by a legislative committee is undeniably a part of its task, legislative judgments normally depend more on the predicted consequences of proposed legislative actions and their political acceptability, than on precise reconstruction of past events; Congress frequently legislate on the basis of conflicting information provided in its hearings."

Cite also: (1) contempt proceedings against Frank Stanton, 92d Cong, 1st Session, House Rpt No 92-349, Hearings No. 92-16 (2) theory 1 Quinn v U.S. 349 U.S. 155, 166 (1955) and U.S. v Kamp 102 F. Supp. 757 (D.D.C. 1952)

Thus, in order to have any chance of success in judicial proceedings which, it should be remembered, are criminal in nature, the committee must show that the recommendations of the various Secretaries of State during the 14 years in question are "demonstrably critical to the responsible fulfillment" of the committee's function. There is little doubt in my mind but that this test cannot be met.

Then there is a second, and perhaps even more formidable, legal hurdle. It is the hurdle of executive privilege asserted in this instance by the President of the United States.

It is important to keep in mind that the assertion of executi privilege was made by the President and not by the Secretary of State. By letter from the President's counsel to Secretary Kissinger, the Presi advised the Secretary that he invoked executive privilege as to the documents covered by the subpoena. The Secretary then transmitted that decision to the committee. This procedure followed the method establishe by the President several years before.

But the important question is whether or not the assertion of executive privilege is valid in this instance. That such a doctrine exists and has constitutional validity has been clearly recognized by our courts including the Supreme Court of the United States. United States v Nixon, 418 U.S. 683. Any member who is troubled about the limits and definition of executive or presidential privilege should afford himself the opportunity of reading the pertinent portion of that decision beginning at 418 U.S. 705.

In ~~the~~ United States v. Nixon, the Supreme Court was confronte with a collision between executive privilege and the constitutionally

defendant in a criminal trial has the right "to be confronted with the witnesses against him" and "to have compulsory process for obtaining witnesses in his favor". The Supreme Court held that executive privilege could not be invoked to prevent access by the judicial branch to material bearing on a criminal trial.

Although the Supreme Court in U.S. v. Nixon was not dealing with the issue of congressional access versus executive privilege, nevertheless, the decision stands as a strong pronouncement as to the existence and extent of the doctrine. When the privilege is asserted on the basis of national security interests it may even foreclose access in criminal cases.

For those who do not have the opportunity to read the decision of the Supreme Court in United States v. Nixon, the following pertinent portions thereof will be helpful:

> " . . . The first ground is the valid need for protection of communications between high Government officials and those who advise and assist them in the performance of their manifold duties; the importance of this confidentiality is too plain to require further discussion. Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decision-making process. Whatever the nature of the privilege of confidentiality of Presidential communications in the exercize of Art. II powers, the privilege can be said to derive from the supremacy of each branch within its own assigned area of constitutional duties. Certain powers and privileges flow from the nature of enumerated powers; the protection of confidentiality of Presidential communications has similar constitutional underpinnings."

"The expectation of a President to the confidentiality of his conversations and correspondence, like the claim of confidentiality of judicial deliberations, for example, has all the values to which we accord deference for the privacy of all citizens and added to those values the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decisionmaking. A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for Presidential communications. The privilege is fundatmental to the operation of government and inextricably rooted in the separation of powers under the Constitution."

"In this case the President challenges a subpoena served on him as a third party requiring the production of materials for use in a criminal prosecution; he does so on the claim that he has a privilege against disclosure of confidential communications. He does not place his claim of privilege on the ground they are military or diplomatic secrets. As to these areas of Art. II duties the courts have traditionally shown the utmost deference to Presidential responsibilities."(emphasis supplied)

"Moreover, a President's communications and activities encompass a vastly wider range of sensitive material than would be true of any 'ordinary individual.' It is therefore necessary in the public interest to afford Presidential confidentiality the greatest protection consistent with the fair administration of justice. The need for confidentiality even as to idle conversations with associates in which casual reference might be made concerning political leaders within the country or foreign statemen is too obvious to call for further treatment."

Thus, the Supreme Court has given firm foundation to the doctr of executive privilege. Its applicability to the circumstances now bef us is hardly debatable. The claim of executive privilege is based on t assertion, set forth in the communication to the Select Committee, that documents subpoenaed "in addition to disclosing highly sensitive milita and foreign affairs assessments and evaluations, disclose the consultat process involving advice and recommendations of advisers to former Pres

made to them directly or to committees composed of their closest aides and counselors."

The argument is made that executive privilege may not be asserted by President Ford for communications directed to former President or to advisory committees of former Presidents. On this point, as far as I know, there are no specific legal precedents. However, if the rationale of United States v. Nixon is applied it becomes apparent that the doctrine must extend to communications involving former Presidents.

The doctrine of executive privilege is bottomed not on some legal technicality ~~brought~~ but on plain and simple logic: the need for confidentiality. This need can be served only if those who make recommend tions to the President know that their expressions will be protected even after the President to whom those expressions were made has left office. No Secretary of State, no high government official, no aide to the Preside has any assurance that the man he speaks to as President today may not be gone from the scene tomorrow. How can we expect him to advise the President with that candor of which the Supreme Court speaks in U. S. v. Nixon if he knows that the very next day the protection of executive privilege may be shattered because of a change in the occupant of the Oval Office?

If the need for a confidential channel of communication exists, isn't that need just as great on the day before the Presidency changes har in orderly fashion every four or eight years? It is just as important on the last day of a President's term as it is on the first day. But if we deny the application of executive privilege to conversations with a form President then we have to conclude that communications which are fully protected on January 19 have absolutely no protection on January 20.

