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DEPARTMENT OF STATE
THE LEGAL ADVISER
WASHINGTON

June 25, 1975

MEMORANDUM FOR: MR. BUCHEN

From: Monroe Leigh *W.L.*

In accordance with your request, I have prepared a revision of the May 9 draft prepared by Les as a suggested response to the Sparkman letter.

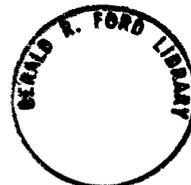
My changes consist in eliminating the last sentence of the third paragraph of Les' draft and introducing at that point one additional paragraph. All the rest is the same. A copy of my draft is attached at Tab A. A copy of Les' draft is attached at Tab B. A copy of the Nixon speech of January 23 is attached at Tab C. A copy of the Joint Communique is attached at Tab D.

As you know, Secretary Kissinger has not yet acted on the options paper on this subject now pending before him. I will advise you as soon as I know his decision. Meanwhile, this draft may be helpful in your consideration of the problem.

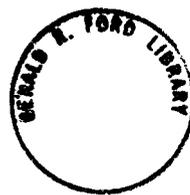
I have assumed that the response to Senator Mansfield would be identical or similar to the response to Senator Sparkman.

Attachments:

As stated.



A



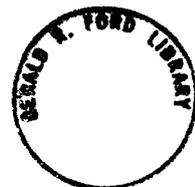
DRAFT
June 25, 1975

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.

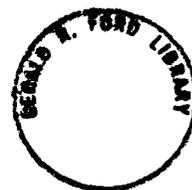
The subject matter of the correspondence and indeed of the debate over them is no longer an issue of current legislative business. As I indicated in my letter of April 25, the Administration never regarded or cited these documents as constituting a contractual agreement binding upon the Congress. The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



As a matter of fact, it is clear from reviewing the entire series of exchanges between President Nixon and President Thieu that both parties to the correspondence contemplated that the definitive expression of President Nixon's intention would be embodied in public statements by the President or members of his Administration contemporaneous with or shortly after the signing of the Paris Peace Agreement. Thus the appropriate source for determining the intent and effect of President Nixon's correspondence with President Thieu is to be found in his speech of January 23, 1973, and in the subsequent Joint Communique issued by President Nixon and President Thieu at the end of their meeting in San Clemente on April 3, 1973.

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

Sincerely,



B

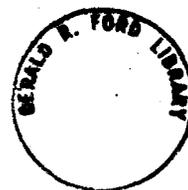
DRAFT
May 9, 1975

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,



ENDING THE WAR AND RESTORING PEACE IN VIETNAM

The President's Address to the Nation Announcing the Conclusion of an Agreement. January 23, 1973

Good evening. I have asked for this radio and television time tonight for the purpose of announcing that we today have concluded an agreement to end the war and bring peace with honor in Vietnam and in Southeast Asia.

The following statement is being issued at this moment in Washington and Hanoi:

At 12:30 Paris time today, January 23, 1973, the Agreement on Ending the War and Restoring Peace in Vietnam was initialed by Dr. Henry Kissinger on behalf of the United States, and Special Adviser Le Duc Tho on behalf of the Democratic Republic of Vietnam.

The agreement will be formally signed by the parties participating in the Paris Conference on Vietnam on January 27, 1973, at the International Conference Center in Paris.

The cease-fire will take effect at 2400 Greenwich Mean Time, January 27, 1973. The United States and the Democratic Republic of Vietnam express the hope that this agreement will insure stable peace in Vietnam and contribute to the preservation of lasting peace in Indochina and Southeast Asia.

That concludes the formal statement.

Throughout the years of negotiations, we have insisted on peace with honor. In my addresses to the Nation from this room of January 25 and May 8, I set forth the goals that we considered essential for peace with honor.

In the settlement that has now been agreed to, all the conditions that I laid down then have been met. A cease-fire, internationally supervised, will begin at 7 p.m., this Saturday, January 27, Washington time. Within 60 days from this Saturday, all Americans held prisoners of war throughout Indochina will be released. There will be the fullest possible accounting for all of those who are missing in action.

During the same 60-day period, all American forces will be withdrawn from South Vietnam.

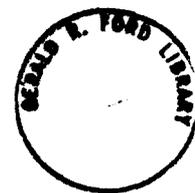
The people of South Vietnam have been guaranteed the right to determine their own future, without outside interference.

By joint agreement, the full text of the agreement and the protocols to carry it out, will be issued tomorrow.

