

The original documents are located in Box 27, folder “National Security Council - Requests for Access to Records (1)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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NSC
1490

MEMORANDUM

NATIONAL SECURITY COUNCIL

3/14
Sent to
Bill
Cassidy

March 13, 1975

MEMORANDUM FOR: PHILIP W. BUCHEN
FROM: Jeanne W. Davis
SUBJECT: Request for Papers from the Nixon Administration

The NSC staff has received the attached Freedom of Information Act request for the declassification and release of cables containing exchanges between President Nixon and Mr. Kissinger in December 1972 while Mr. Kissinger was in Paris negotiating the settlement in Vietnam.

Since these cables are considered part of the papers of President Nixon, we are uncertain about our responsibilities in processing this FOI inquiry. We would therefore appreciate guidance from White House Counsel as to how we should respond to this and similar requests for White House documents originated during the Nixon Administration.

We must reply to the pending request by March 24 so would appreciate a response from your office by next Friday, March 21.



HOOVER INSTITUTION

ON WAR, REVOLUTION AND PEACE

Stanford, California 94305



Mr. Stephen Sancke
National Security Council
Washington, D. C.

March 6, 1975

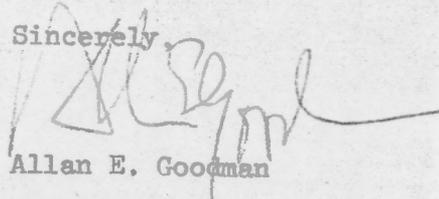
Dear Mr. Sancke:

I am writing to see if it would be possible to make some material bearing on the Vietnam negotiations available to me under the terms of the Freedom of Information Act. I think the material in question important to have on the public record in light of the controversy reference to it has generated.

The material in question concerns telegrams from Henry Kissinger to President Nixon in early December 1972 (i.e., 4 or 5 December is my guess) and one sent to Kissinger from the President in response. Charles Colson described the former cable as including the sentences "Start the bombing immediately. These madmen have double-crossed us." Mr. Colson said the latter cable instructed Kissinger to "keep negotiating."

Obviously, these telegrams form an important part of the history I am trying to write (a project description is enclosed for your information), and your consideration of this request is greatly appreciated. I should also add that after talking with Dan Brown at the Department of State and learning of the results of his search of both the Central files and those maintained in the Secretariat, it was my guess that the telegrams in question would be held in the National Security Council.

Sincerely,


Allan E. Goodman

AEG:ljl

Enclosure



The Vietnam Negotiations
Allan E. Goodman
Department of Government and International Relations
Clark University

The Vietnam war was negotiated over almost as long as it was fought. Yet, the contribution of negotiations to a political settlement in Vietnam is one of the least discussed aspects of the war. This is also the case in the literature on the more than 50 internal and regional wars that have occurred since 1945. While the need to negotiate with Communist and revolutionary political forces has actually increased and the incidence of regional and internal wars has not declined, little is being distilled from the Vietnam experience about the prerequisites for and the role of negotiations in conflicts where the US has an overriding interest in promoting political settlements.

A political settlement in Vietnam now depends on whether negotiations provide both sides with incentives to limit fighting and shift the conflict from the military to the political arena. The private talks from 1969-1972 and the January and June 1973 Kissinger-Tho agreements focussed on limiting warfare; normalization of relations between the adversaries and creation of modalities for a political settlement are still ahead.

While much can be gleaned from the public record -- it is far richer than that available even now on the 1954 Geneva Conference -- interviews with principals in the public and private talks are crucial to assessing what lessons the negotiators think should be learned from Vietnam. The following questions, therefore, are central to my study:

- what produces a committment to seek a negotiated settlement;
- what types of issues are negotiable;
- what role do battlefield developments, detente, and domestic politics play in determining the course of negotiations;
- what difficulties are unique to negotiating with Communist states and revolutionary political forces; and,
- what role do the negotiators think diplomacy can play in promoting political settlements to internal and regional wars?

Such questions are designed to make possible both an assessment of the bases for peace in Vietnam and the lessons of the experience most applicable to future conflicts.

This study is supported by the Hoover Institution on War, Revolution, and Peace of Stanford University where I will be in residence as a National Fellow for 1974-1975.



Allan E. Goodman
Clark University
Worcester, Mass.

Allan E. Goodman is a foreign policy analyst and student of problems of social and political change. His special interests are in U.S. foreign assistance and defense doctrines, diplomacy and negotiation during limited wars, the causes and consequences of Soviet-American detente, the political consequences of urbanization, and the contribution that national legislatures can make to political integration in praetorian polities.

Prior to joining the faculty of Clark University in 1970 and where he is now Chairman of the Department of Government and International Relations and Faculty Parliamentarian, Mr. Goodman worked as a consultant on Vietnamese Affairs to the US Department of State and the RAND Corporation and as Foreign Affairs Assistant for Thailand in the State Department. Mr. Goodman also served briefly as a Civilian Executive Assistant to the Deputy Chief of Staff (Plans and Programs) of the United States Marine Corps. In 1974-75, Mr. Goodman will be a National Fellow at the Hoover Institution on War, Revolution, and Peace at Stanford University.

Mr. Goodman is the author of Politics in War: The Bases of Political Community in South Vietnam (Cambridge: Harvard University Press, 1973) and edited Indochina in Conflict: A Political Assessment (Lexington, Mass: D.C. Heath, 1972). He has contributed articles on Vietnam, foreign policy, and problems of political change to a large number of books and journals, including ORBIS, Public Administration Review, Asian Survey, Pacific Affairs, Yale Review, Economic Development and Cultural Change, Southeast Asia, Naval War College Review, Asia Quarterly, Freedom at Issue, and the Journal of Comparative Administration. He is on the Editorial Board of Asian Survey and the International Advisory Board of the Korean Institute of International Studies. Mr. Goodman is a guest editorial page columnist for The Christian Science Monitor and has been a witness on WGBH-TV's The Advocates.

Born in 1944 in New York City, Mr. Goodman received a B.S. (with honours) from Northwestern University in 1966, an M.P.A. from the John F. Kennedy School of Government at Harvard University in 1968, and his Ph.D. in Government from Harvard in 1971. He received a Harvard Book Prize in 1962, a letter of commendation from the U.S. Marine Corps in 1965, the Clarion DeWitt Hardy Public Service Medal from Northwestern University in 1966, and an Outstanding Young Leader Award from the Worcester Jaycees in 1973. He is a member of the American Political Science Association, the Association for Asian Studies, The American Foreign Service Association, and the Societe des Etudes Indochinoises of Saigon. He has traveled and lectured in England, Belgium, South Vietnam, Japan, Hong Kong, Laos, Thailand, Cambodia, Indonesia and Korea.



NSC

THE WHITE HOUSE

3/17/75

TO: Phil Buchen

FROM: Bill Casselman

Information _____

Action:

As appropriate _____

See me _____

Prepare reply _____

Concur and return _____

This will confirm the oral advice

which I gave to Jeanne Davis on Friday.



THE WHITE HOUSE
WASHINGTON

Classified material attached

March 17, 1975

MEMORANDUM FOR:

Jeanne Davis

THRU:

Phil Buchen *P.W.B.*

FROM:

Bill Casselman *BC*

This is in reply to your memorandum of March 13, 1975 for an opinion of this office. You have asked whether, in responding to a request made under the Freedom of Information Act (5 U.S.C. 522) for a classified record, the requested record must be reviewed as to the sufficiency of its classification when it would otherwise appear to be exempted from disclosure by subsection (b)(5) of the Act or on the basis of Executive privilege.

The record in question is a report on the post-Tet situation in Vietnam prepared in February 1968 for President Johnson, at his direction, by General Wheeler, Chairman of the Joint Chiefs of Staff. The document appears to have been classified by the Department of Defense (DoD), which is now seeking the views of the National Security Council (NSC) and the White House as to its possible declassification and release.

As a general proposition, there is no legal requirement to review the classification of a record which an agency intends to withhold under an exemption of the Act other than the exemption provided in subsection (b)(1) for classified material. (Of course, any document sought under the mandatory review provisions of Executive Order 11652 (March 8, 1972), as amended, governing the classification and declassification of national security information, would require processing in accordance with that Order).

On the facts presented here, however, it is extremely doubtful that the (b)(5) exemption, regarding inter and intra agency memoranda, would be sufficient to permit the total withholding of the record involved.

Classified material attached



Recent court decisions have diminished the scope of the exemption to apply only to communications that evidence the "administrative policy-making process" within an agency, and not to an actual agency decision or the factual material used in arriving at that decision.¹ Since the report in question appears to contain a considerable amount of factual information, albeit classified, it would seem that the (b)(5) exemption would not be a complete one.

Therefore, with respect to the remaining factual material, it would be necessary for the classifying agency, in this case DoD, to review the remaining factual portions of the report if it wished to withhold those portions under (b)(1). Although DoD may seek the assistance of the NSC and the White House in conducting this review, the responsibility is principally that of the classifying agency.

With respect to your inquiry regarding Executive privilege, it would be inappropriate in our view to assert such a privilege to protect the report in question. The term "Executive privilege" is generally applied to the invocation by the Executive branch of its right, based on the constitutional doctrine of separation of powers, to withhold official information from the Legislative or Judicial branches of the Government. The mere fact that a record may have been prepared as a classified report for the President by an agency does not permit the invocation of Executive privilege, absent an actual case in litigation and a compelling reason to invoke the privilege.

Because of the serious separation of powers issues which are raised in such situations, the traditional guidance from the Department of Justice has been that Executive privilege is to be asserted rarely and only after the most careful consideration. It is difficult to imagine a circumstance arising out of a Freedom of Information Act request where the assertion of the privilege would be necessary, since the Act's exemptions usually cover situations in which the need for privilege arises--as would appear to be the case here. Thus, we would advise that, except with respect to the most confidential communications between the President and his advisors, not otherwise protected under exemptions to the Freedom of Information Act, that you not seek to invoke Executive privilege.

1. M. A. Schapiro & Co. v. SEC, 339 F. Supp. 467 (D.D.C. 1972); Consumers Union v. Veterans Administration, 301 F. Supp. 796 (S.D.N.Y. 1969), appeal dismissed, 436 F.2d 1363 (2d Cir. 1970).