Those who do not believe that the doctrine of executive privilege can be invoked by a current President as to occurrences prior to his administration contend that such a proposition would lead to the ridiculous result that a current President might invoke executive privilege as to communications to President Washington. The answer to that is quite simple: the doctrine is applicable as far back as reasonably necessary to protect the purpose of the privilege. After the passage of time has eliminated the dangers of exposure the need for confidentiality disappears and executive privilege dissolves.

I submit, therefore, that the resolution of contempt based on this subpoena be voted down because there is no critical need for the documents sought, and because there is very substantial doubt that prosecution for contempt in this instance would be successful.

II. Subpoena and Contempt Citation No. 2

Subpoena served: Friday, November 7, 1975

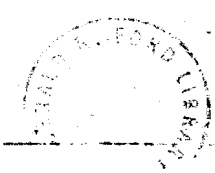
Return date: Tuesday, November 11, 1975

Directed to: The Assistant to the President for National Security Affairs, or any subordinate officer, official or employee with custody or control of the items described in the subpoena.

For the following: All 40 committee and predecessor committee records of decisions taken since January 20, 1965 reflecting approvals of covert action projects.

On November 14 the committee voted, 10 to 2, to bring contempt action against Secretary Kissinger for non-compliance with this subpoena. This was done even though some of the subpoenaed material had been suppl and the staff of the National Security Council were expressing willingne to continue to try to work with the staff of the Select Committee to provide information which it hoped would ultimately prove to be sufficie for our purposes. The record does not indicate that there was ever a refusal to supply additional information.

On November 6, 1975 the Select Committee voted to issue seven subpoenas covering a substantial number of documents and, in most cases, covering extensive periods of time. Five of these subpoenas were direct to the Assistant to the President for National Security Affairs. These subpoenas were served on Friday, November 7 with return dates of Tuesday November 11 at 10:00 a.m. Thus, only two working days were provided to the respondent to sort out materials, to consult with the staff of the committee for clarification in some instances, and to try to work out a



means of supplying sufficient information for our purposes without compromising some of the concerns of the executive branch.

(Here consider inserting a chronology of events pertaining to attempts to comply and to negotiate.)

There is no question but that the executive branch has been reluctant to surrender to the Select Committee the complete records of the Forty Committee pertaining to approved covert actions since January 20, 1965 to date. This reluctance is not at all surprising in view of certain events which create strong suspicion that there have been leaks of important information by the committee and/or its staff.

Nevertheless, some information regarding approvals of covert a projects was supplied to the committee, and it is my understanding that an effort was made to determine exactly that which the committee wished prove or demonstrate so that the needs of the committee might be satisfi without complete disclosure of all covert actions over the last eleven years. It is also my understanding that this effort to satisfy the comm was continuing right up to the time the committee voted, on November 14, the resolution of contempt.

Thus, there never was a discontinuance on the part of the executive branch to try to satisfy the committee. I make no representat that there was compliance with the committee's subpoena as written prio to the time of the contempt resolution. The point I do make is that contempt action on November 14 was not warranted by the circumstances existing at that time. This is not only important in order to make a judgment as to whether the committee was justified in taking contempt ac on November 14, it is important in a determination as to whether the act taken was valid in a legal sense.

On the legal question there are precedents to guide us. First, it would be useful to remind ourselves that what the committee has recommended is a criminal prosecution of Secretary Kissinger. The committee has elected to proceed under the provisions of 2 U.S.C. 192 and 194. Please see appendix B for the exact language of these provisio

A prosecution under 2 U.S.C. 192 was before the United States District Court for the District of Columbia in United States v. Kamp, 102 F.Supp. 757 (1952). The court observed that the defendant was entitled to the usual presumption of innocence, and that it was necessar for the prosecution to prove that the defendant had failed and refused to produce certain records. The court acquitted the defendant stating:

> "Committees of Congress must conduct examinations in such a manner that it is clear to the witness that the Committee recognizes him as being in default, and anything short of a clear cut default on the part of the witness will not sustain a conviction for contempt of Congress."

In Quinn v. United States, 349 U.S. 155 (1955), the Supreme Court approved the Kamp decision. In the Quinn case the court was considering the refusal of a witness before a congressional committee to say whether he was or had been a member of the Communist Party. The Supreme Court ruled that the trial court should have entered a judgment of acquittal. The heart of the decision was that a prerequisite to prosecution under 2 U.S.C. 192 is a clear disposition of the objection of the witness. The court said:

> "Section 192, like the ordinary federal criminal statute, requires a criminal intent--in this instance, a deliberate, intentional refusal to answer. This element of the offense, like any other, must be proved beyond a reasonable doubt. Petitioner contends that such proof was not, and cannot be, made in this case.

"Clearly not every refusal to answer a question propounded by a congressional committee subjects a witness to prosecution under 192. Thus if he raises an objection to a certain question--for example, lack of pertinency or the privilege against self-incrimination--the committee may sustain the objection and abandon the question, even though the objection might actually be without merit. In such an instance, the witness' refusal to answer is not contumacious, for there is lacking the requisite criminal intent. Or the committee may disallow the objection and thus give the witness the choice of answering or not. Given such a choice, the witness may recede from his position and answer the question. And if he does not then answer, it may fairly be said that the foundation has been laid for a finding of criminal intent to violate 192. In short, unless the witness is clearly apprised that the committee demands his answer notwithstanding his objections, there can be no conviction under 192 for refusal to answer that question."

The court went on to say:

"Our view that a clear disposition of the witness' objection is a prerequisite to prosecution for contempt is supported by long-standing tradition here and in other English-speaking nations."

The holdings of Kamp and Quinn are clear. Before a person subpoenaed may be prosecuted under 2 U.S.C. 192 he must be given an opportunity to explain his position, must then be put on notice by the committee that compliance with the subpoena is demanded, and ~~the~~ given further opportunity ~~for the witness~~ to respond.