Throughout these negotiations we have been in the closest consultation with President Thieu and other representatives of the Republic of Vietnam. This settlement meets the goals and has the full support of President Thieu and the Government of the Republic of Vietnam, as well as that of our other allies who are affected.

The United States will continue to recognize the Government of the Republic of Vietnam as the sole legitimate government of South Vietnam.

We shall continue to aid South Vietnam within the terms of the agreement and we shall support efforts by the people of South Vietnam to settle their problems peacefully among themselves.



We must recognize that ending the war is only the first step toward building the peace. All parties must now see to it that this is a peace that lasts, and also a peace that heals, and a peace that not only ends the war in Southeast Asia, but contributes to the prospects of peace in the whole world.

This will mean that the terms of the agreement must be scrupulously adhered to. We shall do everything the agreement requires of us and we shall expect the other parties to do everything it requires of them. We shall also expect other interested nations to help insure that the agreement is carried out and peace is maintained.

As this long and very difficult war ends, I would like to address a few special words to each of those who have been parties in the conflict.

First, to the people and Government of South Vietnam: By your courage, by your sacrifice, you have won the precious right to determine your own future and you have developed the strength to defend that right. We look forward to working with you in the future, friends in peace as we have been allies in war.

To the leaders of North Vietnam: As we have ended the war through negotiations, let us now build a peace of reconciliation. For our part, we are prepared to make a major effort to help achieve that goal. But just as reciprocity was needed to end the war, so, too, will it be needed to build and strengthen the peace.

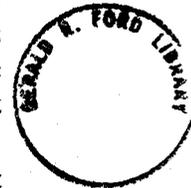
To the other major powers that have been involved even indirectly: Now is the time for mutual restraint so that the peace we have achieved can last.

And finally, to all of you who are listening, the American people: Your steadfastness in supporting our insistence on peace with honor has made peace with honor possible. I know that you would not have wanted that peace jeopardized. With our secret negotiations at the sensitive stage they were in during this recent period, for me to have discussed publicly our efforts to secure peace would not only have violated our understanding with North Vietnam, it would have seriously harmed and possibly destroyed the chances for peace. Therefore, I know that you now can understand why, during these past several weeks, I have not made any public statements about those efforts.

The important thing was not to talk about peace, but to get peace and to get the right kind of peace. This we have done.

Now that we have achieved an honorable agreement, let us be proud that America did not settle for a peace that would have betrayed our allies, that would have abandoned our prisoners of war, or that would have ended the war for us but would have continued the war for the 50 million people of Indochina. Let us be proud of the 2½ million young Americans who served in Vietnam, who served with honor and distinction in one of the most selfless enterprises in the history of nations. And let us be proud of those who sacrificed, who gave their lives so that the people of South Vietnam might live in freedom and so that the world might live in peace.

In particular, I would like to say a word to some of the bravest people I have ever met—the wives, the children, the families of our prisoners of war and the missing in action. When others called on us to



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settle on any terms, you had the courage to stand for the right kind of peace so that those who died and those who suffered would not have died and suffered in vain, and so that where this generation knew war, the next generation would know peace. Nothing means more to me at this moment than the fact that your long vigil is coming to an end.

Just yesterday, a great American, who once occupied this office, died. In his life President Johnson endured the vilification of those who sought to portray him as a man of war. But there was nothing he cared about more deeply than achieving a lasting peace in the world.

I remember the last time I talked with him. It was just the day after New Year's. He spoke then of his concern with bringing peace, with making it the right kind of peace, and I was grateful that he once again expressed his support for my efforts to gain such a peace. No one would have welcomed this peace more than he.

And I know he would join me in asking for those who died and for those who live, let us consecrate this moment by resolving together to make the peace we have achieved a peace that will last.

Thank you and good evening.

NOTE: The President spoke at 10:01 p.m. in his Oval Office at the White House. The address was broadcast live on radio and television.