~~CONFIDENTIAL~~
WITH ATTACHMENT

THE WHITE HOUSE
WASHINGTON
June 12, 1975

Nsc
Freedom of Information

MEMORANDUM FOR: JIM CANNON
THROUGH: PHIL BUCHEN *P.W.B.*
FROM: DUDLEY CHAPMAN *DC*
SUBJECT: Release of White House Memorandum
Concerning Energy

The memorandum in question, dated July 7, 1972, was from Peter Flanigan to John Ehrlichman, George Shultz, Rogers Morton, Bill Timmons and Clark MacGregor. It is classified Confidential. The memo discusses both the merits and politics of natural gas deregulation, as well as certain foreign policy implications. The foreign policy discussion, particularly insofar as it relates to policy toward imports from Canada, is properly classifiable.

The paper is, in addition, an internal White House memorandum to which the Freedom of Information Act does not apply. Even if the Act did apply, it would be exempt because it consists of internal recommendations and advice that would exempt it from disclosure under exemption 5. The memorandum is so totally made up of internal policy discussion that it would not be practical to excise only portions of it.

The document is also clearly protected by executive privilege, though the above grounds are sufficient in themselves to withhold it.

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ATTACHMENTS

~~CONFIDENTIAL~~
WITH ATTACHMENT

THE WHITE HOUSE

WASHINGTON

June 2, 1975

MEMORANDUM FOR

JIM CANNON

THROUGH:

JIM CAVANAUGH

FROM:

MIKE DUVAL

SUBJECT:

RELEASE OF WHITE HOUSE
MEMORANDUM CONCERNING ENERGY

As you can see from the attached memorandum from NSC, I have been asked to review a 1972 memo from Peter Flanigan on "Possible Pre-Election Energy Initiative". Apparently there is a Freedom of Information Act request for this memo, and NSC is considering declassifying it.

I can't see anything in the memo or its attachments which needs to be classified in a national security sense. Obviously, this raises questions concerning the broader issue of release of internal White House documents, and therefore, I thought I should send it to you for final decision.

NATIONAL SECURITY COUNCIL

May 29, 1975

MEMORANDUM FOR: MIKE DUVAL

FROM: Jeanne W. Davi *JWD*

SUBJECT: Release of 1972 White House
Memorandum Concerning
Energy Issues

We have been asked to review the attached documents for possible declassification in response to a Freedom of Information Act request.

The matters discussed in the July 7, 1972 memorandum from Peter Flanigan on "Possible Pre-Election Energy Initiative" are those in which your office has an interest. Accordingly, I am asking that you examine this material and let me know if you have any objection to the declassification and release of these documents.

THE WHITE HOUSE

WASHINGTON

June 2, 1975

MEMORANDUM FOR JIM CANNON

THROUGH: JIM CAVANAUGH 

FROM: MIKE DUVAL 

SUBJECT: RELEASE OF WHITE HOUSE
MEMORANDUM CONCERNING ENERGY

As you can see from the attached memorandum from NSC, I have been asked to review a 1972 memo from Peter Flanigan on "Possible Pre-Election Energy Initiative". Apparently there is a Freedom of Information Act request for this memo, and NSC is considering declassifying it.

I can't see anything in the memo or its attachments which needs to be classified in a national security sense. Obviously, this raises questions concerning the broader issue of release of internal White House documents, and therefore, I thought I should send it to you for final decision.

NATIONAL SECURITY COUNCIL

May 29, 1975

MEMORANDUM FOR: MIKE DUVAL

FROM: Jeanne W. Davis *JWD*

SUBJECT: Release of 1972 White House
Memorandum Concerning
Energy Issues

We have been asked to review the attached documents for possible declassification in response to a Freedom of Information Act request.

The matters discussed in the July 7, 1972 memorandum from Peter Flanigan on "Possible Pre-Election Energy Initiative" are those in which your office has an interest. Accordingly, I am asking that you examine this material and let me know if you have any objection to the declassification and release of these documents.

~~CONFIDENTIAL~~

THE WHITE HOUSE
WASHINGTON

cy to a & B
34

July 7, 1972

MEMORANDUM FOR:

JOHN EHRLICHMAN
GEORGE SHULTZ
ROGERS MORTON
BILL TIMMONS
CLARK MacGREGOR

FROM:

PETER M. FLANIGAN

SUBJECT:

Possible Pre Election Energy Initiative

Administration energy strategists will undoubtedly conclude shortly that a major legislative initiative -- elimination of FPC price regulation of new natural gas production -- is urgently needed if the Nation is to avoid a serious energy crisis. However, constrained by the election year political climate and the unlikelihood of favorable action by this Congress, the Administration has publicly supported only "sanctity-of-contract" legislation which would modestly loosen FPC regulatory controls, with the expectation of releasing a major gas deregulation proposal in 1973.

This memorandum will explore whether we should accelerate this policy timetable and issue a second Presidential Energy Message, including a gas deregulation initiative, before the election. This politically sensitive idea has thus far been staffed only within the Executive Office of the President. I would appreciate receiving your personal views as to whether the President should be advised to take this step by COB Wednesday, July 12.

A. BACKGROUND.

1. The Energy Crisis. There can be little doubt that the US faces a serious energy supply problem. All energy fuels contribute to this situation -- domestic oil production is peaking, nuclear development has been retarded by technological and other difficulties, and coal causes severe environmental problems. Our major crisis, however, lies with natural gas, the cleanest and currently the cheapest energy fuel. Gas

DECLASSIFIED

E.O. 12958, Sec. 3.5

NSC Memo, 11/24/98, State Dept. Guidelines
By W.H.M., NARA, Date 5/8/00

comprised 36.7% of total US energy consumption in 1970. According to the National Petroleum Council, potential gas demand of 40.1 quadrillion BTUs would comprise 32.1% of total energy consumption in 1985; yet the projected gas supply from all sources including imports is only 22.2 quadrillion BTUs. This projected gas shortfall of 17.9 quadrillion BTUs means that 14.3% of total US energy demand in 1985 can only be satisfied by shifting consumers who want gas to other less attractive fuels unless we can find ways of stimulating new gas supplies. (See Tab A)

The gas shortage is already affecting our energy situation. Seven major interstate pipelines have filed "curtailment" petitions with the FPC, claiming inadequate supplies to meet current customer demands. In many areas of the country, no new industrial and commercial applicants for gas service are being accepted, and this is said to retard economic growth and employment in depressed areas such as Newark. Gas pipeline and distribution companies, seeking to protect their huge capital investments, are seeking government approval for high liquefied natural gas (LNG) import projects, and to import huge quantities of oil and naphtha to manufacture substitute natural gas (SNG). When available in 25 years, LNG and SNG will cost consumers from \$.85 to \$1.40 per thousand cubic feet (MCF), whereas newly discovered domestic gas currently is limited to \$.40 to \$.50 per MCF delivered to the East Coast.

For the long term, the projected gas supply shortfalls will place severe pressure on alternate energy fuels, particularly low sulfur fuel oils. With domestic oil production peaking, and with new energy technologies still 15 years away or more, oil imports will have to meet this unfulfilled energy demand in the next 10-20 years. Clearly, there are immense national security and balance-of-payments risks in accepting such levels of oil imports, in addition to the imports required for LNG and SNG supplies.

Finally, these gas supply problems coincide with a new national emphasis on clean energy fuels to achieve environmental goals. After exhaustive study, EPA has concluded that we cannot meet the air quality standards already legislated unless government can stimulate substantial additional domestic gas supplies.

2. The Impact of FPC Regulation. FPC regulation of producer prices is an economic and legal anomaly. Relying on an ambiguous producer exemption in the Natural Gas Act of 1938, the FPC initially declined to

regulate non-integrated gas producers. After President Truman vetoed a bill which would have clarified this producer exemption, the Supreme Court overturned FPC policy and compelled the Commission to regulate producer prices. President Eisenhower then vetoed another bill to regulate producers because of lobbying improprieties surrounding its passage.

During the Eisenhower years, FPC regulation did not significantly retard new gas discoveries because the regulated prices stayed in line with rising exploration and production costs. Beginning with the Kennedy Administration, however, the FPC adopted an explicit price freeze policy, enforced through mammoth area rate proceedings. By requiring that sales be made at historically low prices at a time when accessible, low cost reserves were no longer available, the FPC has stimulated excess demand, created disincentives on new exploration and development, and distorted gas distribution as producers attempt to make unregulated sales such as in intrastate markets.

Today there is almost unanimous agreement among students of the natural gas industry that FPC regulation of wellhead prices has been a policy failure. (See Tab B for the President's public comment on the apparent need for deregulation of wellhead gas prices in his 1971 Annual Economic Report.) For energy policy purposes, the question is the likely effect of deregulation on our current gas supply crisis and on the entire energy crisis. Since regulated prices are artificially low, deregulation will clearly raise prices -- a bad political result. The key question is, will these higher prices also provide sufficient new gas -- a political plus.

Unfortunately -- and rather remarkably -- reliable evidence of the price elasticity of natural gas supply has been all but non-existent. Consequently, early this year I mobilized the Domestic Council Energy Subcommittee to cure this information gap.

Although collective industry analysis of price-supply relationships is generally precluded by antitrust fears, we found five serious models of gas supply response to price, a Cities Service model built for internal corporate use, an NPC model constructed by a team of oil company technicians for use by Interior, and three separate models developed and published by academics without industry sponsorship. Using the CEA energy economist to verify the reliability of the data, we obtained

projections from each model as to domestic gas supplies which would be forthcoming if new gas production was deregulated. Tab C summarizes the startling results of this work. Despite completely different approaches used in constructing the various models, each predicts that new gas deregulation would generate substantial new domestic gas supplies over the next 10-15 years. Moreover, the assumed market price for these new supplies, although modestly above the price of competing fuel oils (since gas is a premium fuel) and well above the current regulated price, would be significantly below the price of alternative gas supplies such as LNG and SNG. Finally, the models suggest, though with less unanimity, that deregulation could also stimulate significant new domestic oil supplies, particularly if the domestic price of crude oil is permitted to rise modestly.

To summarize, it is fair to say that if the market responded to deregulation in a manner even approaching the projections of these models, the energy "crisis" would be largely solved, the enormous balance of payments and national security problems arising from a reliance on foreign energy sources would be avoided, and the environmental demands for clean fuels would be substantially satisfied. The strength of this research data, combined with the growing public awareness of the energy crisis, prompt me to reassess the question of the best timing for a Presidential energy initiative.