The record in the matter before us clearly discloses that no notice was given by the committee to the addressee of the subpoena that an answer was demanded. The record reflects that a motion made by this member (see record page) to provide an opportunity for an explanation by Secretary Kissinger and/or his representatives was voted down by the committee. The committee then voted the contempt citation without having the benefit of ~~the~~ any statement by the target of the contem

resolution. All that the members of the committee received was an explanation of why the committee staff felt that there was non-compliance with the subpoena.

see also Stanton contempt proceedings

Thus, whether or not there was compliance is an issue which we need not decide because the resolution of contempt, as a vehicle for prosecution under 2 U.S.C. 192, is fatally defective. That being true, it would be unjust and indeed outrageous to request prosecution of Secretary Kissinger by the United States Attorney for the District of Columbia.

It is true that an attorney was permitted to come before the committee on November 20, six days after the contempt resolutions were adopted, to offer an explanation. This apparently resulted from a written request by the President of the United States delivered to the chairman of the committee on November 19. This does not cure the defect because it is clear that the opportunity to advance an explanation must be given prior to the adoption of a contempt resolution by the committee Furthermore, the other prerequisites have not been met, to wit: a clear statement by the committee to the recalcitrant witness that, despite the explanation, the committee demands a response.

During the committee's meeting of November 20 a representative of the administration offered a method of access to the materials which, if implemented, would amount to substantial compliance with the subpoena of the committee. The offer was to permit the members of the committee and certain selected staff members, to review the records of the Forty Committee at the offices of the National Security Council. If this is accepted by the committee as substantial compliance the issues raised by the contempt resolution will be moot.

If that does not occur there is yet another legal impediment to proceeding under 2 U.S.C. 192. The subpoena in question was directed to the Assistant to the President for National Security Affairs. By letter dated November 19, a copy of which is attached hereto as Appendix , the President stated that:

> "After November 3, he (Secretary Kissinger) was no longer my assistant for National Security Affairs . . . ".

Inasmuch as the subpoena was voted on November 6 it could not possibly have applied to Secretary Kissinger. As a matter of fact, the subpoena was not served on Kissinger but that is of no real moment. The simple fact is that the subpoena could not possibly apply to Secretary Kissinger since he did not occupy the office of Assistant to the President for National Security Affairs after November 3, 1975.

Service was accepted on behalf of the NSC Staff / Secretary — NOT the assistant to the President.

OR any subordinate.

III. Subpoena and Contempt Citation No. 3

Subpoena served: Friday, November 7, 1975

Return date: Tuesday, November 11, 1975, at 10:00 a.m.

Directed to: The Assistant to the President for National Security Affairs, or any subordinate officer, official or employee with custody or control of the items described in the subpoena.

For the following: All documents furnished by the Arms Control and Disarmament Agency's Standing Consultative Commissi the Central Intelligence Agency, the Defense Intell gence Agency, the National Security Agency, the Department of Defense, and the Intelligence Communi Staff since May, 1972 relating to adherence to the provisions of the Strategic Arms Limitation Treaty of 1972 and the Vladivostok agreement of 1974.

(To be completed / similar to Subpoena No. 2.

We're in compliance

Robert McClory

DISSENTING VIEWS OF REP. ROBERT McCLORY

TO

THE COMMITTEE REPORT ACCOMPANYING THE CONTEMPT RESOLUTION DIRECTED AGAINST DR. KISSINGER FOR FAILURE TO PRODUCE MATERIALS UNDER THE FORTY COMMITTEE SUBPOENA.

The criminal contempt resolution, citing Secretary Kissinger, as Assistant to the President for National Security Affairs, for his refusal to turn over to the Select Committee unabridged and unsanitized records of Forty Committee decisions approving covert operations since 1961, ought to be rejected by the full House on the grounds that it is both untimely and procedurally faulty.

To begin with, the Select Committee addressed this subpoena to "Assistant to the President for National Security Affairs, or any subordinate officer, official, or employee with custody or control of the items described in the subpoena," ~~and~~ It was in fact served on the Staff Secretary of the National Security Council on Friday, November 7. In his letter to the Committee dated November 19, the President personally certified that Dr. Kissinger had not been the Assistant to the President for National Security Affairs since November 3. In the face of this uncontested statement by the President, the majority of the Committee, for reasons that remain unfathomable and certainly inexplicable, chose to simply ignore this fact and took no action to redirect the criminal contempt resolution against the person who had actual control over the documents in question. If the Committee was sincerely interested in receiving the information which it sought rather than in forcing a spectacular confrontation with Dr. Kissinger, I fail to understand why, under the terms of its own subpoena (which was directed to the office rather than to a specific individual), it did not amend the resolution and direct it against the person who has served as the President's chief assistant for national security matters since November 3 -- the Deputy Assistant for National Security Affairs, Lt. General Brent Scowcroft.

(Indeed, even the resolution of criminal contempt as voted by the Committee on November 14 erroneously describes the [illegible] Henry Kissinger"][GE]

The majority of the Committee is asking this House to hold Secretary Kissinger in criminal contempt for failing to deliver documents over which he has no control. This is patently unfair to any impartial observer -- and the cavalier attitude which the Committee has exhibited in refusing to redirect this contempt resolution ought not to be emulated by the full House in the serious and responsible exercise of its investigative powers. This contempt resolution should be overwhelmingly rejected by the House to avoid making a mockery of this body's tradition of respect for fundamental fairness and due process.

More importantly, a criminal contempt resolution is unwarranted at this time, regardless to whom it is directed, because of the record of cooperation which has characterized negotiations between the Ford Administration and this Committee in this instance as well as in all cases since the inception of this investigation.

