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THE WHITE HOUSE

WASHINGTON

May 27, 1975

Dear Senator Abourezk:

Thank you for your letters of May 2 and May 22 regarding the hearings of the Subcommittee on Separation of Powers to examine executive agreements and commitments.

I regret that I am unable to respond affirmatively to your request for copies of letters sent by President Nixon to President Thieu during 1972-73, to which you refer. A cardinal principle of diplomatic intercourse is the confidentiality of exchanges between heads of state. The fact that two of the Nixon-Thieu letters have been made public without authorization does not affect my obligation as a matter of principle to protect the confidentiality of exchanges between heads of government. The effectiveness of American diplomacy depends in many ways on our reliability in observing and preserving this essential principle for all our diplomatic communications with other countries.

With specific reference, however, to your concern about commitments regarding assistance to South Vietnam, you should be aware that President Nixon ~~and members of his Administration~~ stated publicly and repeatedly that the United States intended to continue its aid relationship with the Republic of Vietnam and react vigorously to violations of the 1973 Paris Peace Agreement.



Any documents which could be construed as containing or constituting a government to government undertaking have been provided to the Congress. Furthermore, neither this Administration nor its predecessor has ever regarded or cited these documents as constituting a contractual agreement binding upon the U.S. Government. Requests for security assistance and opposition to the 1973 prohibition of the use of military force in Indochina were always argued on the merits of policy, in the belief that it was in our national interest to maintain the conditions necessary for the viability of the Peace Agreement. Our policy was determined by this view of our interests, not by commitments or assurances given in any private documents. I appreciate the importance of your Subcommittee's concern about executive agreements and the treaty power of the Senate and trust that these views will be helpful in your deliberations.

Sincerely,

Ronald R. Ford

The Honorable James Abourezk
United States Senate
Washington, D. C. 20510



THE WHITE HOUSE

WASHINGTON

May 26, 1975

MEMORANDUM FOR: General Scowcroft

FROM:

Phil Buchen

T.W.B.

Attached is a second letter from Senator Abourezk to the President regarding the Nixon/Thieu correspondence. I am sending a copy also to Monroe Leigh because of his involvement before the Abourezk Subcommittee.

Attachment

cc: Monroe Leigh



May 27, 1973

*NSC
Presidential
Correspondence*

Dear Senator:

This is to acknowledge receipt of your May 22 letter to the President requesting that your Subcommittee on Separation of Powers be furnished with Nixon-Thieu correspondence.

I regret the delay in responding to your earlier request and you may be assured you will hear further by June 5.

With kind regards,

Sincerely,

William T. Kendall
Deputy Assistant
to the President

The Honorable James Abouresk
Chairman
Subcommittee on Separation of Powers
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

✓ bcc w/inc to Phil Bucha - for further ACTION

WTK:jk



5-23

JAMES O. EASTLAND, MISS., CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

PETER M. STOCKETT
CHIEF COUNSEL AND STAFF DIRECTOR

*Request
re: [unclear]
[unclear]*

May 22, 1975

The Honorable Gerald R. Ford
The White House
Washington, D.C.

Dear Mr. President:

On May 2, I requested that you and the State Department furnish to the Separation of Powers Subcommittee of the Senate Committee on the Judiciary, copies of the letters of November 14, 1972, and January 5, 17, and 20, 1973, sent by President Richard M. Nixon to President Nguyen Van Thieu, in which President Nixon makes commitments regarding American assistance to South Vietnam in the post-settlement period; copies of the letters of November 11 and December 20, 1972, from President Thieu to President Nixon regarding American assistance to South Vietnam in the post-settlement period; and copies of any other material or information related to this correspondence and its substance. On May 12, Robert J. McCloskey, Assistant Secretary for Congressional Relations for the State Department, replied that my request to State had been forwarded to the White House.

MF

In my letter to you, I asked that you respond by May 7 so that we might make use of this correspondence in our hearings on executive agreements which were held on May 13, 14, and 15. Mr. William T. Kendall responded on May 3 by acknowledging receipt of my letter and by promising to call my letter to your early attention. During two subsequent telephone conversations, Mr. Kendall assured my staff that a response would be forthcoming prior to the hearings. Regrettably, that did not happen and follow-up phone calls to Mr. Kendall's office have not been returned.

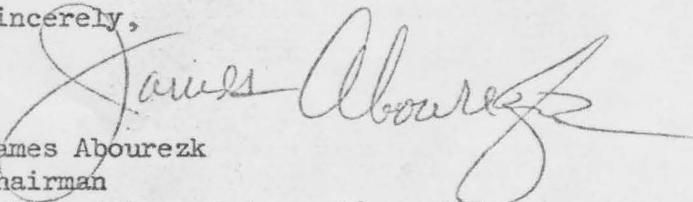
While we have completed the bulk of these hearings, they will resume in mid-June with the testimony of Monroe Leigh, Legal Adviser for the Department of State.