B. A POSSIBLE INITIATIVE

1. The heart of the Administration's proposal will be the complete deregulation of new gas production. (Deregulation of all gas, including that already found, in a time of severe gas shortage would be politically unacceptable, would risk intolerable market disruptions, and does not appear necessary to provide the needed supply incentives.) In addition, an Administration initiative in this area might include deregulation of LNG and SNG, or at least clarification of the FPC's regulatory role which has been clouded by the recent El Paso decision. Some reliance on these alternatives will be necessary at least in the short term, and industry has complained that preliminary FPC decisions defining the scope of its jurisdiction will severely restrict and discourage these needed supplemental supplies.

Briefly stated, the likely results of new gas deregulation would be (i) an increase in the wellhead price of gas supplies thereafter discovered

(perhaps from \$.25 to \$.65 per MCF); (ii) a very gradual rise in consumer gas prices as new high price supplies are rolled into the large rate bases of locally regulated distribution companies; (iii) increased domestic reserve discoveries within two years and substantially increased production well before the end of the decade; (iv) more vigorous exploration and development of gas and oil reserves in remote North American regions (Alaska, the Canadian Arctic, US and Canadian offshore areas); and (v) reduced industry interest in high cost LNG and SNG projects.

2. To increase political appeal, a gas deregulation initiative might be coupled with oil policy initiatives that demonstrate a balanced, consumer-oriented approach to energy problems. I believe we need the basic fabric of the Oil Import Program to protect national security and to permit the domestic industry to finance the necessary gas exploration and development. However, there are a number of Oil Import Program reforms which would link nicely with a gas deregulation initiative:

a. Removal of Canadian Controls. North American self-sufficiency in oil and gas is a long-run national security objective. Canadian exploration would be encouraged by the removal of import controls on Canadian oil. The problem has been Canada's refusal to mitigate the national security risks inherent in Eastern Canada's heavy reliance on overseas oil imports. Based on my talks in Ottawa last week, I believe that the Canadians' latest proposal might permit completion of a bilateral arrangement on oil in the near future if the US is willing to accept a less than perfect solution. Such an arrangement would reduce criticism of Administration oil and energy policies.

b. Favorable SNG Decision. An Oil Policy Committee decision on additional oil imports for SNG manufacture cannot be delayed beyond this fall. By linking an SNG import policy to a gas deregulation initiative, we would underline the severity of our natural gas shortage, and we would emphasize our desire to assure gas supplies at the lowest possible price by permitting free competition between alternative gas sources.

c. Bonus program for Eastern Refiners. The OPC is currently studying whether we should award an oil import bonus to East Coast refiners who produce low sulfur residual fuel oil. Such a program could be linked to gas deregulation: (i) for the consumer, it would evidence our desire to ensure effective competition between deregulated gas and heating oils; and (ii) for the environmentalist, the two initiatives would

reinforce our desire to maximize supplies of clean energy fuels. In addition, for the domestic industry it would indicate a desire to keep refinery capacity in the U.S.

3. To prepare a Presidential initiative containing the above components, we would need to (i) draft technically sound gas deregulation legislation, (ii) make substantial negotiating progress with the Canadians, (iii) complete work on a Presidential Proclamation covering oil imports for SNG and low sulfur fuel oil production, (iv) prepare a second Presidential Energy Message, and (v) conduct appropriate soundings with our friends in the Congress, among environmental and other interest groups, and in industry. Without denying the logistical difficulty of such a task, I think it could be completed by September 15.

C. SUGGESTED PROS AND CONS OF MOVING NOW.

PRO

1. The urgency of the widely recognized energy problem, and the time pressures of our gas supply problem. With gas distribution companies facing substantial supply shortages, the stampede is on to find any available supply alternatives, regardless of cost, national security risks, or balance-of-payments impact. (Witness the \$7.5 billion LNG project now being discussed between the Russians and a US pipeline consortium.) To check this trend, it is essential that we promptly remove regulatory roadblocks to increased domestic supplies.

2. Liberal Democrats are beginning to press an unacceptable gas regulation alternative -- extension of FPC jurisdiction to all gas users combined with strict end-use controls. Given Washington's bias toward excessive Federal regulation, these ideas are getting sympathetic attention. I am concerned that if we do not lead the dialog now, we may not get a word in edgewise later.

3. Right or wrong, the oil industry has blamed this Administration for lowering the depletion allowance, sponsoring the unpopular Cabinet Task Force Report on oil imports, and holding down the price of crude oil. A major gas deregulation initiative promises to be a dramatic favorable event which should be well received by the oil and gas industry, and in the 12 Western and Southwestern States which rely upon oil and gas production for State and local taxes. (On the other hand, if the Democrats nominate

McGovern, the oil industry and its sympathizers will have no political alternative to the President.)

4. Since gas is the cleanest energy fuel, a gas deregulation initiative is truly pro environment. Although professional environmentalists tend toward knee jerk negativism on all energy issues, we should get their support on this one.

5. A deregulation initiative could stimulate unilateral FPC moves toward greater deregulation. The Nixon FPC is taking considerable heat from consumerist demagogues in the Congress for reversing the FPC pricing policies of the 1960's. Administration pressure on the other side could help keep the Commission heading in the right direction.

6. A major energy initiative backed by credible supply-demand analysis would show the President's responsiveness to a serious energy problem -- a "good government" rationale.

7. Deregulation is consistent with traditional Republican economic philosophy.

CON

1. A deregulation initiative would no doubt be viewed as another massive give-away to big business at the expense of the American consumer, particularly in a McGovern populist-oriented campaign. Moreover, suspicion will be heightened by election year timing.

2. There is no indication that the Democrats intend to make energy a major political issue this year since they lack real solutions to the problem. Thus, it may be inconsistent with our overall campaign strategy to put the President out in front with a major new energy initiative.

3. Although the oil industry would overwhelmingly support deregulation, it makes some gas pipeline and distribution companies nervous. We are now supporting the limited sanctity-of-contract bill along with all segments of the gas industry, and this is arguably the right place to be in an election year.

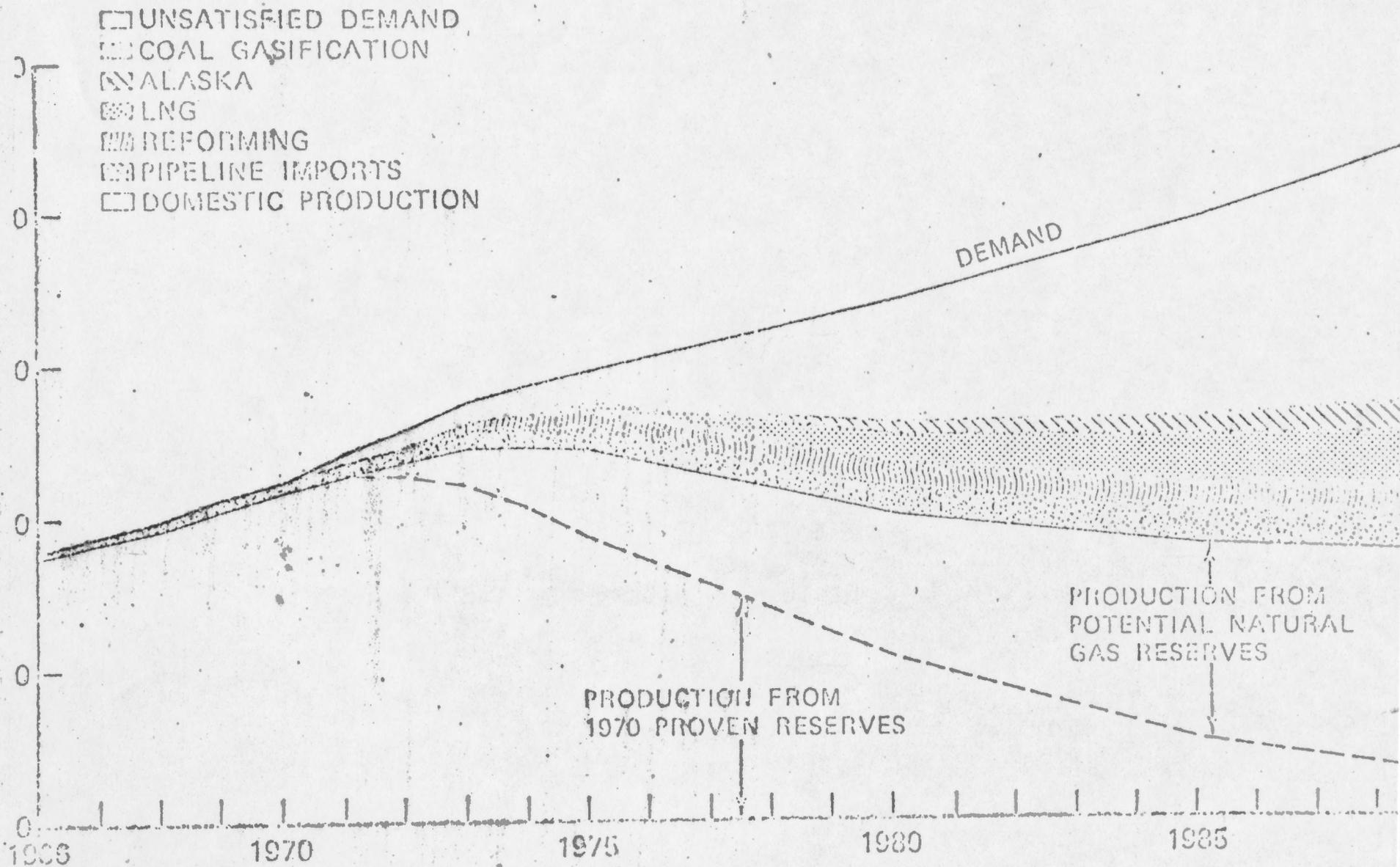
4. By surfacing the deregulation issue this year, we might trigger

partisan positioning that would inhibit Congressional action after the election. (Conversely, we might stimulate public interest and improve the chance of early action by the next Congress.)

I suspect the critical political issue is whether the President would be perceived as anti-consumer for supporting deregulation. Surely making gas available to city users is pro consumer. We cannot prove deregulation will do that, but we can make a powerful case, supported by academic studies which presumably lack the taint of oil industry bias.