The members ought to know that Chairman Pike and I have personally met with the President and his chief advisors on many occasions to work out problems of mutual concern between the Administration and the Select Committee. In addition, the Committee staff has met with representatives of the Administration, under the able direction of Presidential Counsellor John Marsh, on countless occasions to work out acceptable procedures by which the Committee can receive the highly sensitive information which it needs to conduct a responsible investigation. To date, this willingness to cooperate has resulted in this Committee receiving unprecedented access to intelligence information in the Executive Branch.

The members also ought to know that the Committee is seeking to cite Secretary Kissinger for criminal contempt over the question of who is going to retain physical possession of the documents in question. The Administration

PAGE
CHECK THE TRANSCRIPT
NOTES ON EXACTLY WHAT
SEAMANS SAID.

has offered complete and unfettered access to these documents to all thirteen Committee members and appropriate Committee staff in the offices of the National SECURITY Council, subject only to the previously agreed upon procedure that the names of operatives and the most sensitive intelligence sources and methods would be deleted. In other words, the Committee has been given an opportunity to obtain all the information which it requires and has ordered produced in its subpoena. Since November 20, our staff and some the comm

Better check with Nino re exact language to be used here.

To realize the significance of this unprecedented arrangement which has been proposed by the Administration to satisfy the Committee, it is very important that the members understand that the documents in question are among the most sensitive papers which have ever existed in the United States government. These documents constitute the complete record of every covert action which has been approved by the Forty Committee and the President over the past fifteen years. In many of these decisions, the circle of those knowledgeable of an operation was restricted to the President and a very small handful of his closest advisors. Of the entire National Security Council staff, only one person has complete knowledge of and control over the records of the Forty Committee.

Against this background, the members certainly ought to conclude that the Administration has made an offer of a reasonable arrangement for Committee access to this extraordinarily sensitive information that should satisfy the Committee's legitimate needs without the necessity of a contempt proceeding against the Secretary of State.

In any event, the President has pledged the continuing willingness of his Administration to meet to resolve any problems which still exist with respect to cooperation with the Committee. At the very least, the criminal contempt

now stan substantial compli with this subpoen

Inasmuch as the Comm

resolution was seriously premature and precipitate. ~~Even if the majority of the Committee were to make the unfortunate decision to reject~~ has in fact accepted the Administration's proposal for complete access to these materials, the extraordinary remedy of a criminal contempt proceeding is ~~certainly~~ wholly uncalled for at this time.

For the foregoing reasons it is the position of the undersigned that the resolution seeking to hold Dr. Kissinger in contempt for failure to produce materials under the Forty Committee subpoena be rejected overwhelmingly by the Members of the House of Representatives.

Robert McClory

RETURN TO:

Robert McClory

DISSENTING VIEWS OF REP. ROBERT McCLORY

TO

THE COMMITTEE REPORT ACCOMPANYING THE CONTEMPT RESOLUTION AGAINST DR. KISSINGER FOR FAILURE TO PRODUCE MATERIALS UNDER THE STATE DEPARTMENT SUBPOENA.

In the final sentence of his letter to the Select Committee dated November 19, 1975, the President of the United States voiced a sentiment with which I wholeheartedly concur. The President wrote, "I believe that the national interest is best served through our cooperation and adoption of a spirit of mutual trust and respect." It is my earnest contention that in this area of complex national security issues and in an atmosphere of ongoing serious negotiations with the Executive Branch, the Committee ought to have continued to work together with the President to resolve remaining differences rather than follow the precipitate route of voting a criminal contempt citation against the chief foreign affairs officer in this Administration at such a crucial time in world events. As the President stated, there is a legitimate national interest at stake here that ought to transcend all the recriminations, misunderstandings, and personality conflicts which have brought the Committee to this unfortunate action.

The House Select Committee on Intelligence has been given one of the most sensitive and important responsibilities which has faced the Congress since World War II. It has been no easy task to pierce the veil of secrecy which has surrounded the intelligence community's operations since our nation became the most powerful country on earth -- and it has been more difficult still to come to grips with some of the most fundamental questions at the heart of the operation of a secret intelligence function in a democratic society. If I do say so, I believe that the Select Committee, with the aid of unprecedented cooperation on the part of the Ford Administration, has been conducting a crucially important investigation in a most honest and responsible manner.

4 It is clear that the President's assertion of executive privilege is based solely on institutional, separation of powers grounds. None of the documents sought by the subpoena relate to the Ford Administration. Nor do they concern the time in which Henry Kissinger has been Secretary of State.

It is in this context of respect for the dedication and hard work of the Committee that I must express my regret that the majority has chosen to take the hasty and mistaken action of voting a criminal contempt resolution against the Secretary of State. In my opinion, the Committee has made an unfortunate and serious error in citing the Secretary for criminal contempt, and this resolution do not merit the support of the full House of Representatives.

Secretary Kissinger ought not to have been cited in contempt for refusing to surrender State Department documents for which the President of the United States has asserted a claim of executive privilege. The Committee's subpoena to the Secretary sought "all documents relating to State Department recommending (sic) covert action made to the National Security Council and the Forty Committee and its predecessor committees from January 20, 1961 to the present." After service of the subpoena, the appropriate documents were identified and referred to the White House for review. The Attorney General was asked to carefully review these documents and rendered an opinion that executive privilege could appropriately be asserted. By letter dated November 14, 1975, the Counsel to the President confirmed in writing the President's instruction to the Secretary of State to respectfully decline compliance with the subpoena on the grounds of the President's personal assertion of executive privilege. The Majority Report fails to mention the fact of this assertion of executive privilege; neither does it, in any way, challenge the validity of the assertion.