Page Two
May 22, 1975

It is imperative that we have copies of the Nixon-Thieu correspondence for our use when these hearings resume, for completion of the hearing record, and for our further study of the whole problem of executive agreements, particularly legislative solutions therefor. In view of the inordinate time which has elapsed without a reply, I respectfully request that you respond by June 5.

Sincerely,


James Abourezk
Chairman
Subcommittee on Separation of Powers



JOHN F. BELLAMY, IOWA
JAMES H. BROWN, MISSOURI
JAMES H. EASTMAN, MAINE
EDWARD G. BREWER, ILLINOIS
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WILLIAM L. SCOTT, VA.

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

PETER M. STOCKLTT
CHIEF COUNSEL AND STAFF DIRECTOR

May 2, 1975

The Honorable Gerald R. Ford
The White House
Washington, D. C.

Dear Mr. President:

me
For some time the Subcommittee on Separation of Powers has been examining executive-legislative relations in foreign affairs with special emphasis on executive agreements and commitments. The Subcommittee held extensive hearings on the subject in April and May of 1972. Despite congressional attempts to define the powers, duties and prerogatives of the two branches of the government in this area of foreign policy, the problem of executive agreements vis-a-vis the treaty power of the Senate has remained a matter of increasing concern.

Various legislative proposals are now pending which would prescribe a congressional role in the making of international agreements, other than treaties, that commit our national resources. The Subcommittee presently has before it two such bills requiring congressional oversight of these agreements. S. 632 introduced on February 7, 1975, by Senator Bentsen and S. 1251 introduced on March 20, 1975, by Senator Glenn. The separation of powers questions involved in such legislative proposals are vitally important; therefore, we have scheduled hearings on May 13, 14, and 15, 1975.

Obviously, the letters made public on April 30, 1975, in Washington by Nguyen Tien Hung, former Minister of Planning for South Vietnam, are of compelling relevance to these hearings and consideration of the above-referenced legislation.

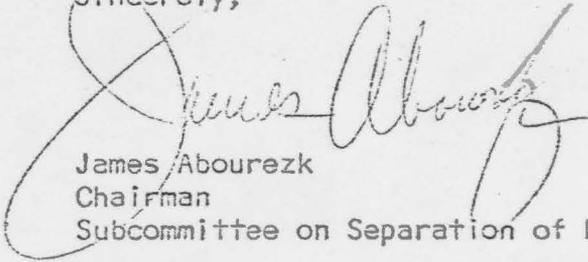
Accordingly, I respectfully request that you furnish to the Separation of Powers Subcommittee of the Senate Committee on the Judiciary, copies of the letters of November 14, 1972, and January 5, 17, and 20, 1973, sent by President Richard M. Nixon to President Nguyen Van Thieu, in which President Nixon makes commitments regarding American assistance to South Vietnam in the post-settlement period.



The Honorable Gerald R. Ford
May 2, 1975
Page Two

I also request that you send the Subcommittee copies of the letters of November 11 and December 20, 1972, from President Thieu to President Nixon regarding American assistance to South Vietnam in the post-settlement period. I also ask that you transmit to the Subcommittee copies of any other material or information related to this correspondence and its substance which is in your possession. Please let me hear from you regarding these requests by close of business on May 7, 1975. Your cooperation will be appreciated in view of the time constraints under which we are operating.

Sincerely,



James Abourezk
Chairman
Subcommittee on Separation of Powers



724-1
May 29, 1975

MEMORANDUM FOR: PHIL BUCHEN
FROM: KEN LAZARUS
SUBJECT: Power of Congressional Committees to
Compel Appearance or Testimony of
Presidential Assistants

This is in response to your request for a discussion of historical precedents and policy on appearances or testimony before congressional committees by Presidential assistants not confirmed by the Senate.

Introductory Note

In his press briefing of April 25, regarding Senator Kennedy's request to have Ambassador Brown testify before a Judiciary Subcommittee, Ron Nessen stated: ". . . traditionally appointees of the President who are not subject to confirmation by the Senate are not called to testify." Actually, a complete reading of the transcript (Tab A) makes clear that Ron was talking about a narrower category of Presidential "assistants" rather than "appointees".

On May 2, 1975, Senator John Sparkman sent a letter to the President in order ". . . to keep the record straight." (Tab B) He noted:

* * *

"Among the Presidential appointees not confirmed by the Senate who have testified before congressional committees are Peter Flanigan, Richard Goodwin, Sherman Adams, Robert Cutler, Robert E. Merriam, Gerald D. Morgan, Lawrence F. O'Brien, General E. R. Quesada, Roger L. Stevens, Dr. Stafford L. Warren, and Dr. Jerome Wiesner."