VISIT OF PRESIDENT NGUYEN VAN THIEU OF THE REPUBLIC OF VIETNAM

Joint Communiqué by President Nixon and President Thieu Following Their Meetings at the Western White House. April 3, 1973

The President of the United States, Richard M. Nixon, and the President of the Republic of Vietnam, Nguyen Van Thieu, met for two days of discussions in San Clemente at the outset of President Thieu's official visit to the United States. Taking part in these discussions on the United States side were the Secretary of State, William P. Rogers; the Assistant to the President for National Security Affairs, Henry A. Kissinger; the Ambassador of the United States to the Republic of Vietnam, Ellsworth Bunker; the Ambassador-designate of the United States to the Republic of Vietnam, Graham Martin; and other officials. On the side of the Republic of Vietnam the Minister for Foreign Affairs, Tran Van Lam; the Minister of Economy, Pham Kim Ngoc; the Minister of Finance, Ha Xuan Trung; the Special Assistant to the President for Foreign Affairs, Nguyen Phu Duc; the Vietnamese Ambassador to the United States, Tran Kim Phuong, and other officials also participated in the discussions.

The discussions were held in a very cordial atmosphere appropriate to the enduring relationship of friendship which exists between the governments of the Republic of Vietnam and the United States. The two Presidents discussed the course of U.S.-Vietnamese relations since their meeting at Midway Island on June 8, 1969 and the postwar relationship between the two countries. They reached full consensus in their views.

President Nixon and President Thieu reviewed the progress that has been made in economic, political and defense affairs in Vietnam since the Midway meeting. President Nixon expressed gratification with the proficiency of South Vietnam's armed forces and noted their effective and courageous performance in halting the invasion launched by North Vietnam on March 30, 1972. The President also expressed satisfaction with the development of political institutions and noted the political



stability that has prevailed in South Vietnam in recent years. President Thieu reaffirmed his determination to assure social and political justice for the people of South Vietnam.

The two Presidents expressed their satisfaction at the conclusion of the Agreement on Ending the War and Restoring Peace in Vietnam, as well as the Act of the International Conference on Vietnam which endorsed this Agreement. They asserted the determination of their two governments to implement the provisions of the Agreement scrupulously. They also affirmed their strong expectation that the other parties signatory to the Agreement would do the same in order to establish a lasting peace in Vietnam. The two Presidents expressed their appreciation to the other members of the international community who helped in achieving the Agreement and particularly to the four member governments of the International Commission of Control and Supervision whose representatives are observing its implementation. They consider that the International Commission, acting in cooperation with the Four Parties to the Agreement, is an essential element in the structure of restoring peace to Vietnam and expressed their determination to further encourage the most effective and objective possible supervision of the Agreement.

President Nixon informed President Thieu of his great interest in the meetings between representatives of the two South Vietnamese parties which are currently taking place in France in an effort to achieve an internal political settlement in South Vietnam. President Thieu said that his government is resolved at these meetings to achieve a settlement which will fully insure the right of self-determination by the South Vietnamese people in accordance with the Agreement on Ending the War. President Thieu expressed his earnest desire for a reconciliation among the South Vietnamese parties which will fulfill the hopes of the South Vietnamese people for peace, independence, and democracy.

Both Presidents, while acknowledging that progress was being made toward military and political settlements in South Vietnam, nevertheless viewed with great concern infiltrations of men and weapons in sizeable numbers from North Vietnam into South Vietnam in violation of the Agreement on Ending the War, and considered that actions which would threaten the basis of the Agreement would call for appropriately vigorous reactions. They expressed their conviction that all the provisions of the Agreement, including in particular those concerning military forces and military supplies, must be faithfully implemented if the cease-fire is to be preserved and the prospects for a peaceful settlement are to be assured. President Nixon stated in this connection that the United States views violations of any provision of the Agreement with great and continuing concern.

Both Presidents also agreed that there could be lasting peace in Vietnam only if there is peace in the neighboring countries. Accordingly they expressed their earnest interest in the achievement of a satisfactory implementation of the cease-fire agreement reached in Laos on February 21. They expressed their grave concern at the fact that Article 20 of the Agreement which calls for the unconditional withdrawal of all foreign forces from Laos and Cambodia has not been carried out. They agreed that this Article should be quickly implemented.

In assessing the prospects for peace throughout Indochina the two Presidents stressed the need for vigilance on the part of the governments



in the Indochinese states against the possibility of renewed Communist aggression after the departure of United States ground forces from South Vietnam. They stressed the fact that this vigilance will require the continued political, economic, and military strength of the governments and nations menaced by any renewal of this aggressive threat. Because of their limited resources, the nations of the region will require external assistance to preserve the necessary social and economic stability for peaceful development.