In the above-mentioned letter from the President to the Committee, the Committee received the President's personal word that

> the documents revealed to an unacceptable degree the consultation process involving advice and recommendations to Presidents Kennedy, Johnson, and Nixon, made to them directly or to committees composed of their closest aides and counselors.

The Committee has no evidence, and has, in fact, made no claim that this is not the case. In the absence of any such claim, it seems to me that the President's claim in this respect ought to be honored and respected.

The Committee's action in pressing the criminal contempt resolution in the face of the President's assertion of executive privilege in this case creates a conflict between the House of Representatives and the President which cannot be resolved by following any definitive precedent. However, there is a clearly established manner for the House to meet a challenge which it regards as contumacious. There is no need to refer this matter to the courts in the context of a criminal proceeding. ~~If this House had the gumption, it could~~ utilize its own authority to order the Sargeant-at-Arms to seize the Secretary and confine him to the common jail of the District of Columbia or the Guard Room of the Capitol Police. ~~Of course, there is no~~ Nor is there any apparent intention on the part of any members of the Committee to ~~follow this course of action.~~ Indeed, no Congress has ever undertaken to exercise its contempt authority in this manner -- but the members ought to be aware that if the full House approves this resolution, it will set in motion a course of events which can result in an equally disastrous spectacle.

Several members of the Committee have questioned the President's authority to assert executive privilege on behalf of his predecessors in office. Bearing in mind that the raison d'etre of the privilege is the protection of the integrity of the consultation process between the Chief Executive and his closest advisors, it would seem obvious that the privilege runs to the Office of the Presidency rather than to the individual President himself -- and numerous precedents can be cited in support of this particular assertion. The President has not claimed a privilege which covers a period

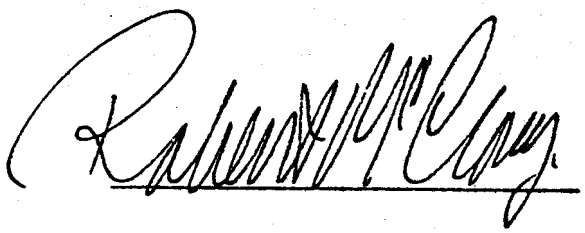
going back to the founding of the Republic -- rather he has sought to protect the consultation process in the immediate past three Administrations as it occurred over the past 15 years. Many people who served in the past three Administrations are still very much alive -- and to set a precedent in this case in which Presidents and their closest aides could fear revelation of their internal deliberations after they left the government would certainly have a chilling effect on the frank, forthright, and sometimes publicly unpopular advice which the Chief Executive has a right to expect from his advisors.

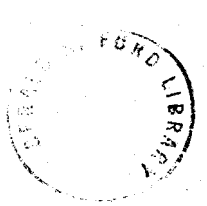
Finally, to help the members determine the validity of the assertion of executive privilege in their own minds, it may be useful to expand upon the sketchy description of the documents which is contained in the majority report. The Committee subpoenaed and the Executive has compiled a total of less than 16 documents prepared by the Department of State which were sent to the National Security Council and the Forty Committee in which the Department initiated a proposal for a covert action project. These documents cannot be described as a normal part of the tremendous paper flow between an Executive department and the White House. Rather, these documents contained highly sensitive information and went directly to the National Security Council, which is chaired directly by the President, or to the Forty Committee, which is chaired by the Assistant to the President for National Security Affairs -- one of the President's two closest advisors in matters of foreign affairs and national security. Furthermore, the Select Committee has received testimony from the Secretary of State that, in no instance of which he is aware, did any covert operation receive approval without the direct personal attention of the President. Clearly, these documents either went directly to the President or

Should avoid using exact number

were the basis for a Presidential briefing by one of his closest advisors. They are at the heart of the consultation process -- and as such, deserve protection under the doctrine of executive privilege if the doctrine is to have any vitality at all.

For the foregoing reasons it is the position of the undersigned that the resolution seeking to hold Dr. Kissinger in contempt for failure to produce materials under the State Department subpoena be rejected overwhelmingly by the Members of the House of Representatives.





File

THE WHITE HOUSE

WASHINGTON

November 28, 1975

MEMORANDUM FOR: MAX FRIEDERSDORF

FROM: JACK MARSH

It is very important on Monday that we prepare for the Republican Conference involving citations from the Pike Committee.

Because of his efforts to date, Charlie Leppert can be of tremendous help.

File

December 1, 1975

MEMORANDUM FOR: MAX FRIEDERSDORF

FROM: JACK MARSH

It is my understanding that the Kissinger contempt citations are to be one of the subjects at the Republican Conference.

It is of utmost importance that we prepare for this and have available to the Conference members fact sheets in support of Henry's position.

In this regard, I think it would be helpful to have a copy of the President's letter directed to Otis Pike and also a one or two page fact sheet which advises the Conference where the matter currently stands, available.

cc: Charlie Leppert

JOM/dl

FILE
INTELL COMS

THE WHITE HOUSE

WASHINGTON

December 2, 1975

Dear Mr. Chairman:

On November 14, George H. Aldrich, Acting Legal Adviser of the Department of State, advised you by letter that the President had decided to invoke executive privilege with respect to documents sought in the Committee's subpoena of November 6, 1975, directed to the Secretary of State, and that Secretary Kissinger had accordingly been instructed respectfully to decline to comply with such subpoena. Mr. Aldrich stated in his letter that, as of that date, an examination of State Department records disclosed ten such documents covering the period 1961 through 1972.