* * *



- 2 -

Historical Precedents

There have been numerous instances in which White House Staff members declined to appear before congressional committees.

1. On two occasions during the administration of President Truman, a subcommittee of the House Committee on Education and Labor issued subpoenas to John R. Steelman, who held the title "Assistant to the President". In both instances he returned the subpoena with a letter stating that "In each instance the President directed me, in view of my duties as his Assistant, not to appear before your subcommittee."
2. In 1951, Donald Dawson, an Administrative Assistant to President Truman, was requested to testify before a Senate Subcommittee investigating the Reconstruction Finance Corporation, one aspect of which concerned Mr. Dawson's alleged misfeasance. Although the President believed that this request constituted a violation of the constitutional principle of the separation of powers, he nevertheless "reluctantly" permitted Mr. Dawson to testify so that he could clear his name.
3. In 1944, Jonathan Daniels, an Administrative Assistant to President Roosevelt, refused to respond to a subcommittee subpoena requiring him to testify concerning his alleged attempts to force the resignation of the Rural Electrification Administrator. He based his refusal on the confidential nature of his relationship to the President. The Subcommittee then recommended that Daniels be cited for contempt. Thereupon Daniels wrote the Subcommittee that although he still believed that he was not subject to subpoena, the President had authorized him to respond to the subcommittee's questions.
4. During the Eisenhower Administration Sherman Adams declined to testify before a committee investigating the Dixon-Yates contract because of his confidential relationship to the President. However, at a later date in the administration he



volunteered to testify concerning his dealings with Bernard Goldfine who was charged with violations of federal criminal statutes.

5. During the hearings on the nomination of Justice Fortas as Chief Justice the Senate Judiciary Committee requested W. DeVier Pierson, then Associate Special Counsel to the President, to appear and testify regarding the participation of Justice Fortas in the drafting of certain legislation. Pierson declined to appear, writing the Committee as follows:

"As Associate Special Counsel to the President since March, 1967, I have been one of the 'immediate staff assistants' provided to the President by law. (3 U.S.C. 105, 106) It has been firmly established, as a matter of principle and precedents, that members of the President's immediate staff shall not appear before a congressional committee to testify with respect to the performance of their duties on behalf of the President. This limitation, which has been recognized by the Congress as well as the Executive, is fundamental to our system of government. I must, therefore, respectfully decline the invitation to testify in the hearings."

6. Similar incidents occurred during the Nixon Administration in connection with attempts of Congressional Committees to obtain the testimony of Dr. Kissinger and Mr. Flanigan. It is my recollection that Kissinger never testified as a Presidential assistant, but that Flanigan did appear during the course of the Kleindienst nomination with the approval of the President and under certain ground rules limiting the scope of the inquiry to his personal role in the ITT-Hartford merger.

It thus appears that at least since the Truman Administration Presidential Assistants have appeared before congressional committees only where the inquiry related to their own private affairs or where they had received Presidential permission. In the Dawson case both conditions were met.



Relevant Doctrine

Although I am not aware of any judicial pronouncements on this issue, two areas of Constitutional doctrine are relevant.

1. Executive Privilege. While an assertion of Executive Privilege with respect to specific testimony or documents on the subject of advice given by a staff member to the President would be entirely proper, the propriety of invoking the privilege to direct the staff member not to appear at all would be questionable.

Requests to the White House to furnish official documents in its custody to a congressional committee clearly can be resisted on the basis of Executive Privilege (notwithstanding Nixon v. Sirica). But the claim of privilege for documents would not appear to be co-extensive with the claim of personal immunity from subpoena. A claim for official documents in the custody of the Executive Branch necessarily involves Executive business, whereas it cannot be said to a certainty in advance that a White House adviser will necessarily be interrogated only on matters pertaining to his official duties.

2. Separation of Powers. A more persuasive rationale for denying the appearance or testimony of Presidential assistants before congressional committees is the doctrine of separation of powers. An immediate assistant to the President in the normal situation acts as an agent of the President in implementing Presidential functions. If a congressional committee could compel the attendance of a Presidential adviser for the purpose of inquiring into the discharge of functions constitutionally committed to the President, the independence of the Presidency would be impaired for the same reason that such congressional power to compel the attendance of the President himself would impair that independence. As President Truman said in a radio address on the occasion of his refusal to appear pursuant to a request of the House Un-American Activities Committee, if a President or former President could be called and questioned about his official duties, "the office of President would be dominated by the Congress and the Presidency might become a mere appendage of Congress." New York Times, Nov. 17, 1953 at p. 26.

The issue at hand is treated comprehensively in the attached Memorandum on Power of Congressional Committee to Compel Appearance or Testimony of Presidential Assistants -- Constitutional and Statutory Aspects (Tab C) and the Statement



of William H. Rehnquist, Assistant Attorney General, before the Subcommittee on Separation of Powers, Committee on the Judiciary, United States Senate (Tab D).