In this context, President Thieu affirmed the determination of the Vietnamese people and the Government to forge ahead with the task of providing adequate and timely relief to war victims, reconstructing damaged social and economic infrastructures, and building a strong and viable economy, so that the Vietnamese nation can gradually shoulder a greater burden in the maintenance of peace and the achievement of economic progress for its people. The two Presidents agreed that in order to attain the stated economic goals as quickly as possible, the Republic of Vietnam will need greater external economic assistance in the initial years of the post war era. President Nixon reaffirmed his wholehearted support for the endeavors of post war rehabilitation, reconstruction and development of the Republic of Vietnam. He informed President Thieu of the United States intention to provide adequate and substantial economic assistance for the Republic of Vietnam during the remainder of this year and to seek Congressional authority for a level of funding for the next year sufficient to assure essential economic stability and rehabilitation for that country as it now moves from war to peace. He recognized that the economic development and self-sufficiency of South Vietnam depend to a significant extent on its ability to promote and attract foreign investment. He also expressed his intention to seek Congressional support for a longer range program for the economic development of South Vietnam now that the war has ended.

The two Presidents expressed their earnest hope that other nations as well as international institutions will act promptly on a positive and concerted program of international assistance to the Republic of Vietnam. They also agreed that consultations should soon be held in this regard with all interested parties.

The two Presidents expressed hope that the implementation of the Agreement on Vietnam would permit a normalization of relations with all countries of Southeast Asia. They agreed that this step and a regional reconstruction program will increase the prospects of a lasting peace in the area.

President Nixon discussed the future security of South Vietnam in the context of the Nixon Doctrine. The President noted that the assumption by the Republic of Vietnam of the full manpower requirements for its own defense was fully in keeping with his doctrine. He affirmed that the United States for its part, expected to continue, in accordance with its Constitutional processes, to supply the Republic of Vietnam with the material means for its defense consistent with the Agreement on Ending the War.

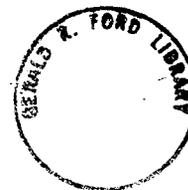
President Thieu asked President Nixon to convey to the American people and particularly to families bereaved by the loss of loved ones, the deep and abiding appreciation of the people of South Vietnam for the sacrifices made on their behalf and the assistance given to the Republic

of Vietnam in its long struggle to maintain its freedom and preserve its right of self-determination.

Prior to the departure of President Thieu for Washington to continue his official visit to the United States, both Presidents agreed that through the harsh experience of a tragic war and the sacrifices of their two peoples a close and constructive relationship between the American and the South Vietnamese people has been developed and strengthened. They affirmed their full confidence that this association would be preserved as the foundation of an honorable and lasting peace in Southeast Asia.

President Thieu expressed his gratitude for the warm hospitality extended to him and his party by President Nixon.

NOTE: The joint communiqué was released at San Clemente, Calif.



THE WHITE HOUSE

WASHINGTON

June 27, 1975

Mr. Buchen:

Barry brought this over. He said that in his memo Les Jenka suggested that you mention Senator Mansfield letter in your letter to Senator Sparkman.

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, AIA., CHAIRMAN

MIKE MANSFIELD, MONT.
FRANK CHUNSH, IDAHO
STUART SYMINGTON, MO.
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United Sta

COMMITTEE ON FO
WASHINGTON.

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

June 2, 1975

Dear Mr. President:

MF
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.

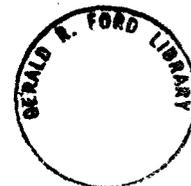
On May 20 the Committee discussed this matter further and by agreement of all Members present decided to make a complete study of all aspects of the commitments question. In view of this action, the Committee respectfully reiterates its request for copies of all pertinent documents. I hope that upon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



[Handwritten signature]

June 27, 1975

Dear Senator Abourezk:

On behalf of the President, I would like to thank you for your letter of June 13, 1975, in which you renew the request of the Subcommittee on Separation of Powers for copies of letters sent by President Nixon to President Thieu during 1972-73.

Although the President fully appreciates the concerns of the Subcommittee in this matter, he has asked me to advise you that he must again decline this request for the reasons stated in his letter to you of May 27.

Let me assure you once more that this Administration will continue to provide to the Congress documents which could be construed as continuing or constituting government-to-government understandings, in accordance with P.L. 92-403. With respect to our previous commitments in Southeast Asia, this has already been done.

Sincerely,

Philip W. Buchen
Counsel to the President

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

bcc: Brent Scowcroft
John Marsh
Max Friedersdorf
William Kendall
Monroe Leigh (State Dept.)
Les Janka - NSC

PWB:BNR:bw



RECEIVED
JUN 28 1975
CENTRAL FILES

A letter has gone to the President for his signature to Senator Sparkman.