Likewise, given the cost of supplemental LNG and SNG to consumers, it seems quite likely that even those consumers who would get this gas in any event will pay less for deregulated domestic gas. Unfortunately, we have been unable to quantify this assumption. Since deregulation would lead to demonstrably higher prices for new domestic gas production, consumerist demagogues can attack such a proposal even though they will have no satisfactory policy alternative. Thus, the key political decision is to assess whether the media would give our defense an adequate airing and whether the average voter, to the extent he is influenced by such issues at all, would recognize the soundness of our approach.

UNITED STATES GAS SUPPLY-DEMAND BALANCE (Contiguous 48 States)



BASED ON FPC STAFF REPORT NO. 2 WITH REFORMING VOLUMES ADDED.

ENERGY

Sharp price increases in two major energy products, combined with concern about the extent of their supply, have focused particular attention on the Nation's energy resources. In late 1970 the price of heavy fuel oil, which is used by electric utilities, industrial plants, and other large institutions, was almost twice as high as a year before in some markets. Bituminous coal, used primarily by electric utilities, was also priced substantially higher in the spot market than a year before. Natural gas supplies were not available to meet desired consumption at prevailing prices, and therefore the demand for substitute fuels increased. Nevertheless these recent price increases and shortages are not symptoms of a growing scarcity of energy resources. They are the result of unanticipated developments that the energy industry has been unable to offset completely in a short time-span, in particular a stronger demand for energy than was expected from past experience. Programs to reduce air pollution by prohibiting high-sulphur fuels contributed to the problem.

Coinciding with the acceleration of demand, there have been several disappointments on the supply side. The generation of electric power, particularly in atomic plants, has not met the expectations of electric utilities because of construction delays, licensing problems, and environmental concerns. In part, these difficulties reflect the assumption a few years ago that atomic power would become profitable, an assumption that slowed coal mine development. Heavy fuel oil supplies have been limited by a world tanker capacity that has not yet adjusted to the longer delivery runs required from the Mideast after the Trans-Arabia Pipeline was severed. This limitation on supply has resulted in higher prices for heavy fuel oil. Since heavy fuel oil can be imported to the east coast without quotas, that area has come to rely on these normally lower-priced foreign sources for a large share of its supply, and domestic refiners have had no incentive to construct refineries with much capacity for these heavy products.

These short-run problems are being resolved by Federal action and by adjustments in the market.

* * *

Domestic energy consumption between now and the year 2000 is likely to exceed all of the energy consumed by this Nation in its history. This enormous future demand raises questions about the supply of energy fuels, their price, and the role that different sources of energy will play.

* * *

* * *

There appears to be a shortage of one major energy fuel, natural gas: that is, its production is clearly falling short of desired consumption at current prices. Current prices for interstate sales have been kept low by the Federal Power Commission, which sets these prices under law. Not only have prices been too low for desired consumption to be met, but they appear also to have retarded development of new gas supplies. The only satisfactory solution of this problem is to allow the price, at least of new gas not previously committed, to approach the market-clearing level.

It is important to recognize that increased gas supplies, even at higher prices, would offer direct benefits to the consumer. Some users would switch to natural gas if it were available because the price of gas in terms of heating value, though higher than before, would still be lower than the price of the fuel they had been using. Industrial users would switch because gas contains little sulphur and would be the cheapest way for them to meet air quality standards. The added competition of these new supplies would also tend to reduce prices for consumers of other fuels. If the price of natural gas on old commitments remained under control, consumers would be protected from unnecessary price increases on current supplies.

* * *

UNITED STATES GOVERNMENT

Memorandum

COUNCIL OF ECONOMIC ADVISERS
Old Executive Office Building
Washington, D. C. 20506

TO : Peter Flanigan

FROM : Edward Mitchell

SUBJECT: Gas Supply Response to Price

DATE: July 7, 1972

Six estimates have been made of the response of gas supply to price based on six independent studies or models:

(1) the National Petroleum Council (NPC) model, constructed by a team of technicians from several major oil companies for use by the Department of the Interior.

(2) the CITGO model, built for corporate use by Cities Service Oil Company;

(3) the Khazzeom model, developed under contract for the Federal Power Commission by a university professor;

(4) the Erickson-Spann model, published by two academics in the Bell Journal of Economics and Management Science;

(5) the MacAvoy model, developed by an MIT professor and published in a collection of pieces on gas regulation sponsored by Resources for the Future and the Office of Science and Technology;

(6) the Garrett-Humble study, a paper on the quantity of recoverable gas economical at various wellhead prices, given by Ralph Garrett of Humble Oil Company to the Potential Gas Committee.

Projections were made directly from the first three models given alternative assumptions about price. Each of the last three studies leads to an estimate of the price elasticity of gas supply. These elasticities were then utilized separately in a simple supply projection model I constructed. The projections made from these elasticities, therefore, depend not only on the elasticities themselves but on my method of projection as well.

For each of these models three cases were considered:

- Base Case: (a) Wellhead price of natural gas constant at 24¢ per MCF (the current average price ceiling price).
(b) Wellhead price of crude oil constant at \$3.35 per barrel.
- Case I: (a) Wellhead price of natural gas constant at 65¢ per MCF (assumed to be the market clearing price) and at 2-1/2 percent per year thereafter.
(b) Wellhead price of crude oil constant at \$3.35 per barrel.
- Case II: (a) Wellhead price of natural gas constant at 65¢ per MCF immediately and 2-1/2 percent per year thereafter.
(b) Wellhead price of crude oil constant at \$3.35 per barrel.

The assumption of a 65¢ gas price after 1975 is based on the assumption that at this way. Perfect substitutes for natural gas and Arctic gas, would be available for approximately 100 mcf (wellhead equivalent). This tends to push up gas prices. On the other hand, low sulfur fuel oil can be bought for \$4.50 per barrel or 75¢ per mcf equivalent to a wellhead price of 50¢ per mcf. Cleaner fuel, should be worth at least as much as 75¢ per mcf. Thus, natural gas in a free market would be worth 65¢ and 75¢ per mcf. A recent contract in the Gulf of Mexico for about 55-60¢ Louisiana wellhead equivalent. So does an estimate of Commonwealth Edison which will cost 75¢ per million BTU's in Chicago originally put forward by CITGO and based on the reasoning, has been adopted as a working assumption.

While the assumption of a 65¢ wellhead price is based on the response of supply in different models, the response of gas supply will partially determine the free market price and quantity are determined. This means that a model that forecasts a smaller increase in gas supply is forecasting that a smaller increase in price is needed to clear the market.

Furthermore, prices of competing fuels, such as low sulfur residual oil, home heating oil, and coal, will also tend to be depressed by the added gas supplies and the quantity of these fuels consumed will be reduced. Before laying out the supply schedules generated by these models a description of how each model works is in order.

In the CITGO model higher prices generate more gas because higher prices give a greater present discounted value to current and future production. CITGO assumes that this cash - the cash generated immediately and from borrowing on future production - goes into new wildcat drilling and bonus payments for wildcat acreage. If just the new gas price is raised only new discoveries generate more cash. On the other hand, when crude oil prices are raised all flowing oil revenue goes up. Thus, the effect of an oil price increase is much greater in the CITGO model than a new gas price increase.

Furthermore, the CITGO model assumes no directionality. This is why an oil price increase with its much greater impact on cash flow has a greater effect on gas supply than a gas price increase.

The translation of additional wildcats into new reserves and production is based on historical trends in reserves discovered per foot drilled. This engineering analysis is more sophisticated than the economic.

The NPC model is very similar in the engineering segment to the CITGO model. It translates drilling footage into new reserves by means of a careful analysis of historical relationships between footage drilled and reserves discovered. However, the NPC does this separately for 14 different regions of the U. S. Each has a separate engineering model with different parameters based on different historical experience and potential. For each region the model generates reserves, production and capital and operating expenditures for any given drilling rate. Thus, on the engineering side CITGO and NPC use a similar approach, but the NPC model is much more disaggregated and, therefore, probably more accurate.

The economic logic of the NPC model differs from that of CITGO substantially. For any given drilling rate there are certain capital and operating expenditures, and through the engineering model, certain quantities of oil discovered and produced. For the industry to be in equilibrium the flow of income from all production, old and new must be such that when compared to the total book value of capital, it yields a certain rate of return acceptable to the industry.

(The latter can be varied in the model and I set it at 15% return after taxes.) The variable that is adjusted so as to make the rate of return come out to 15 percent for a given drilling rate is price. Thus, there is a connection established between drilling rate (and hence production) and price. But it is drilling that "causes" price - not the other way around. Apparently one of the reasons for building the model backwards was to avoid the antitrust problem - the companies couldn't collectively agree on assumed prices.

To deal with the three cases the model had to be run backwards. Essentially what was done was to find the pattern of drilling rates over time that yielded price patterns resembling the three cases.

While the CITGO model assumes no directionality, the NPC model assumes perfect directionality. A firm drills either for oil or for gas and finds what it is looking for, or nothing. Associated and dissolved gas in oil wells is accounted for. This assumption is probably much closer to reality than the CITGO assumption.

These directionality assumptions create important differences between the forecasts of the two models. When just new gas prices go up, the NPC model generates substantial gas supplies, while the CITGO model does not. When oil prices go up as well, the CITGO gas supply gets a big boost, but the NPC model gives us only the modest amount of gas associated with or dissolved in the additional oil discovered.

models

The Khazzoom, Erickson and Spann, and MacAvoy/are all econometric models. An equation, or set of equations, is postulated that represents the behavior of the industry as it responds to changes in price and other variables. Then the parameters of these equations are estimated by "fitting" the equations to the numerical data from some historical period - Khazzoom uses the period 1961-68; Erickson and Spann, 1946-59; and MacAvoy, 1954-1960. All arrive at the conclusion that gas supply responds significantly to price. Erickson and Spam's elasticity of supply estimate is .69, meaning that a 10% increase in price yields a 6.9% increase in new reserves found. MacAvoy's estimate is .45. Neither the Khazzoom model nor the industry models yield a constant elasticity of supply.

The Khazzoom model makes no assumption about the degree of directionality but in statistical estimation of the parameters concludes that oil price has virtually no effect on gas discoveries. The Khazzoom results for Case II are therefore the same as for Case I.

To the elasticities of Erickson-Spann and MacAvoy can be added another estimate derived from the work of Garrett of Humble Oil Company. He estimated the quantities of potentially discoverable reserves that would be economical at various prices. The elasticity of his curve between current prices and 70¢ per mcf is .6. If it is assumed that the industry tends to find in any year a constant fraction of the total reserves worth producing at contemporary prices, then a given percentage increase in price has the same effect on reserve additions each year as it has on ultimately recoverable reserves. On this assumption which is mine and not Garrett's, his elasticity can be used in the same was as the others.