Recommendation

I would suggest that you not respond to the letter of Senator Sparkman at this time. In this regard, it would be best to leave sleeping dogs lie.



May 29, 1975

Dear Senator:

This will acknowledge receipt and thank you for your recent letter to the President concerning the reported exchange of letters between former President Nixon and the British and French leaders about the supersonic transport.

You may be assured that your letter has been passed along for consideration by the President and the appropriate members of the staff.

With kind regards,

Sincerely,

William T. Kendall
Deputy Assistant
to the President

The Honorable Hubert H. Humphrey
United States Senate
Washington, D. C. 20510



bcc: w/incoming to Philip Buchen for DIRECT REPLY
bcc: w/incoming to General Scowcroft - FYI
bcc: w/incoming to John Marsh - FYI

WTK:EF:VO:vo

5-23

JOHN SPARKMAN, ALA., CHAIRMAN

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United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, D.C. 20510

PAT M. HOLT, CHIEF OF STAFF
ARTHUR M. KUHL, CHIEF CLERK

May 19, 1975

The President
The White House
Washington, D. C.

Dear Mr. President:

The Environmental Defense Fund recently informed me that the London Observer has asserted that President Nixon assured British and French leaders in writing that he would do all he could to ensure that the Concorde is not discriminated against in America. I share their concern that such a letter, if it exists, could affect the Federal Aviation Administration's ability to reach an objective decision on permitting Concorde operations in the United States.

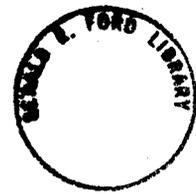
MF

In order to clarify the record, I urge you to comply with the Fund's request for public disclosure of the aforementioned letter. I think it would also be useful to indicate if a copy of the letter was provided to the FAA.

Thank you for your consideration in this matter.

Sincerely,

Hubert H. Humphrey
Hubert H. Humphrey



June 2, 1975

Dear Senator:

This will acknowledge receipt and thank you for the letter to the President, of today's date, requesting as Acting Chairman of the Committee on Foreign Relations a favorable decision to permit the release of documents pertaining to the 1973 Paris Cease-fire Agreement to the Committee.

Please be assured your letter will be called promptly to the attention of the President and the appropriate members of the staff.

With kind regards,

Sincerely,

William T. Kendall
Deputy Assistant
to the President

The Honorable Mike Mansfield
United States Senate
Washington, D. C. 20510

bcc: w/incoming to General Scowcroft for substantive reply
in coordination with Philip Buchen
✓ bcc: w/incoming to Phil Buchen - action as above
bcc: w/incoming for your information
Don Rumsfeld
John Marsh
Max Friedersdorf



WTK:EF:VO:vo

JOHN SPARKMAN, ALA., CHAIRMAN
MIKE MANSFIELD, MONT.
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United States

COMMITTEE ON FOREIGN RELATIONS
WASHINGTON

RECEIVED
JUN 2 1975

PAT M. HOLT, CHIEF OF STAFF
ARTHUR M. KUHL, CHIEF CLERK

June 2, 1975

Dear Mr. President:

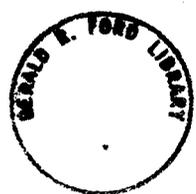
ME
As you know, on two occasions the Committee on Foreign Relations has requested copies of all pertinent documents which concern any commitments to or understandings with South Vietnam relative to the 1973 Paris Cease-fire Agreement.

On May 20 the Committee discussed this matter further and by agreement of all Members present decided to make a complete study of all aspects of the commitments question. In view of this action, the Committee respectfully reiterates its request for copies of all pertinent documents. I hope that upon reconsideration you will decide to respond favorably to the Committee's request for these documents.

Sincerely yours,

Mike Mansfield
Acting Chairman

The President
The White House



May 6, 1975

Dear Mr. Chairman:

This will acknowledge receipt of your letter to the President in response to his April 25 letter concerning the request of the Committee on Foreign Relations for material relating to the 1973 Paris Cease-fire Agreement.

Please be assured your letter will be called promptly to the attention of the President and the appropriate advisers.

With kindest regards,

Sincerely,

William T. Kendall
Deputy Assistant
to the President

The Honorable John Sparkman
Chairman
Committee on Foreign Relations
United States Senate
Washington, D. C. 20510

bcc: w/incoming to General Scowcroft for substantive reply in coordination with Phil Buchen.

~~bcc~~: w/incoming to Phil Buchen -- action as above

WTK:VO:vo

bcc: w/incoming for your information
Don Bumsfeld
John Marsh



MARK MANSFIELD, MONT.
FRANK CHURCH, IDAHO
COURT SYMINGTON, MO.
JOHN J. PICKLE, R.I.
WALTER W. MOGENSEN, WYO.
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United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, D.C. 20510

PAT M. HOLT, CHIEF OF STAFF
ARTHUR M. KUHL, CHIEF CLERK

May 1, 1975.