This is to inform you that, since the date of Mr. Aldrich's letter, we have continued to search Executive Branch records for documents possibly subject to that subpoena and have, through information and documents not in the possession of the Department of State, identified an additional fifteen documents in which the Department of State proposed to the NSC, the 40 Committee or its predecessor, ten covert action projects. These documents cover the period from 1966 to 1971. Please be advised that the President has reviewed these additional documents and has decided to assert executive privilege with respect to them for the same reasons as compelled the assertion with respect to the documents previously identified.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

The Honorable Otis G. Pike
Chairman
Select Committee on Intelligence
House of Representatives
Washington, D. C. 20515

THE WHITE HOUSE

WASHINGTON

December 6, 1975

Dear Mr. Chairman:

The President has asked me to reply on his behalf to your thoughtful letter of November 21. He has further asked me to tell you that he appreciates the fact that you and your Committee permitted representatives of the Executive Branch to appear for testimony on November 20, and shares your hope that the remaining "underlying issues" may be removed.

As you know, in order to provide your Committee with the substance of the information it sought to obtain by the November 6 subpoenas, the Executive Branch identified the originating agency with respect to all covert actions conducted from 1965 to the present. The President authorized this step because of his desire to meet the legitimate needs of the Committee for information on covert operations, although such detail was not required under any of the three subpoenas.

As a further demonstration of our desire for accommodation, the President has authorized me to inform you and your Committee that, since the 40 Committee subpoena covered only the period 1965 to the present, we will supplement the information already given to your Committee by providing similar information for the years 1961 through 1964 under the guidelines we have followed thus far. This additional step should, we believe, make it possible for the Committee to obtain the information that your letter indicated was necessary without affecting the President's claim of Executive privilege.

I sincerely hope, Mr. Chairman, that this further example of the President's desire to help the Committee carry out its important responsibilities will receive a favorable response by the Committee.

Sincerely,

Philip W. Buchen
Counsel to the President

The Honorable Otis G. Pike
Chairman
Select Committee on Intelligence
House of Representatives
Washington, D. C. 20515

December 6, 1975

MEMORANDUM FOR: JACK MARSH

FROM: MAX FRIEDERSDORF

SUBJECT: Kissinger Contempt Citation

Per our meeting this morning, I recommend we consider the following:

1. Put the Kissinger meeting on the leadership agenda.
2. Ask John Rhodes and John Anderson for a Republican Conference.
3. Check Barber Conable for a GOP policy position.
4. Request Bob Michel to do a whip check.
5. Request "Dear Colleagues" (Rhodes, Michel, Anderson, Broomfield, Derwinski(?), O'Neill, McFall, Burton, Waggonner, Satterfield, Murtha, Wayne Hays, et al.)
6. Request Satterfield to gear up DRO.
7. Request State Department to prepare a one page fact sheet.
8. Request Republicans take special orders and offer one minute speeches.
9. Request Members to put Saturday editorial from POST in the CONGRESSIONAL RECORD.
10. Convene LIC meeting on Monday and divide up assignments for a series of phone calls.
11. Place Kissinger subject on Cabinet Meeting agenda for Wednesday.
12. Request Cabinet Members call key jurisdictional Members.

I tried to contact McCloskey but State Department CGR shop shut down today.

cc: Wolthuis, Loen, Leppert

OTIS G. PIKE
FIRST DISTRICT, NEW YORK

COMMITTEE:
WAYS AND MEANS

DEC 8 1975

2428 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
AREA CODE 202
TELEPHONE: 225-3826
MRS. BETTY ORR
OFFICE MANAGER

DISTRICT OFFICE:
209 WEST MAIN STREET
RIVERHEAD, NEW YORK 11901
TELEPHONE: 727-2332

Congress of the United States
House of Representatives
Washington, D.C. 20515

December 5, 1975

Dear Colleague:

On Monday, December 8, it is my intention to file in the House a Report, adopted in a 10-2 vote by the House Select Committee on Intelligence, citing Henry A. Kissinger in contempt of Congress for failure to supply subpoenaed documents to the Committee.

Contrary to widely published rumors, neither the filing of such a report nor its adoption by the House will cause the earth to tremble nor the sun to stop in its tracks. No one is seeking to place Mr. Kissinger in jail, and the worst that can happen to him is that he might have to provide the documents subpoenaed to Congress.

The particular documents requested are those addressed by the State Department to the National Security Council recommending covert actions during the period from 1961 to 1975. No one has questioned the authority of the Committee to issue the subpoena, the manner in which it was issued, or its form. On October 14th Mr. Kissinger had assured the Committee in writing that he would:

> "Authorize any policy level officer of the Department or the Foreign Service to testify before the Select Committee on... any recommendations he forwarded to his superiors."

The documents subpoenaed cover such recommendations. They do not cover recommendations to the President, they cover recommendations to the National Security Council, a statutory body created by act of Congress in the National Security Act of 1947. No committee of Congress can ever exercise oversight as long as the Executive branch alone determines what facts it may have.

I request only that you read the report, hear the argument, and exercise your own judgment and conscience.

Very truly yours,

Otis G. Pike

OTIS G. PIKE

December 6, 1975

MEMORANDUM FOR: JACK MARSH

FROM: MAX FRIEDERSDORF

SUBJECT: Kissinger Contempt Citation

Per our meeting this morning, I recommend we consider the following:

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I tried to contact McCloskey but State Department CGR shop shut down today.

cc: Wolthuis, Loen, Leppert

THE "KISSINGER" SUBPOENA

CHRONOLOGY

11/6 - Seven subpoenas voted by the Pike Committee -- directed to the State Department, the NSC and CIA.

11/7 - Subpoenas served.

11/13- Letter from White House Counsel, Philip Buchen, to Mr. Pike requesting additional time to comply.

11/14- President asserted Executive privilege over documents involved in the "State Department" subpoena.