To develop projections from these three estimates of elasticity of supply it was assumed that the reserves added in 1969, 1970, and 1971 were in response to an FPC authorized price of 18¢ per mcf. Any given percentage change in price was then translated into reserve additions by applying the particular elasticity to the 1969-1971 reserve addition data. For example, a 100 percent increase in price in 1973 would result in a 60 percent greater quantity of reserves added if the elasticity were .6. I have labelled this type of projection a Constant Elasticity of Supply (CES) projection.

Charts 1, 2, and 3 show the six projections of gas for the three cases. Table 1 gives the figures. Only one projection is shown in the base case for the three CES projections because for all practical purposes they are the same in that case.

In the base case every model shows lower 48 production falling. Khazzoom is the most optimistic with a fall from 22.0 tcf in 1970 to 16.6 tcf in 1985. CES shows a fall to 14.4, CITGO is 13.3, and NPC is most pessimistic with 8.6.

In Case I every model shows a rise in lower 48 production. The Khazzoom, CES elasticities .6 and .7 and the NPC projection fall within the narrow range of 28.2 to 31.5 tcf. The elasticity of .5 (MacAvoy) is somewhat lower at 25.7, but CITGO is substantially lower at 22.6, barely above the 1970 level. The low estimate of CITGO in Case I is due to the cash-flow - no directionality aspect of the model. Higher new gas prices do little to raise cash flow and and so have little effect on supply in the CITGO model. To get as high a forecast as it does for 1985 CITGO relies on substantial production from low productivity reservoirs which no other forecast includes.

In Case II, the CITGO model gets a large increment of gas production from the cash flow arising from higher oil prices and joins the other forecasts. The NPC projection is modestly higher than in Case I because of gas found in association with or dissolved in the additional oil discovered. Khazzoom and Erickson find no positive effect of oil price on gas discoveries and MacAvoy assumes no effect. These curves are therefore the same as for Case I.

In Case II all but the .5 elasticity projection fall within the range of 28.2 to 32.4 tcf in 1985. The .5 elasticity again gives a forecast of 25.8 tcf.

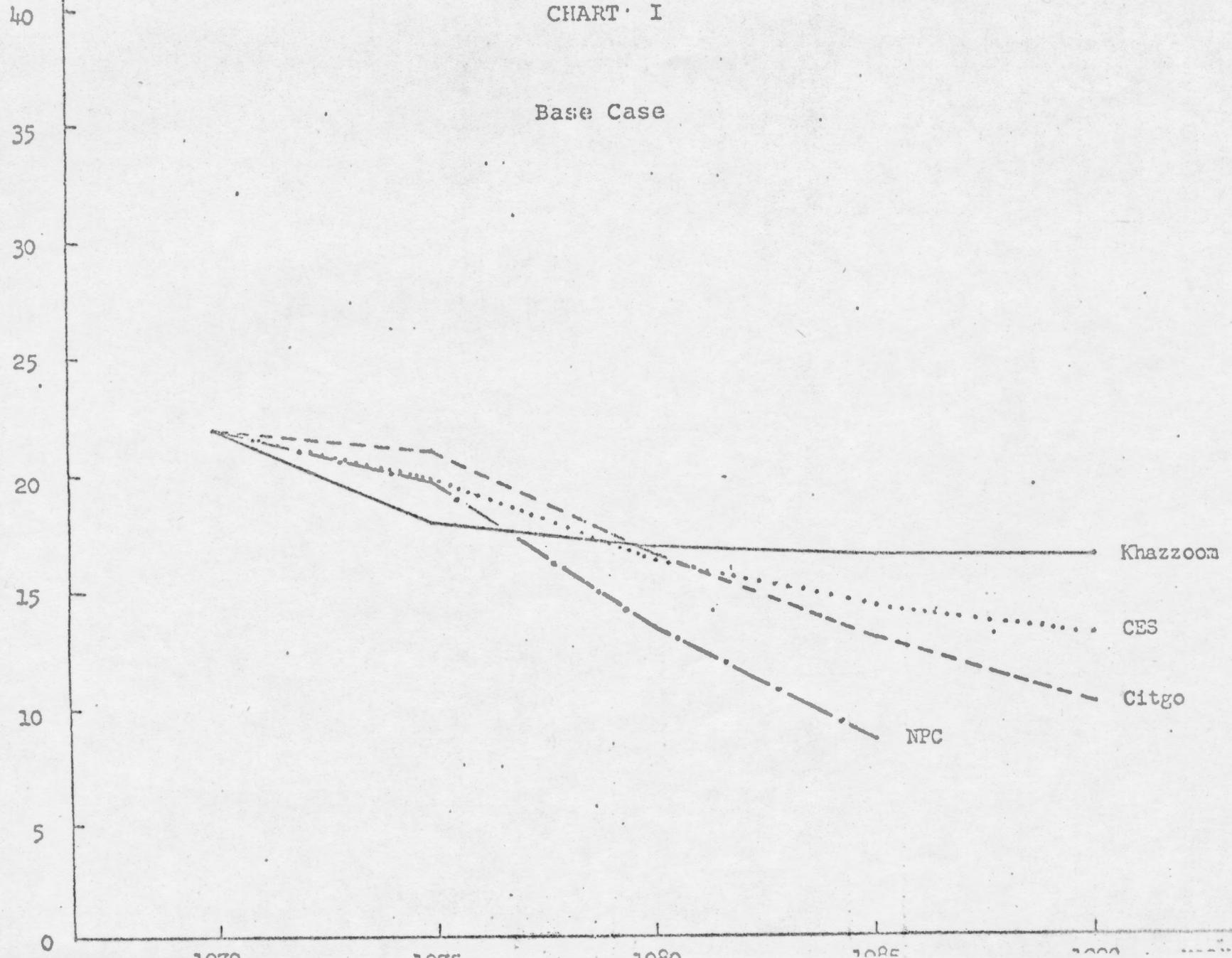
An important question for policy is how much more gas is supplied at free market prices than at current wellhead ceiling prices. To answer this the difference between the base case and Case II was calculated for each model. The smallest increment in supply in 1985 is 11.3 tcf; the largest is 21.9 tcf. In terms of oil this is equivalent of 5.5 to 10.7 million barrels per day. And this does not include price-induced incremental supplies for Alaska or Canada.

Drawing upon these oil and gas supply-price relationships and the broader energy studies of NPC and CITGO an overall energy balance has been put together for the three cases. In the base case we estimate that in 1985 35 percent of our energy will be imported. (And 86 percent of these energy imports will be in the form of Eastern Hemisphere oil.) In Case I, with gas deregulated, imports drop to 18 percent of energy consumption. In Case II, with oil prices also raised, imports fall to 12.3 percent of consumption.

TCF
per year

CHART I

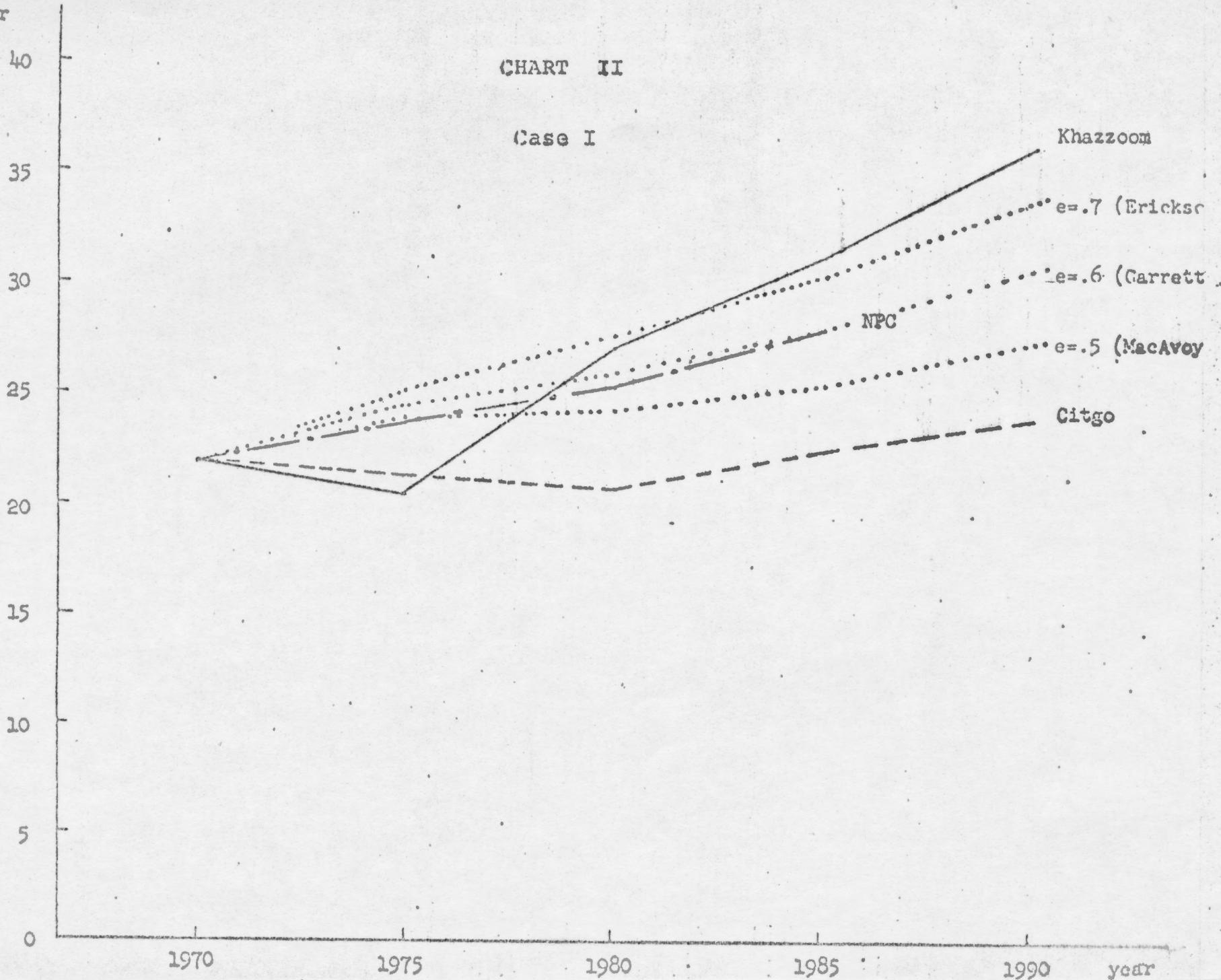
Base Case



TCF
per year

CHART II

Case I



TCF
per year

40

CHART III

35

Case II

30

Khazzoom

Citro
 $e=.7$ (Erickson)