Dear Mr. President:

I appreciate your letter of April 25 concerning the request of the Committee on Foreign Relations for the texts of any United States understandings or undertakings relative to the 1973 Paris Cease-fire Agreement.

As you know, a former member of the South Vietnamese Government has released the texts of what are alleged to be letters from President Nixon to President Thieu containing assurances relative to "continued" United States aid to South Vietnam and of "swift and severe retaliatory action" in the event of North Vietnam's failure to abide by the agreement. In this connection, also, I note that Ambassador Graham Martin was quoted in this morning's Washington Post as saying, as he arrived aboard an evacuation ship, that: "If we had kept our commitments we wouldn't have had to evacuate."

I urge that you reconsider your decision to deny the Committee's request. Although I agree with your statement that we should "leave the divisive debates on Vietnam behind us," I do not view the Committee's request for these documents as a part of a "debate" but only a legitimate exercise of the Committee's responsibility for legislative oversight of international agreements.

In view of the release of the alleged letters from President Nixon and the fact that the South Vietnamese Government has fallen, it seems to me that the issue of confidentiality is not a proper justification for denying the Committee access to the pertinent documents. The public interest would be served by a full disclosure of pertinent communications



relative to United States undertakings or commitments surrounding the cease-fire agreement and I hope that upon reconsideration you will furnish these documents to the Committee.

With best wishes, I am

Sincerely,


John Sparkman
Chairman

The President
The White House



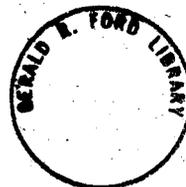
NATIONAL SECURITY COUNCIL

May 20, 1975

MEMO FOR: PHIL BUCHEN
FROM: LES JANKA *LJ*
SUBJECT: Sparkman Letter #2

Have you been able to give any further thought to this mess?

Sparkman is starting to express displeasure over our failure to respond to his earlier requests on Iran and Saudi Arabia (see attached).



DRAFT
May 9, 1975

Dear John:

I have given careful thought to your letter of May 1 asking me to reconsider the Committee's request for the texts of diplomatic exchanges with South Vietnam concerning any United States commitments or undertaking relative to the 1973 Paris Peace Agreement.

The fact that two of these exchanges have been made public without authorization, and the fact that President Nixon and President Thieu are out of office, do not affect my obligation as a matter of principle to protect the confidentiality of exchanges between heads of government. The effectiveness of American diplomacy depends in many ways on our reliability in observing and preserving this essential principle for all our diplomatic communications with other countries.

The subject matter of the correspondence and indeed of the debate over them is no longer an issue of current legislative business. As I indicated in my letter of April 25, the Administration never regarded or cited these documents as constituting a contractual agreement binding upon the Congress. The exchanges reflected unilateral statements of policy and intention that were also stated publicly by President Nixon and members of his Administration. I believe the public statements at the time were fully understood as having the same content as these letters contain.



I appreciate the sincerity of your Committee's interest in this matter. I hope you will understand the reasons for my decision.

Sincerely,



JOHN SPARKMAN, ALA., CHAIRMAN

MIKE MANSFIELD, MONT.
FRANK CHURCH, IDAHO
STUART SYMINGTON, MO.
CLAIBORNE PEEL, R.I.
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United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, D.C. 20510

May 8, 1975

PAT M. HOLT, CHIEF OF STAFF
ARTHUR M. KUHL, CHIEF CLERK

37

ACTION
is assigned to



The Honorable Henry A. Kissinger
Secretary of State
Washington, D. C. 20520

Dear Mr. Secretary:

I refer to my letter to you of March 3^H inquiring about answers from the Department to three long outstanding requests by the Committee for information, which was acknowledged on March 18 by Assistant Secretary McCloskey. Would you please inform the Committee when it can expect to receive a substantive reply to these requests.

With best wishes, I am

Sincerely,

John Sparkman
Chairman

RECEIVED
DEPARTMENT OF STATE

1975 MAY 13 PM 2 50

FABRIC
DOCUMENT ANALYSIS



P 750042-1969

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JOHN J. PICKENS, VICE CHAIRMAN

United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, D. C. 20510

March 3, 1975

ACTION

H

The Honorable Henry A. Kissinger
Secretary of State
Washington, D. C. 20520

Dear Mr. Secretary:

Would you please advise as to when the Committee can expect to receive substantive responses to the following letters to the Department, copies of which are enclosed for convenience:

1. October 23, 1974, letter from Chairman Fulbright to Secretary Kissinger requesting copies of letters from U. S. Presidents to leaders of Saudi Arabia. (No acknowledgement received).
2. November 12, 1974, letter from Chairman Fulbright to Secretary Kissinger concerning assurances made in 1972 by President Nixon to the Shah of Iran relative to sale of arms (interim reply received on December 11, 1974).
3. November 22, 1974, letter from Chairman Fulbright to Secretary Kissinger concerning procedures for treaties and international agreements (no acknowledgement received).