Should this material from Leigh, Janka, et al be filed in Sparkman or NIXON-THIEU or should welll, I'm tired of thinking.

THE WHITE HOUSE
WASHINGTON

*Nixon-Thieu
Letters*

July 1, 1975

MEMORANDUM FOR:

THE PRESIDENT

FROM:

PHILIP BUCHEN *P.W.B.*

SUBJECT:

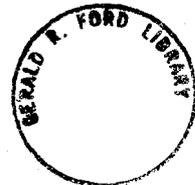
Response to Request by Senators
Sparkman and Mansfield for
Text of Nixon-Thieu Letters

Attached at Tab A is an incoming letter from Senator Sparkman of May 1 and attached at Tab B is a copy of an incoming letter from Senator Mansfield of June 2.

We have delayed preparing an answer to these two letters pending a careful review of the material requested by Monroe Leigh, General Counsel of the Department of State. This whole problem is tied up with various inquiries going on in the Congress relative to the possibility of legislation requiring the Executive Branch to file with the Congress all manner of undertakings with foreign governments, just as it is now required to do under the Case Act for formal Executive agreements.

Attached at Tab C is a proposed response for your signature, which has been approved by General Scowcroft, Monroe Leigh, and me.

Attachments



July 1, 1975

Dear John:

I have given careful thought to your letter of May 1 and Mike Mansfield's of June 2, 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.

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.

As a matter of fact, it is clear from the entire series of exchanges between President Nixon and President Thieu that both parties to the correspondence contemplated that the definitive expression of President Nixon's intention would be embodied in public statements



by the President or members of his Administration contemporaneous with or shortly after the signing of the Paris Peace Agreement. Thus the appropriate source for determining the intent and effect of President Nixon's correspondence with President Thieu is to be found in his speech of January 23, 1973, and in the subsequent Joint Communiqué issued by President Nixon and President Thieu at the end of their meeting in San Clemente on April 3, 1973.

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

Sincerely,

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

GRF:PWB:jem

cc: Senator Mansfield



CLAIBORNE PELL, R.I.
CALE W. MC GEE, WYO.
GEORGE MC GOVERN, S. DAK.
MURKENT H. HUMPHREY, MINN.
DICK CLARK, IOWA
JOSEPH R. BIDEN, JR., DEL.

JAMES D. EASTLAND, MISS.
CHARLES H. PERCY, ILL.
ROBERT P. GRIFFIN, 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. KUHL, CHIEF CLERK

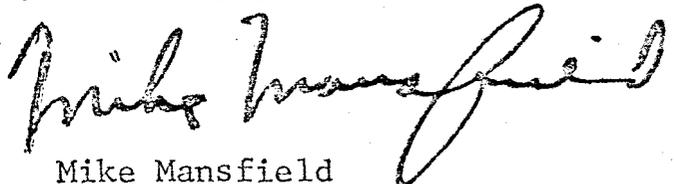
June 2, 1975

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



JANT SYMINGTON, MO.
LAIBORNE PELL, R.I.
GALE W. MC GEE, WYO.
GEORGE MC GOVERN, S. DAK.
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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 re-consideration you will furnish these documents to the Committee.

With best wishes, I am

Sincerely,


John Sparkman
Chairman

The President
The White House



THE WHITE HOUSE
WASHINGTON

July 2, 1975

Blk. Book
RECEIVED

JUL 3 3 04 PM '75

OFFICE OF LEGAL COUNSEL

MEMORANDUM FOR:

JACK MARSH
BRENT SCOWCROFT
MONROE LEIGH
NINO SCALIA ✓

FROM:

PHILIP BUCHEN *P.W.B.*

Attached is an incoming letter from Senator Abourezk dated June 30, 1975, together with a copy of the June 17, letter from me.

We will be working on the issues raised concerning the effect of Judge Richey's order. At the same time, I would like your comments and suggestions concerning the other points made in this letter, so that a response will be ready in final form by July 8.

Attachments



86

JAMES O. EASTLAND, MISS., CHAIRMAN

JOHN L. MCCLELLAN, ARK. ROMAN L. HRUSKA, NEBR.
PHILIP A. HART, MICH. HIRAM L. FONG, HAWAII
EDWARD M. KENNEDY, MASS. HUGH SCOTT, PA.
BIRCH BAYH, IND. STROM THURMOND, S.C.
QUENTIN N. BURDICK, N. DAK. CHARLES MC C. MATHIAS, JR., MD.
ROBERT C. BYRD, W. VA. WILLIAM L. SCOTT, VA.
JOHN V. TUNNEY, CALIF.
JAMES ABDOUREZK, S. DAK.