11/14- Pike Committee adopts resolutions to the effect that Secretary Kissinger has not complied with three subpoenas: one directed to the State Department and two to the NSC. There was compliance with the remaining four subpoenas.

12/2 - Pike Committee acknowledges that there has been substantial compliance on all subpoenas except the one for which Executive privilege asserted.

12/6 - In response to letters from Chairman Pike, the President offered in a letter by Buchen, to make additional information available which is intended to cover the substance of the "State Department" subpoenas.

REMAINING ISSUE

There is no longer any issue involving the two "NSC" subpoenas. The remaining controversy concerns the "State Department" subpoena for "...All documents relating to State Department documents recommending for covert actions made to [NSC committees] from January 20, 1961 to the present." Documents which fall into this category are from the Kennedy, Johnson and Nixon Administrations. The President instructed Secretary Kissinger not to provide the documents to the Committee because of Executive privilege.

ADMINISTRATION EFFORTS TO COMPLY

There has been compliance with six out of the seven subpoenas.

In connection with the seventh -- for which Executive privilege was asserted -- the Committee has been given information from the NSC files on the substance of what they are investigating.

This has been provided under the Administration's response to the "NSC" subpoena in order to make information available. This was intended to be reponsive to the substance of the "State Department" subpoena.

EXECUTIVE PRIVILEGE ISSUE

The Supreme Court has stated that the doctrine of Executive privilege is "constitutionally based." Without it the Executive Branch could no more function as a separate but equal organ of the government than could the Congress operate if the Executive were entitled to inquire into the staff and committee deliberations.

Some of the memoranda covered by the subpoena were addressed to former Presidents and others to close advisors. They all contain advice and recommendations concerning the course of action which the President should pursue. None of the subpoenaed documents are from the Ford Administration.

There is no historical or legal basis for the principle that an incumbent President can only assert the privilege with respect to his own administration. As early as 1846, a President declined to produce to the Congress information concerning a prior administration; the same action was taken by Presidents Truman and Kennedy.

In declining to make the requested documents available, Secretary Kissinger was acting at the direction of the President. In thus obeying what appears on its face -- on the basis of both judicial decisions and historical precedent -- to be a lawful instruction, Secretary Kissinger is not guilty of contempt.

In the 200 years of our Nation's existence, no cabinet officer has ever been cited for contempt of Congress. It would be a serious mistake, harmful domestically and in our foreign relations, to punish the Secretary of State for complying with a Constitutional Presidential directive.

DRAFT AGREEMENT FOR OBTAINING INFORMATION

1) The Committee will agree to formally withdraw the resolution directed against Dr. Kissinger for failure to comply with the so-called State Dept. subpoena; and

2) The Executive will agree

a) to allow Committee access to 40 Committee minutes covering those instances in which the State Dept initiated recommendations for covert action, whether approved or disapproved ultimately, for the period January 20, 1961 to 1965 -- under the same guidelines which have been agreed to with respect to other 40 Committee documents.

b) to allow Committee access to 40 Committee minutes covering those instances in which State Dept. recommendations for covert action were disapproved by the 40 Committee during the period of 1965 to the present.-- under the same guidelines which have been agreed to with respect to other 40 Committee documents.

In this way, the Committee can obtain access to the essential information which it needs to conduct its investigation -- and the Executive can provide this access without, in any way, affecting its assertion of executive privilege for the actual State Dept. documents.

THE WHITE HOUSE

WASHINGTON

December 8, 1975

MEMORANDUM FOR: JACK MARSH

FROM: CHARLES LEPPERT, JR.

SUBJECT: House Select Committee on Intelligence

You asked for the reaction of selected House Members to the Pike Committee action seeking to hold Secretary Kissinger in contempt of Congress. The comments of Members I contacted are as follows:

Speaker Carl Albert

States that he, Tip O'Neill and Jack McFall talked to Pike for about one hour on this matter. The Speaker said that Pike feels very strongly about taking the contempt resolution to the floor. Pike stated that some things had been handled very poorly and he (Pike) felt that the American people should know about it regardless of the fact that it did not involve the Ford Administration.

The Speaker, O'Neill and McFall could not dissuade Pike from his position to take the contempt resolution to the floor despite their advice that if he did that he'd probably get beaten by a strong vote against him (Pike).

The Speaker also stated that there were other things involved and he intimated that there was pressure from the Jewish community against Kissinger.

The Speaker said that Pike will not call up the contempt resolution without consulting the Speaker first.

Rep. George Mahon

Says that it would be a disgraceful thing for the House to take up the Kissinger contempt resolution. He would make a note to himself to talk to the Speaker on this because he felt that the Speaker was going to have to hang tough on this one. Mahon then suggested that if there was anything that could be worked out on the matter to stop it from coming to the floor he felt the Administration should do it.

Rep. John Anderson

Says that he hoped something could be worked out to stop the contempt resolution from coming to the House for consideration. Rep. Jim Johnson had talked to him about the issue and had given him some materials to read over the weekend and that after he read the material he may have a better feel for the situation. Anderson said he didn't want to see another executive-legislative confrontation so soon after the last experience but that he was not an exponent of the doctrine of executive privilege.