I am unable to understand why it has taken the Department so long to provide the information requested in these letters.

Sincerely,

John Sparkman
John Sparkman
Chairman

Enclosures



THE WHITE HOUSE

WASHINGTON

April 25, 1975

Dear Mr. Chairman:

Thank you for your letter of April 10. I welcome your desire to clear up any misunderstanding about "secret undertakings" by the United States relative to the 1973 Vietnam accords.

In light of current events in Indochina, it is worth recalling that it was the openly stated policy of the United States Government to maintain the necessary conditions for the viability of the Agreement. President Nixon and members of his Administration stated publicly and repeatedly that the United States intended to continue its aid relationship with the Republic of Vietnam and react vigorously to massive violations. I have reviewed the record of the private diplomatic communications, which naturally contained statements reflecting the same policy. Since the same policy and intentions contained in these exchanges were declared publicly, there was no secret from the Congress or the American people.

Furthermore, neither this Administration nor the previous one has ever invoked any private assurances or commitments as arguments for Congressional action. Requests for security assistance and opposition to the 1973 prohibition of the use of military force were always argued on the merits of policy. This was done in the belief that it was in our national interest to maintain the conditions essential to observance of the Vietnam Agreement. Our policy was determined by this view of our interests, not by "secret agreements" or assurances given in any secret document. Obviously, our ability to maintain this policy was subject to our own Constitutional process.



Any documents which could be construed as containing or constituting a government-to-government undertaking have been provided to the Congress.

I do not believe, therefore, that there is any basis for misunderstanding about American obligations or actions relative to the Paris Agreement; nor is this question relevant to the important policy questions we face now concerning our aid to Vietnam and, indeed, our foreign policy in the future. Inasmuch as confidentiality is an essential aspect of diplomatic intercourse, the diplomatic exchanges between the United States and the Republic of Vietnam should remain confidential within the Executive Branch. I believe our urgent task now is to face the future and leave the divisive debates over Vietnam behind us.

Sincerely,

Richard A. Ford

The Honorable John Sparkman
United States Senate
Washington, D. C. 20510



JOHN STAFFORD, R.I., CHAIRMAN
WALTER MONDALE, MONT.
CHRISTIAN LEAHY
ROBERT BYRNINGTON, MO.
ELIZABETH BELL, R.I.
DALE W. COGGER, WYO.
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ROBERT P. GRIZZIN, MICH.
HOWARD H. BAKER, JR., TENN.

United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, D.C. 20510

PAT M. HOLT, CHIEF OF STAFF
ARTHUR M. NUHL, CHIEF CLERK

April 10, 1975

Dear Mr. President:

As you know, there is much public interest about whether there are any secret understandings by the United States relative to the 1973 Vietnam Cease-fire Agreement.

In explaining the agreement at a press conference on January 24, 1973, Dr. Kissinger said: "There are no secret understandings." However, on Wednesday the White House issued a statement saying that there were "confidential exchanges between the Nixon Administration and President Thieu" at the time of the Paris agreement relative to both how the United States would react to a major violation of the agreement and about future economic and military assistance.

On a number of occasions members of the Committee on Foreign Relations have questioned Executive Branch witnesses about the agreement and related matters. For example, Secretary of State Rogers told the Committee on February 21, 1973, that the agreement would not "impose any further obligations on the United States." On May 8, Secretary of Defense Richardson, when questioned about whether there were any commitments "if the cease-fire accord in Vietnam should collapse," replied: "No."

In order to insure that there is no misunderstanding about any U. S. undertakings relative to the agreement, I believe that all of the pertinent documents should be made available to the Committee on Foreign Relations which has the responsibility for legislative oversight in matters relating to international agreements. I would appreciate your furnishing the Committee with the text of all understandings, undertakings or similar

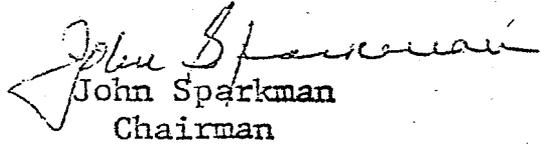


statements made by President Nixon, Dr. Kissinger, or other U. S. officials relative to the cease-fire agreement or subsequent conferences concerning that agreement.

Thank you in advance for your cooperation on this important matter.

With best wishes, I am

Sincerely,


John Sparkman
Chairman

The President
The White House



MEMORANDUM

THE WHITE HOUSE
WASHINGTON

June 16, 1975

MEMORANDUM FOR: PHIL BUCHEN
FROM: GENERAL SCOWCROFT *120*

Thank you for your memo of June 13, 1975 with your proposed reply to Senator Abourezk's request for materials relating to President Nixon's meeting of November 30, 1972, with the Secretary of Defense and Joint Chiefs.