United States Senate

PETER M. STOCKETT
CHIEF COUNSEL AND STAFF DIRECTOR

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

June 30, 1975

Philip W. Buchen, Esquire
Counsel to the President
The White House
Washington, D. C.

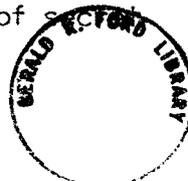
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You note that the material requested is subject to the October 21, 1974, Order of the Court in Nixon v. Sampson which you state "enjoins the search, disclosure, transfer or disposal of these materials, and effectively requires that President Nixon or his agent consent to any production or use of such materials for the limited purposes specified in the Order." In accordance with this determination you state that you have referred my "request to Mr. Herbert J. Miller, Jr., Counsel to Mr. Nixon, for his consideration before the matter of disclosure can be considered by this Administration."

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Philip W. Buchen, Esquire

June 30, 1975 - Page Two

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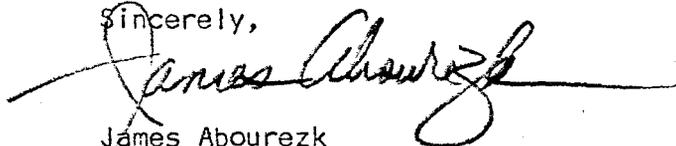
Overriding policy reasons which have been recognized by the Supreme Court - especially Congressional access to information which will aid it in performing its legislative function - also mandate your granting my request. To refuse to provide the requested information would fly in the face of the Court's assertion in Watkins v. United States, 354 U.S. 178, 187 (1957) that: "It is unquestionably the duty of all citizens to cooperate with Congress in its efforts to obtain the facts needed for intelligent legislative action." I would submit that your position, as a public servant, imposes an especially heavy duty upon you and compels consent.

Furthermore, when the Subcommittee requested copies of the Nixon-Thieu correspondence of late 1972 and early 1973, you responded by denying my request on the grounds 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." I cannot accept your premise that public statements about government policy decisions are grounds for denying Congressional access to the documents which formed the basis of such decisions. Nevertheless, your statement evidences the conviction that the material I presently seek is not Mr. Nixon's private information but rather constitutes material which was used in the conduct of foreign policy and which is in the public domain.

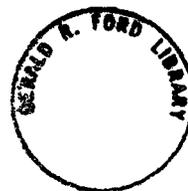
In light of Judge Richey's Order and because of the facts and policy and practical reasons stated above, I respectfully request that you consent to the prompt disclosure of the material which the Subcommittee seeks. Since Mr. Monroe Leigh will reappear to testify before this Subcommittee on July 15 and since we shall need the material requested in order to prepare for his appearance, I ask that you respond by close of business on July 8.

Thank you for your cooperation on this matter.

Sincerely,



James Abourezk
Chairman
Subcommittee on Separation of Powers



THE WHITE HOUSE

WASHINGTON

June 17, 1975

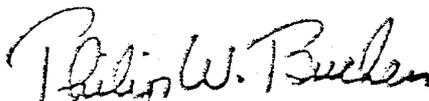
Dear Mr. Chairman:

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 and decided the question of the status to be given any such tapes and materials insofar as his Administration is concerned, and he cannot do so without first having learned the exact nature and the contents of the materials, if they do exist. 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 before the matter of disclosure can be considered by this Administration.

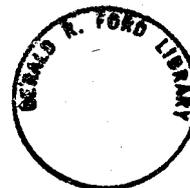
We will advise you of the position taken by Mr. Miller on this request.

Sincerely,



Philip W. Buchen
Counsel to the President

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



JAMES O. EASTLAND, MISS., CHAIRMAN
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WILLIAM L. SCOTT, VA.

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

Handwritten signature: Stille, June 30

PETER M. STOCKETT
CHIEF COUNSEL AND STAFF DIRECTOR

June 30, 1975

Philip W. Buchen, Esquire
Counsel to the President
The White House
Washington, D. C.