cc: Friedersdorf
Loen
Loeffler

eson, Tex.	Hefner	Nichols
ilson, Mo.	Henderson	O'Brien
ler	Hightower	Passman
on	Holt	Poage
erberg	Hubbard	Quillen
ppell	Hungate	Randall
ncy	Hutchinson	Rhodes
wson, Del	Hyde	Roberts
uran	Ichord	Robinson
ins, Tex.	Jarman	Rogers
lan	Jenrette	Roush
ne	Jones, Ala.	Rousselot
niel, Dan	Jones, N.C.	St Germain
niel, R. W.	Jones, Okla.	Satterfield
delson	Jones, Tenn.	Schneebeli
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ine	Kemp	Shuster
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ns, Ind.	Lent	Sullivan
dley	Lloyd, Tenn.	Symms
nan	Lott	Talcott
no	Lujan	Taylor, Mo.
wers	McCollister	Taylor, N.C.
rt	McDonald	Thornton
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nan	Mahon	Waggonner
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lwater	Mathis	Wampler
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fison	Milford	Whitten
sley	Miller, Ohio	Wiggins
edorn	Mitchell, N.Y.	Wilson, Bob
y	Montgomery	Wilson, C. H.
mer-	Moore	Wylie
midt	Moorhead,	Young, Fla.
sen	Calif.	Young, Tex.
ha	Myers, Ind.	Zablocki
ings	Natcher	Zeferetti
ler, W. Va.	Neal	

ANSWERED "PRESENT"—1

Evins, Tenn.

NOT VOTING—19

ews,	Gaydos	Patman, Tex.
Dak.	Hanley	Railsback
e, Fla.	Hébert	Riegle
	Heinz	Spellman
	Helstoski	Steed
	Hinshaw	Teague
r	Horton	

he Clerk announced the following S:

s. Spellman with Mr. Horton.
. Helstoski with Mr. Andrews of North ta.
. Hébert with Mr. Burke of Florida.
. Fraser with Mr. Esch.
. Riegle with Mr. Railsback.
. Hanley with Mr. Hinshaw.
. Patman with Mr. Heinz.
. Steed with Mr. Teague.
. Casey with Mr. Davis.

the bill was passed.

ne result of the vote was announced ove recorded.

motion to reconsider was laid on the

GENERAL LEAVE

. ABZUG. Mr. Speaker, I ask unani- consent that all Members may have islative days in which to revise and nd their remarks on the bill, H.R. just passed.

e SPEAKER. Is there objection to request of the gentlewoman from York?

ere was no objection.

ADDITIONAL INFORMATION MADE AVAILABLE REGARDING CONTEMPT CITATION ADDRESSED TO HENRY KISSINGER

(Mr. PIKE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PIKE. Mr. Speaker, on Monday the House Select Committee on Intelligence filed a report regarding a contempt citation addressed to Henry Kissinger. Since that time, I am pleased to be able to advise the House that additional information in compliance with the subpoena has been made available to the committee, and the committee has made a determination that substantial compliance has been achieved.

RECOMMITTAL OF HOUSE REPORT 94-693 TO SELECT COMMITTEE ON INTELLIGENCE

Mr. PIKE. Mr. Speaker, I ask unanimous consent that House Report 94-693 be recommitted to the Select Committee on Intelligence.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

AMENDING EFFECTIVE DATE OF DEFENSE PRODUCTION ACT AMENDMENTS OF 1975

Mr. ASHLEY. Mr. Speaker, I ask unanimous consent that the Committee on Banking, Currency and Housing be discharged from further consideration of the bill (H.R. 11027) to amend the effective date of the Defense Production Act Amendments of 1975, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, will the gentleman from Ohio (Mr. ASHLEY) inform us as to why this is necessary?

Mr. ASHLEY. I will, Mr. Speaker, if the gentleman will yield.

Mr. ROUSSELOT. I yield to the gentleman from Ohio.

Mr. ASHLEY. Mr. Speaker, the lapse in Defense Production Act authority which has occurred due to the expiration of that act prior to the House passage of the conference report on S. 1537 has created some uncertainty in the coverage of the voluntary agreement and program relating to the international energy program. The agreement provides, in pertinent part, that—

It shall cease to be effective at the termination of Section 708 of the Defense Production Act, as amended, or unless other legislative authority is provided which permits continuation of the agreement.

Although it is the opinion of the Federal Energy Administration that this language permits continuation of the agreement in spite of the lapse, the serious consequences to the participants of any uncertainty in this regard may disrupt the activities under the existing agreement if S. 1537 is enacted in its current form. Any interruption of activities under the agreement could have serious adverse consequences with respect to the role of the United States in the activities of the international energy program. This result is obviously not the intent of the legislation.

Nonetheless, when taken in the context of the text of the agreement, S. 1537 would present some ambiguity as to the continued efficacy of the current agreement. Accordingly, the Defense Production Act extension should be made effective retroactively to the prior law's expiration on November 30.

Mr. ROUSSELOT. Mr. Speaker, further reserving the right to object, the gentleman is then prepared to tell us that this changes the legislation in no other way except as to the effective date?

Mr. ASHLEY. The gentleman is correct, in no other way whatsoever.

Mr. ROUSSELOT. Mr. Speaker, I thank the gentleman.

Mr. McKINNEY. Mr. Speaker, will the gentleman yield?

Mr. ROUSSELOT. I yield to the gentleman from Connecticut.

Mr. McKINNEY. Mr. Speaker, I would just like to concur with the chairman of the subcommittee and state that this is a technical problem that we must face up to. We cannot have a bill that the House passed with all good intents sitting in limbo. We can solve this very simply by making the legislation retroactive to expiration date.

Mr. Speaker, I appreciate the efforts of the gentleman from Ohio (Mr. ASHLEY) in bringing this matter before the House, and I thank the gentleman from California (Mr. ROUSSELOT) for yielding.

Mr. ROUSSELOT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the bill, as follows:

H.R. 11027

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 9 of the Defense Production Act Amendments of 1975 is amended by striking out "date of enactment of this Act" and inserting in lieu thereof "close of November 30, 1975".

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

PERMISSION TO FILE CONFERENCE REPORTS ON SENATE JOINT RESOLUTION 121 AND H.R. 7656

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file conference reports on Senate Joint Resolution 121, to provide for quarterly adjustments in the support price for milk,