We believe there are additional strong grounds for denying this request, in addition to the legal ground you cite in your draft. We have therefore done an alternative draft, which is attached, which adds these other arguments. I would be happy to discuss with you the precise wording, but we feel strongly that it should not be left open that this kind of President deliberation and this kind of subject matter are available for disclosure in the absence of such a court order.



THE WHITE HOUSE

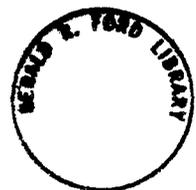
WASHINGTON

NSC DRAFT

Dear Mr. Chairman:

On behalf of the President, this is in response to your letter of June 9, 1975, in which you request that the Administration make available to the Subcommittee on Separation of Powers "any tapes or transcripts of tapes of, or any other material which in any way relates to," a meeting held on November 30, 1972, with former President Nixon, the Secretary of Defense and the members of the Joint Chiefs of Staff.

This meeting was a confidential discussion between President Nixon and his most senior national security advisers on matters concerning the conduct of a war and the negotiation of a peace. President Ford is concerned that the advice given a President by his senior advisers be frank and candid at all times and not inhibited by the prospect of publication. He considers these deliberations therefore privileged. He is also concerned that discussion of relations with foreign governments and sensitive negotiations -- matters which foreign governments almost invariably wish to remain confidential -- be held in confidence. Therefore, he feels



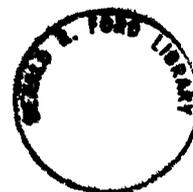
obligated as a matter of principle, by the duties of his office, to maintain the confidentiality of all such proceedings.

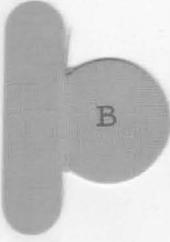
In addition, there is a problem regarding the physical disposition of such materials. Such recordings and materials, if they do exist, are part of the "Presidential materials of the Nixon Administration," and are subject to the Order of the United States District Court for the District of Columbia, entered October 21, 1974, as amended, in Nixon v. Sampson, et. al., Civil Action No. 74-1518. This Order enjoins the search, disclosure, transfer or disposal of these materials, and effectively requires that President Nixon or his agent consent to any production or use of such materials for the limited purposes specified in the Order. For this additional reason, the President regrets that he is not in a position to comply with your request.

Sincerely,

Philip W. Buchen
Counsel to the President

The Honorable James Abourezk
United States Senate
Washington, D. C. 20510





THE WHITE HOUSE

WASHINGTON

June 13, 1975

MEMORANDUM FOR: JACK MARSH
MAX FRIEDERSDORF
GENERAL SCOWCROFT ✓

FROM: PHIL BUCHEN *P.W.B.*

Attached is a proposed response for my signature to Senator Abourezk's request for a Nixon Presidential tape recording and other materials. As you may be aware, the court order prevents compliance with this request without the consent of Mr. Nixon or his counsel.

I would appreciate your concurrence or comments on this response at your earliest convenience.



June 10, 1975

Dear Senator:

This will acknowledge receipt of your letter to the President of June 9 requesting that the Subcommittee on Separation of Powers be furnished with material relating to a meeting reportedly to have been held on November 30, 1972.

You may be assured your letter will be accorded early consideration.

With kind regards,

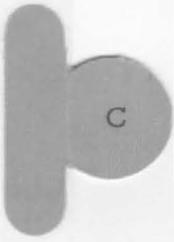
Sincerely,

William T. Kendall
Deputy Assistant
to the President

The Honorable James Abourezk
United States Senate
Washington, D. C. 20510

~~bcc: w/incoming to Philip Buchen for further action.~~
bcc: w/incoming to John Marsh - for your information.
bcc: w/incoming to Max Friedersdorf - for your information.
WTK:EF:VO:vo





C



JOHN L. MCCLELLAN, ARK.
PHILIP V. HART, MICH.
EDWARD M. KENNEDY, MASS.
E. J. BROWN, IND.
WENDELL P. BURDICK, N. DAK.
ROBERT C. BYRD, W. VA.
JOHN V. TUNNEY, CALIF.
JAMES ABOUREZK, S. DAK.

ROMAN L. Hruska, NEBR.
HIRAM L. FONG, HAWAII
HUGH SCOTT, PA.
STROM THURMOND, S.C.
CHARLES MCC. MATHIAS, JR., MD.
WILLIAM L. SCOTT, VA.

United States Senate

9

PETER M. STOCKETT
CHIEF COUNSEL AND STAFF DIRECTOR

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

June 9, 1975

The Honorable Gerald R. Ford
The White House
Washington, D. C.