25

NPC

$e=.6$ (Garrett)

$e=.5$ (MacAvoy)

20

15

10

5

0

1970

1975

1980

1985

1990

year

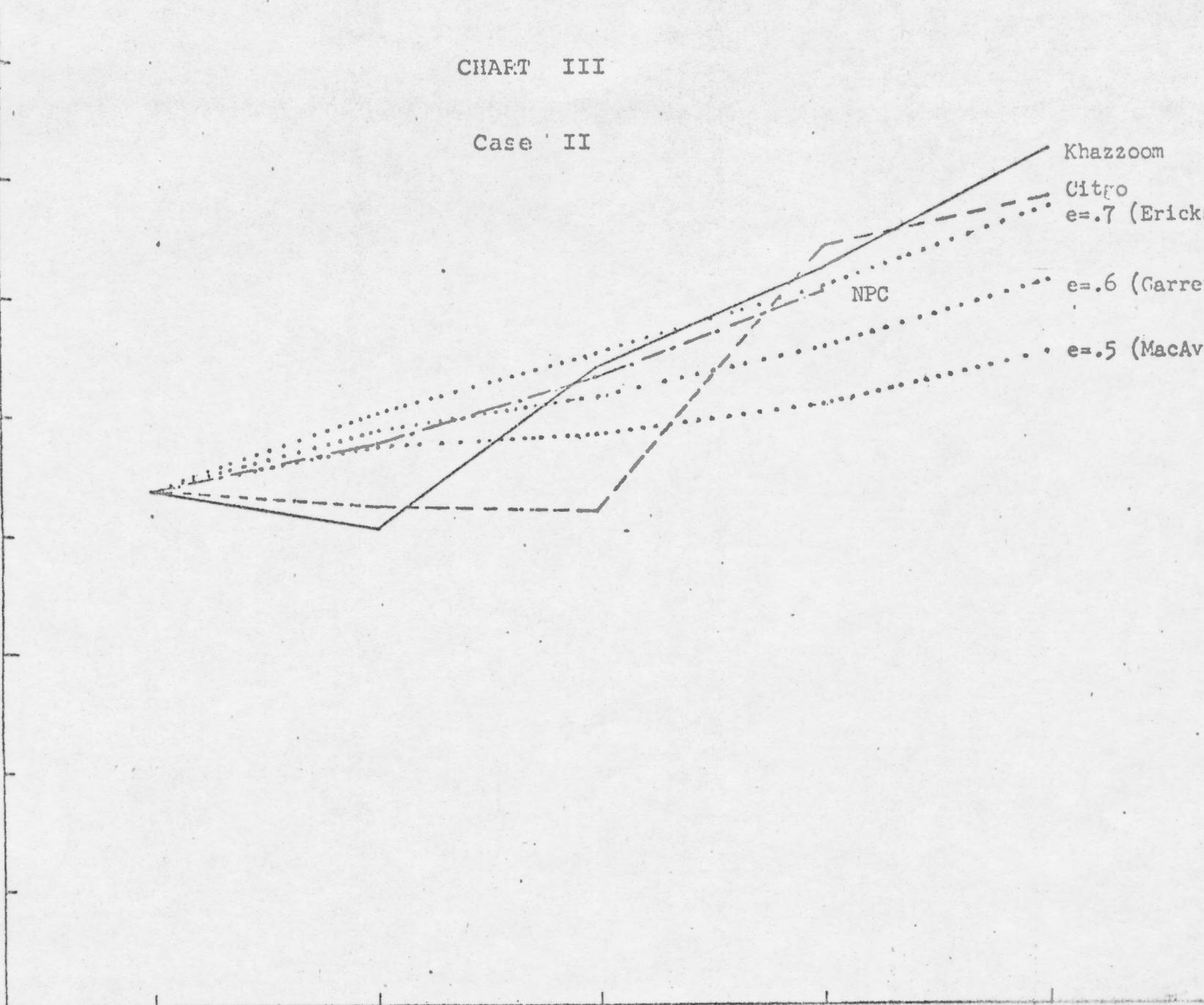


TABLE 1

Gas Production in TCF

Base Case	<u>1970</u>	<u>1975</u>	<u>1980</u>	<u>1985</u>	<u>1990</u>
NPC	22.0	19.8	13.5	8.6	--
CES	22.0	19.9	16.4	14.4	13.2
Khazzoom	22.0	18.0	17.0	16.6	16.6
Citgo	22.0	21.2	16.7	13.0	10.1
Case I					
NPC	22.0	23.8	25.5	28.2	--
CES:*					
e=.5 (MacAvoy)	22.0	24.0	24.4	25.7	27.8
e=.6 (Garrett)	22.0	24.7	26.1	28.2	30.9
e=.7 (Erickson)	22.0	25.4	27.8	30.7	34.1
Khazzoom*	22.0	20.5	27.3	31.5	36.5
Citgo	22.0	21.4	20.8	22.6	24.2
Case II					
NPC	22.0	24.1	26.9	30.5	--
CES:*					
e=.5 (MacAvoy)	22.0	24.0	24.4	25.7	27.8
e=.6 (Garrett)	22.0	24.7	26.1	28.2	30.9
e=.7 (Erickson)	22.0	25.4	27.8	30.7	34.1
Khazzoom*	22.0	20.5	27.3	31.5	36.5
Citgo	22.0	21.4	21.2	32.4	34.5

* Case I and Case II are identical.

*NSC
Exchange of ltrs*

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.



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:

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



JOHN L. MCCLELLAN, ARK.
PHILIP A. PART, MICH.
EDWARD M. KENNEDY, MASS.
RICH BAYH, IND.
QUENTIN N. BURDICK, N. DAK.
ROBERT C. BYRD, W. VA.
JOHN V. TUNNEY, CALIF.
JAMES ABUREZK, S. DAK.

ROMEN L. PRUSKA, NEBR.
HIRAM L. FONG, HAWAII
HUGH SCOTT, PA.
STROM THURMOND, S.C.
CHARLES MCC. MATTHIAS, JR., MD.
WILLIAM L. SCOTT, VA.

United States Senate

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:

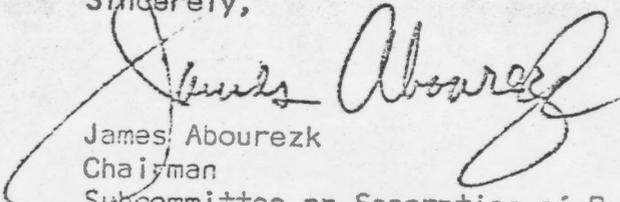
MP
During the hearings on executive agreements held on May 13, by the Separation of Powers Subcommittee, retired Admiral Elmo Zumwalt, former Chief of Naval Operations, testified that it was "quite clear" to him that "verbal commitments had been made" to South Vietnam based on what he was told "in one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



NATIONAL SECURITY COUNCIL

August 19, 1975

*Mr. Villanter
Rae copy.*FREEDOM OF INFORMATION
ACT APPEAL

MEMORANDUM FOR: PHILIP W. BUCHEN

FROM: Jeanne W. Davis *JWD*

SUBJECT: Release of Critical Imported
Materials Study

The NSC Staff decision to deny a Freedom of Information Act (FOIA) request for the release of a series of interagency reports on critical imported materials has been appealed.

This appeal has been reviewed and, because the Staff position has not changed, we will recommend that Mr. Kissinger deny the appeal. A memorandum from me to Mr. Kissinger, which includes the background correspondence on this request and a draft letter for denying the appeal, is being forwarded for your consideration.

We request that you review this material and provide us with your comment and/or concurrence on our proposed course of action. In addition please inform Mr. Robert Saloshen of the Justice Department that we plan on denying an FOIA appeal. Because the appeal must be answered no later than next Monday we ask that, if possible, you respond by c. o. b. tomorrow, August 20.

Attachments

FREEDOM OF INFORMATION ACT APPEAL

MEMORANDUM FOR: SECRETARY KISSINGER.

THROUGH: GENERAL SCOWCROFT

FROM: Jeanne W. Davis

SUBJECT: Release of Response to NSSM 197/
CIEPSM 33 -- Critical Imported Materials

In May we were asked by the Council on International Economic Policy (CIEP) Staff to respond to a Freedom of Information Act (FOIA) request from Mr. J. Reed Kramer (Tab B) for the declassification and release of the full interagency report on Critical Imported Materials (Tab E).

The NSC Staff reviewed the request and determined that it should be denied. Accordingly, I informed Mr. Kramer in my letter of May 28, 1975 (Tab C) that the study was being withheld under the provisions of the FOIA and cited 5 U. S. C. 552 (b) (5) [inter or intra-agency memoranda] and 5 U. S. C. 552 (b) (1) [national security information] as the exemption authority. Mr. Kramer has now appealed (Tab D) this denial and you must respond by August 25.

The Critical Imported Materials Study (response to NSSM 197/ CIEPSM 33) is not yet complete and none of the interagency recommendations have yet been reviewed by you or the President. Once the study is completed, there will be a wide range of options to be considered in several areas related to imported materials. But until the interagency process has worked itself out, the options will continue to change and none will have clearance by the working groups. To release portions of this study, including those which contain the policy options, before they have been submitted to the President would severely impede the decision-making process and could limit the scope of the actions the President could consider.

Although only certain portions of the study will be classified, much of the information it contains is, nevertheless, sensitive. It deals with such matters as the political stability and reliability of certain producer countries and the likelihood that particular countries might join a cartel. Release of this information could jeopardize our relations with the countries discussed in the study.

A copy of the CIEP Special Report entitled "Critical Imported Materials" has already been sent to Kramer. This special report was prepared in December of 1974 and contains all reasonably segregable portions of the study which were available at that time, and considered suitable for release. We have, therefore, already provided the public and Mr. Kramer with a "sanitized" version of the study and have thus discharged our responsibility to release "reasonably segregable" portions as required by the FOIA.