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Philip W. Buchen, Esquire
June 30, 1975 - Page Two

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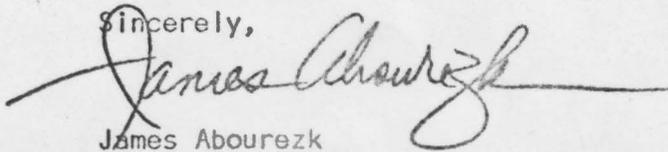
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Furthermore, when the Subcommittee requested copies of the Nixon-Thieu correspondence of late 1972 and early 1973, you responded by denying my request on the grounds that "President Nixon and members of his Administration stated publicly and repeatedly 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." I cannot accept your premise that public statements about government policy decisions are grounds for denying Congressional access to the documents which formed the basis of such decisions. Nevertheless, your statement evidences the conviction that the material I presently seek is not Mr. Nixon's private information but rather constitutes material which was used in the conduct of foreign policy and which is in the public domain.

In light of Judge Richey's Order and because of the facts and policy and practical reasons stated above, I respectfully request that you consent to the prompt disclosure of the material which the Subcommittee seeks. Since Mr. Monroe Leigh will reappear to testify before this Subcommittee on July 15 and since we shall need the material requested in order to prepare for his appearance, I ask that you respond by close of business on July 8.

Thank you for your cooperation on this matter.

Sincerely,



James Abourezk
Chairman
Subcommittee on Separation of Powers



THE WHITE HOUSE
WASHINGTON

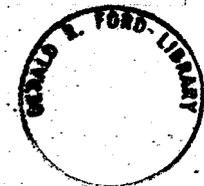
July 9, 1975

MEMORANDUM FOR: DON RUMSFELD
JACK MARSH
MAX FRIEDERSDORF
GENERAL SCOWCROFT

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

Attached is a proposed response for my signature to Senator Abourezk's renewed request for a Nixon Presidential recording. I would appreciate your concurrence or comments on this response at your earliest convenience.

Attachment



*Abourezk,
James
(Cong.)*

DRAFT

July 9, 1975

Dear Senator Abourezk:

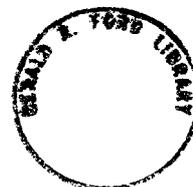
Thank you for your letter of June 30, 1975, regarding the request of the Subcommittee on Separation of Powers for certain conversations which you indicate took place on November 30, 1972.

While we appreciate having the benefit of your interpretation of the Order of the United States District Court, as amended, in Nixon v. Sampson, et. al., it is the understanding of this office and the Department of Justice that your interpretation is not consistent with the intended purposes of this Order.

In addition to the provisions of the Order that you cite in your letter, the Order also states the following:

"FURTHER ORDERED, that Plaintiff Richard M. Nixon, or his attorney, shall be afforded access to said materials under current access procedures established by Defendants for the sole purposes of preparing to testify in the Watergate trial and determining whether to raise any privileges or defenses he believes he might have in opposition to production of said materials for current government business or pursuant to requests by the Special Prosecutor or to validly -issued subpoenas, discovery demand or a court order....

* * * *



"FURTHER ORDERED, that any search conducted for purposes of producing or using said materials as provided in this Order shall be conducted jointly by Defendant Philip W. Buchen, or his agent, and counsel for Plaintiff Richard M. Nixon, or his agent, and said persons shall take such steps as are necessary to assure materials will in no way destroy or affect the original character of any of the materials, including tapes, documents or other papers referred to herein;"
(Supplemental Order of October 22, 1974)

Enclosed is a letter to me from Mr. Herbert J. Miller, Jr., counsel for Mr. Nixon, dated July 2, 1974, in which he strenuously objects to the requested unilateral review of the Nixon Presidential tape recordings. I am a named defendant in this litigation and, therefore, I am restrained from unilaterally reviewing these recordings on the basis of your letter request.

As I indicated to you in my letter of June 17, the President has neither addressed nor decided the question of the status to be given any such tapes and materials insofar as his Administration is concerned. Until we are able to learn the precise nature of the contents of these materials, he cannot make that decision.

In view of Mr. Miller's position in this regard, we are unable to comply with your request at this time.