Dear Mr. President:

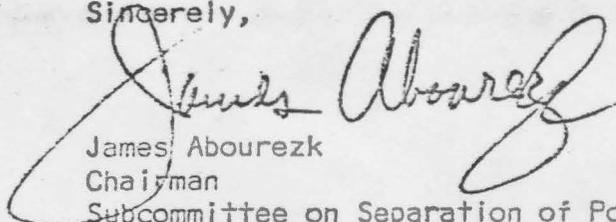
During the hearings on executive agreements held on May 13, by the Separation of Powers Subcommittee, retired Admiral Elmo Zumwalt, former Chief of Naval Operations, testified that it was "quite clear" to him that "verbal commitments had been made" to South Vietnam based on what he was told "in one meeting between the President, the Secretary of Defense and the members of the Joint Chiefs of Staff on the 30th of November 1972."

When I asked Admiral Zumwalt who had indicated that these were commitments to South Vietnam, he responded that "the best source, I suppose, Mr. Chairman, of that would be if you could get a hold of the tape." The Admiral added that it was his "recollection" that "it was implicit in a whole series of things that were said," but he was unable to recount with complete accuracy everything that was said at that meeting.

The conversations conducted at that meeting as they pertain to the making of secret commitments and to the making of international agreements obviously are crucial to this Subcommittee's study of executive agreements. Thus, we respectfully request that you make available to the Subcommittee any tapes or transcripts of tapes of, or any other material which in any way relates to, the meeting held on November 30, 1972.

Thank you for your help on this matter.

Sincerely,



James Abourezk
Chairman
Subcommittee on Separation of Powers



JUN 13 1975
me ASAP

THE WHITE HOUSE

WASHINGTON

June 13, 1975

MEMORANDUM FOR: JACK MARSH ✓
MAX FRIEDERSDORF
GENERAL SCOWCROFT

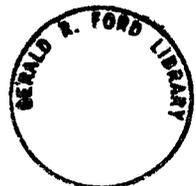
FROM: PHIL BUCHEN *T.W.B.*

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I would appreciate your concurrence or comments on this response at your earliest convenience.

Phil -
Concur, except add
word "Any" second line
2nd TP after "given"

John



THE WHITE HOUSE
WASHINGTON

Date: 6-13-75

TO: Phil Buchan

FROM: Max L. Friedersdorf

For Your Information ✓

Please Handle _____

Please See Me _____

Comments, Please _____

Other

D. K. — max

THE WHITE HOUSE

WASHINGTON

June 13, 1975

MEMORANDUM FOR:

JACK MARSH
MAX FRIEDERSDORF ✓
GENERAL SCOWCROFT

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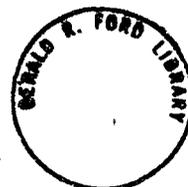


DRAFT -- 6/13/75

Dear Mr. Chairman:

On behalf of the President, this is in response to your letter of June 9, 1975, in which you request that the Administration make available to the Subcommittee on Separation of Powers "any tapes or transcripts of tapes of, or any other material which in any way relates to," a meeting held on November 30, 1972, with former President Nixon, the Secretary of Defense and the members of the Joint Chiefs of Staff.

The President has not addressed the question of the status to be given such tapes and materials insofar as his Administration is concerned. However, such recordings and materials, if they do exist, are part of the "Presidential materials of the Nixon Administration," and are subject to the Order of the United States District Court for the District of Columbia, entered October 21, 1974, as amended, in Nixon v. Sampson, et. al., Civil Action No. 74-1518. This Order enjoins the search, disclosure, transfer or disposal of these materials, and effectively requires that President Nixon or his agent consent to any production or use of such materials for the limited purposes



specified in the Order. Accordingly, we have referred your request to Mr. Herbert J. Miller, Jr., counsel to Mr. Nixon, for his consideration.

We will advise you of the position taken by Mr. Miller on this request.

Sincerely,

Philip W. Buchen
Counsel to the President

The Honorable James Abourezk
United States Senate
Washington, D. C. 20510

PWB:BNR



June 10, 1975

Dear Senator:

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You may be assured your letter will be accorded early consideration.

With kind regards,

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Deputy Assistant
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Washington, D. C. 20510

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WTK:EF:VO:vo



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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

PETER M. STOCKETT
CHIEF COUNSEL AND STAFF DIRECTOR

June 9, 1975

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The White House
Washington, D. C.

Dear Mr. President:

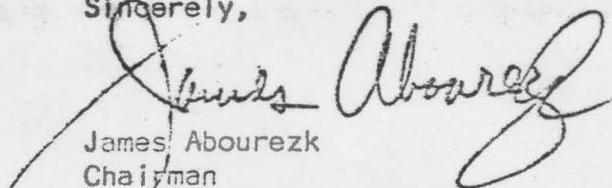
MP
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Sincerely,



James Abourezk
Chairman
Subcommittee on Separation of Powers