The NSC Staff believes that the portions of this study which have not yet been released must continue to be withheld and recommends that you affirm our initial denial. I have prepared a letter (Tab A) for signature by you, or General Scowcroft, informing Mr. Kramer that his appeal is denied. The letter has been cleared with White House Counsel and the Department of Justice Freedom of Information Committee.

RECOMMENDATION:

That you or General Scowcroft sign the letter at Tab A denying this appeal.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

Dear Mr. Kramer:

I have your letter of July 8, 1975 appealing the NSC Staff denial of your request for the public release of "the full report on Critical Materials."

We have carefully reviewed your request and the statements contained in your appeal and have again determined that the material you are seeking is exempt from compulsory disclosure pursuant to 5 U. S. C. 552 (b) (5). The portions of this study which contain information properly classified in accordance with Executive Order 11652 are also exempt from release under 5 U. S. C. 552 (b) (1).

You should know that you have the right to seek judicial review of this determination under the provisions of 5 U. S. C. 552.

Best regards,

Henry A. Kissinger

Mr. J. Reed Kramer
Research Editor
Africa News
Post Office Box 3851
Durham, North Carolina 27702

B

COUNCIL ON INTERNATIONAL ECONOMIC POLICY

May 13, 1975

FOR: Jeanne W. Davis
Staff Secretary
National Security Council

FROM: Skip Hartquist *SH*
General Counsel

SUBJECT: Freedom of Information Act request from J. Reed Kramer
of Africa News

Attached is a Freedom of Information Act request directed to CIEP from the Africa News relating to the critical imported materials report.

In checking with Dudley Chapman of the White House Counsel's office as to how to handle this one, he suggested that the request should be forwarded to you, since the NSC classified the report. I have discussed the matter with Mike Higgins of your staff, and it appears to me that the request can be denied both because the document is classified and because it is an internal working report.

I would appreciate it if you would reply directly to Mr. Kramer. A copy of my reply to him is attached for your information.

Attachment

COUNCIL ON INTERNATIONAL ECONOMIC POLICY
WASHINGTON, D.C. 20500

May 13, 1975

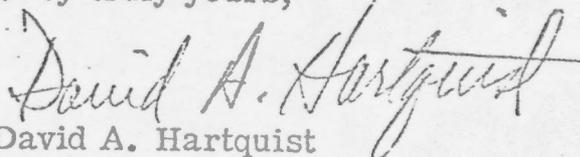
Dear Mr. Kramer:

This is in response to your letter of May 1st requesting a copy of the full report on critical imported materials. The report was prepared by an interagency task force under the joint direction of CIEP and the National Security Council.

Since the unpublished version of this report is classified, I have forwarded your request to the agency responsible for its classification, the National Security Council. The NSC will respond directly to your request.

For your information, I am enclosing a copy of the published version of the report.

Very truly yours,


David A. Hartquist
General Counsel

Mr. J. Reed Kramer
Research Editor
Africa News
Post Office Box 3851
Durham, North Carolina 27702

AFRICA NEWS

THE WHITE HOUSE
WASHINGTON

EDITORIAL OFFICES AND
MONITORING FACILITIES: P.O. Box 3851
Durham, NC 27702
TELEPHONE: 919 682-7342
CABLE: AF NEWS
NEW YORK BUREAU: 244 West 27th Street
New York, NY 10001
TELEPHONE: 212 741-3480
TELEX: 667-264 (WUI)

May 1 1975

CONFIDENTIAL SECRETARIAT
CICP

May 1, 1975

Executive Director
Council on International Policy
Old Executive Office Building
Washington, D.C. 20506

Dear Sir:

Pursuant to the Freedom of Information Act, I hereby request a copy of the full report on Critical Imported Materials, including all related studies and documents, prepared by various Government agencies. I understand that the published version, entitled Special Report, contains only a portion of the study.

As you know, the amended Act provides that if some parts of a report are exempt from release, the "reasonably segregable" portions shall be provided. I therefore request, while reserving my right to appeal any such decisions, the release of those portions of the study not considered exempt under the Act.

I am prepared to pay the reasonable costs related to locating and reproducing the requested material. I look forward to a reply within 10 working days, as provided in the Act.

Sincerely,

J. Reed Kramer
J. Reed Kramer
Research Editor

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

May 28, 1975

Dear Mr. Kramer:

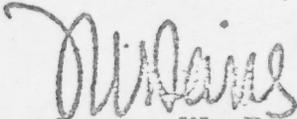
I have your letter of May 1 to the Council on International Economic Policy in which you request a copy of the full report on Critical Imported Materials, including all related studies and documents.

We have carefully examined this material in light of your request and have determined that it is exempt from compulsory disclosure under 5 U.S.C. 552 (b)(5). In addition, portions of these documents are classified in accordance with the provisions of Executive Order 11652 and, thus, are also exempt from release under 5 U.S.C. 552 (b)(1).

In December 1974 the available documents related to this study were reviewed, and all portions considered to be reasonably segregable for release were published by the Council on International Economic Policy in a "Special Report" entitled "Critical Imported Materials," a copy of which has been sent to you by the CIEP staff.

You should know that you have a right to appeal the decision to withhold this information to Mr. Kissinger in his role as Assistant to the President for National Security Affairs. Such an appeal should be addressed to me as Staff Secretary of the National Security Council.

Sincerely,


Jeanne W. Davis

Mr. J. Reed Kramer
Research Editor
Africa News
Post Office Box 3851
Durham, North Carolina 27702

AFRICA NEWS

47820

EDITORIAL OFFICES AND
MONITORING FACILITIES: P.O. Box 3851
Durham, NC 27702
TELEPHONE: 919 682-7342
CABLE: AF NEWS

NEW YORK BUREAU: 244 West 27th Street
New York, NY 10001
TELEPHONE: 212 741-3480
TELEX: 667-284 (WUI)

July 8, 1975

Jeanne W. Davis
Staff Secretary
National Security Council
Washington, D.C. 20506

Dear Ms. Davis:

Pursuant to the Freedom of Information Act, I am writing to appeal the refusal of the National Security Council to release to the public the full report on Critical Materials.

It is very clear to any well-informed citizen that the availability of certain critical raw materials is crucial to this country's economic well-being. This is why President Nixon ordered preparation of the above-mentioned study. From several press reports and from telephone conversations with officials from the Council on International Economic Policy, I have learned that much important information was deleted from the published version.

For example, on July 24, 1974, Drew Middleton wrote in the New York Times about a recent survey commissioned by the U.S. Navy on the transportation of critical materials on the world's oceans. I requested a copy of the study from the Navy, and was told I would have to address my request to the White House. Subsequently, I learned that this study was prepared as a part of the Critical Materials Study.

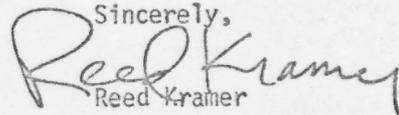
Further, on November 17, 1974, Leslie Gelb reported on the Critical Minerals Study in the New York Times. A careful reading of his article and comparison with the published Study shows that he had access to more material than was contained in the version published one month later.

For the purposes of my organization, I am most interested in the portions of the unpublished study relating to Africa, Rhodesia and South Africa. In addition, we believe the above-mentioned Navy study is important to an understanding of American interests in the waterways around Africa.

I believe the denial by your agency of my request has been arbitrary and capricious. Full disclosure of information on this subject is in the best interest of the American public, if we are going to be able to make sound political choices on this most important issue. I also suggest that the release of at least some of the classified materials to selected journalists violates the public interest, if not the law, since it allows only them to choose what to present to their reading audience.

ANS to NSC
July 8, 1975
Page two

I hereby request that you release the full report on Critical Materials, within the time limit set forth in the Act. Should you decide to deny my appeal, I ask you to release the specific information mentioned in my paragraph five above. I plan to take the matter into court, should you deny my request for the full report.

Sincerely,

Reed Kramer

enclosures: Previous correspondence
New York Times articles

cc: Sen. Edward Kennedy,
Subcommittee on Administrative Practice and Procedure

Rep. Bella S. Abzug
Subcommittee on Government Information and
Individual Rights

Some items in this folder were not digitized because it contains copyrighted materials. Please contact the Gerald R. Ford Presidential Library for access to these materials.

NATO Studying Vulnerable Sea Lanes

7/24/74
By DREW MIDDLETON

Special to The New York Times

LONDON, July 17—The assured supply by sea of oil and other essential minerals in the event of war with the Soviet Union has become the primary problem facing the Atlantic Alliance.

The United States, in the opinion of strategic planners

these minerals were 95 million tons. A quarter of a century hence, it is estimated, 160 million tons of these minerals and metals will be imported.

Energy imports in 1973 were valued at approximately \$8-billion, consisting of two billion barrels of crude oil and refined products and one trillion cubic feet of natural gas. The figure may be more than

ed States have become the most important naval area in the world.

America's allies, according to Vice Adm. John M. Lee, retired, are "demonstrably vulnerable" to scarcities in resources. But Washington planners, projecting American needs into the nineteen-eighties, fear that the United States will be vulnerable, too.

The vulnerability of the sea

U.S. STUDY HOPEFUL
ON RAW MATERIALS

NYT 11/17/74

Foresees a Sufficient Supply
of Imports for Industry
Through This Century

By LESLIE H. GELB

Special to The New York Times

... said would be completed shortly are expected to be considered by an inter-agency group jointly headed by Secretary of State Kissinger and William D. Eberle, director of the White House Council on International Economic Policy. Their recommendations will then go to President Ford.

After a Presidential decision is made, high officials said the studies and recommendations will be turned over to the National Commission on Supplies and Shortages, whose members are yet to be chosen by Congress and the President.

A March Deadline

According to legislation passed this year, the commission is to make its own pro-

were a waste of money.

Nixon Changed Requirement

Mr. Nixon changed the stockpiling requirements to meet military and civilian needs from three years of general war to "the first year of a war." This he could do without Congressional authority.

He then submitted the omnibus disposal bill to Congress, asking authority to sell off the "excess" above one year's needs. Congressman Bennett balked. He submitted his own bill calling for an "economic stockpile" or a Government-held inventory that could be sold off as necessary to meet shortages and cartel-imposed price increases. Neither bill has been passed.