Sincerely,

Philip W. Buchen
Counsel to the President



LAW OFFICES
MILLER, CASSIDY, LARROCA & LEWIN
2555 M STREET, N.W. - SUITE 500
WASHINGTON, D. C. 20037

AREA CODE 202
TELEPHONE 293-6400

HERBERT J. MILLER, JR.
JOHN JOSEPH CASSIDY
RAYMOND G. LARROCA
NATHAN LEWIN
MARTIN D. MINSKER
WILLIAM H. JEFFRESS, JR.
THOMAS D. ROWE, JR.
R. STAN MORTENSON
THOMAS B. CARR

JOSEPH S. MCCARTY
COURTNEY A. EVAN
OF COUNSEL

July 2, 1975

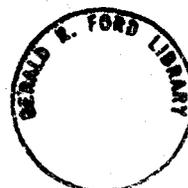
Philip W. Buchen
Counsel to the President
The White House
Washington, D. C.

Attention: Mr. Casselman

Dear Mr. Casselman:

I have been informed by your office that in a letter dated June 30, 1975, Senator James Abourezk re-asserted a previously desired request for access to a tape recording of a November 30, 1972 meeting among then-President Nixon, Secretary of Defense and the Joint Chiefs of Staff. I understand that Senator Abourezk's letter states that your prior denial, based upon our refusal to consent to such access was inappropriate because his request constitutes a demand for access for purposes of current government business and thus President Nixon's consent is not required under the outstanding court orders.

I am writing to inform you that, on behalf of former President Nixon, I strenuously object to the Senator's request for access to my client's presidential materials and accordingly will not waive my right to be present during the search that would be a necessary prerequisite to complying with the Senator's demand. Notwithstanding Senator Abourezk's characterization of his request, it is not, in my opinion, for "purposes of current government business" as that term is to be construed in the order of the United States District Court for the District



Philip W. Buchen

Page Two

July 2, 1975

of Columbia in Nixon v. Sampson, dated October 22, 1974. The limited scope of the "current government business" provision and the understanding thereof by the parties who participated in the formulation of that order is reflected by the fact that the Special Prosecutor, who is a party to the Nixon v. Sampson litigation, has not had access to the presidential materials under the "current government business" provision of the order and has not attempted to invoke that provision to gain access. At minimum, the Senator's request stands on the same footing as requests for access to the presidential materials by the Special Prosecutor. Because the Senator's request does not qualify under the "current government business" provision, Mr. Nixon's or my consent is required before access by the Senator to any of the presidential materials can be permitted. You do not have that consent.

In light of the foregoing, I must inform you that if steps are taken to permit production of these materials to Senator Abourzek despite my stated objection, I will seek appropriate sanctions for violation of the outstanding restraining orders or take such other action as I deem necessary to preserve my client's rights.

Sincerely,


Herbert J. Miller, Jr.

HJM/sl



JOHN L. MAC CLELLAN, ARK.
PHILIP A. HARVEY, MICH.
EDWARD MCKENNEY, MASS.
BIRCH BAYNE, IND.
QUINTIN N. RUPPICK, N. DAK.
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United States Senate

PETER M. STOCKETT
CHIEF COUNSEL AND STAFF DIRECTOR

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

June 30, 1975

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Philip W. Buchen, Esquire
June 30, 1975 - Page Two

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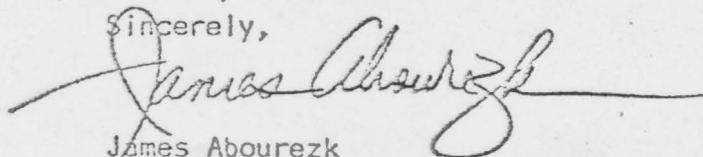
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Sincerely,



James Abourezk
Chairman
Subcommittee on Separation of Powers



June 17, 1975

Dear Mr. Chairman:

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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
Chairman, Subcommittee on Separation
of Powers Judiciary Committee
United States Senate
Washington, D. C. 20510

bcc: General Scowcroft
Jack Marsh
Max Friedersdorf
Mr. Herbert J. Miller, Jr.



June 9, 1975

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

Dear Mr. President:

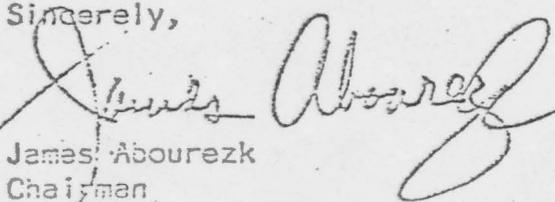
During the hearings on executive agreements held on May 13, by the Separation of Powers Subcommittee, retired Admiral Elmo Zumwalt, former Chief of Naval Operations, testified that it was "quite clear" to him that "verbal commitments had been made" to South Vietnam based on what he was told "in one meeting 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