In the meantime, Mr. Nixon

WASHINGTON, Nov. 10—A study conducted within the Ford Administration has concluded that the United States will have a sufficient supply of imported industrial raw materials from asbestos to zinc through the end of this century and will not face a resource crisis like the oil crisis.

Nevertheless, high officials are expected to consider a program both to protect the country against the limited weaknesses revealed in the study—in bauxite, chromium and platinum—and to further strengthen over-all American self-sufficiency in industrial resources.

Commodity Power Studied

... have been



DEPARTMENT OF STATE

Washington, D.C. 20520

S/S 7412679
7412733

NSC 2931

July 11, 1974

CONFIDENTIAL

MEMORANDUM FOR: THE ASSISTANT TO THE PRESIDENT
FOR NATIONAL SECURITY AFFAIRS

THE ASSISTANT TO THE PRESIDENT
FOR INTERNATIONAL ECONOMIC AFFAIRS

Subject: Critical Imported Materials: NSSM/CIEPSM Study

I am forwarding the study of critical imported materials problems and options for US responses requested in NSSM 197/CIEPSM 33. This study was carried out by an Ad Hoc Group chaired by the Department of State and including representatives of the Secretaries of Defense, Treasury, Commerce, Agriculture, and Interior, the Director of Central Intelligence, Administrator of the General Services Administration, Director of the Office of Management and Budget and Executive Director of the Domestic Council. CIEP and NSC staff also contributed significantly to the study.

Winston Lord
Director
Policy Planning Staff

CONFIDENTIAL
GDS

KR 9/18/88

Entire Document not reproduced.
Call 3440 for complete copy.

Reference material

THE WHITE HOUSE

WASHINGTON

October 23, 1975

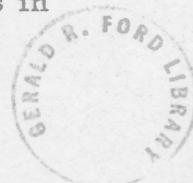
*nsc
(ply. nsc
to nsc)*

MEMORANDUM FOR: JEANNE W. DAVIS
THROUGH: PHILIP W. BUCHEN *J.W.B.*
FROM: JAY T. FRENCH *Jay*
SUBJECT: FOIA Request for NSC File Index
(Bennett)

You have requested the White House Counsel's guidance in your consideration of a Freedom of Information Act appeal of your decision to deny release of certain indices to NSC documents, minutes and policy decisions. The initial request from Mr. Jonathan Bennett was denied primarily because the indices were not considered "records" for purposes of the FOIA.

The NSC's determination that indices are not records subject to the FOIA was apparently based on the legal analysis of the State Department in replying to a similar request for indices from Mr. Bennett. However, our discussions with Mr. Robert Saloschin of the Justice Department's Office of Legal Counsel (and Freedom of Information Committee) indicate that such a legal rationale is not defensible. Accordingly, you should not rely upon such grounds in denying Mr. Bennett's appeal.

It would be proper for the NSC to withhold these indices if they are specifically authorized to be kept secret by Executive order and have been properly classified pursuant to such Executive order. In that regard, it was helpful that your memo recalled the current litigation involving Morton Halperin's request for certain other indices to NSC documents. Presently, the Justice Department is defending the NSC's denial of Mr. Halperin's request on grounds that indices taken as a whole can be classified even though specific titles listed in those indices cannot be classified standing alone. As long as the Department is in



litigation defending this position, the NSC may continue to rely upon it as grounds for denying the release of other indices, such as those requested by Mr. Bennett.

In relying upon such a defense, however, it is important to keep in mind that Mr. Bennett is requesting indices for 1953 and earlier, while Mr. Halperin is requesting indices for 1969 until the present. This time difference is a material distinction between the Halperin and Bennett requests. Consequently, it is my advice in this instance that you reluctantly and sparingly apply the legal reasoning of the Halperin defense and release as many portions of the requested indices as may be segregated from those which are properly classified.

This reply has been approved by the Freedom of Information Committee at the Justice Department in accordance with the requirements in 28 C.F.R. § 50.9.



NSC

THE WHITE HOUSE

WASHINGTON

November 10, 1975

TOP SECRET
ATTACHMENTS

MEMORANDUM FOR: JEANNE DAVIS

FROM: PHILIP W. BUCHEN

P.W.B.

By your memorandum dated November 5 you asked me to review and clear with the Justice Department Freedom of Information Committee the NSC's alternative responses to Jonathan Bennett's request for release of NSC 29.

The age of this document and the fact that its recommendations were never adopted by the NSC tends to make untenable continued classification as a Top Secret document. However, if the NSC staff believes that the name of one particular country which appears repeatedly in the document ought to remain classified for foreign policy reasons, then it is suggested that these references be given the lowest level of classification, confidential. All other parts of NSC 29 should be declassified and released to Mr. Bennett. Such action is consistent with the Freedom of Information Act, as amended, which requires the segregation and release of portions of documents that are not exempt from disclosure.

This response has been cleared with Robert Saloschin, Chairman of the Freedom of Information Committee at the Department of Justice.

TOP SECRET
ATTACHMENTS

THE WHITE HOUSE

WASHINGTON

November 10, 1975

Phil:

Attached is reply to Jeanne Davis' memo of November 5 concerning an FOIA appeal from Mr. Jonathan Bennett.

Bob Saloschin at Justice and I are in agreement on how this should be handled.


Jay

MEMORANDUM

NATIONAL SECURITY COUNCIL

~~TOP SECRET~~
ATTACHMENTS

FOIA 448-A
November 5, 1975

MEMORANDUM FOR MR. PHILIP W. BUCHEN

FROM: JEANNE W. DAVIS *JWD*

SUBJECT: FOIA Appeal for Release of NSC 29

In response to a Freedom of Information Act (FOIA) appeal for the release of NSC 29, a 1948 document on Security of Strategically Important Industrial Operations in Foreign Countries, we have assembled the attached materials for General Scowcroft's consideration.

We ask that you review my memorandum and clear the alternative responses with the Department of Justice Freedom of Information Coordinating Committee. So that we may provide the appellant with a timely response, we would appreciate receiving your comments by Monday, November 10, 1975.

Attachments

~~TOP SECRET~~
ATTACHMENTS

NATIONAL SECURITY COUNCIL

TOP SECRET
ATTACHMENT

ACTION

MEMORANDUM FOR

FROM: Jeanne W. Davis

SUBJECT: FOIA Appeal for Release of NSC 29 - Security of
Strategically Important Industrial Operations in
Foreign Countries

On September 25, 1975, Mr. Jonathan Bennett (Tab C) requested under the Freedom of Information Act (FOIA) the declassification and release of NSC 29, a TOP SECRET August 26, 1948 document entitled: "Security of Strategically Important Industrial Operations in Foreign Countries," (Tab B). Due to an oversight we failed to respond to Mr. Bennett's original request within the time prescribed under the FOIA and he has subsequently written (Tab D) indicating that he views our failure to promptly respond as an implied denial of his request. Accordingly, he has appealed the denial and his appeal must be answered by November 21, 1975.

NSC 29, a twenty-seven year old Report to the National Security Council, was prepared pursuant to a request from the Department of State that the NSC Staff review the matter of security measures in Venezuelan oil fields. In its final form the study was broadened to cover the general security problems of overseas industrial operations strategically important to the US and Venezuelan petroleum production is used as an example.

During our initial review, we asked for the views of the Department of State and CIA prior to making our own determination. Both agencies responded, indicating they had no objection to the declassification of NSC 29. We were particularly intrigued with State's response, since they are very aware of Venezuela's sensitivity to matters concerning protection or control of their oil refineries. As a result, we queried the Venezuelan Country Director, who stated that the document should not be released (which raises questions concerning State's FOIA procedures). He also agreed that in light of current sensitivities in US relations with Venezuela and other oil-producing countries, NSC 29 could be

TOP SECRET
ATTACHMENT

considered properly classified and exempt from the General De-classification Schedule under the provisions of Executive Order 11652.

After reviewing this document, Steve Low concluded that the document should not be declassified at this time. He pointed out the "exaggerated Venezuelan response to a recent Congressional study relating to protection/seizure of oil operations overseas" as an example of Venezuela's sensitivities on this subject. Negotiations between US oil companies and the Government of Venezuela are currently in a sensitive state and could be adversely affected by release of NSC 29. Steve has suggested, however, that next year, after these negotiations have been completed, the document should be reviewed again for possible declassification.

Colonel Granger believes that, although NSC 29 is twenty-seven years old, and its recommendations were never adopted by the NSC, the "subject matter is particularly sensitive in view of the delicate relationship between the United States and oil [and other critical commodity] exporting countries, including Venezuela." He also points out that NSC 29 recommendations could be relevant to the Congressional investigation of the intelligence community as well.

Denis Clift also believes the document should not be declassified.

Based on our own review of the document, we have identified three options for handling the appeal:

- Grant the appeal and release the document.
- Release a sanitized version of the document from which the most sensitive and inflammatory passages have been removed. (The copy at Tab B has been marked in yellow to indicate suggested deletions.)
- Deny the appeal and withhold NSC 29.

You should be aware that there is a good chance Mr. Bennett will initiate a lawsuit to compel disclosure of this document and we will be faced with yet another court action. To strengthen our position

in anticipation of a lawsuit, the Staff suggests that you consider downgrading the document from TOP SECRET to CONFIDENTIAL.

At Tabs A-1, 2 and 3 are alternative letters informing Mr. Bennett of your decision. They have been coordinated with the Office of White House Counsel and the Chairman of the Department of Justice Freedom of Information Coordinating Committee.

RECOMMENDATION

That you indicate your decision on the declassification and release of NSC 29 by signing the appropriate reply at Tab A:

- _____ Option 1 - Grant appeal; release NSC 29;
sign letter at Tab A-1.
- _____ Option 2 - Declassify and release sanitized version;
sign letter at Tab A-2.
- _____ Option 3 - Deny appeal; withhold NSC 29;
sign letter at Tab 3; and,

In addition, consider downgrading classification of NSC 29 to CONFIDENTIAL.

Approve _____ Disapprove _____.

Attachments:

- Tab A - Proposed alternative letters to choose from.
(1, 2, 3)
- Tab B - NSC #29, dated August 26, 1948.
- Tab C - September 22, 1975 letter of appeal from Jonathan Bennett.
- Tab D - October 2~~2~~, 1975 letter from Jonathan Bennett.

September 22, 1975

Mrs. Jeanne W. Davis
Staff Secretary
National Security Council
Washington, D.C. 20506

Dear Mrs Davis:

This letter is to appeal your September 16, 1975, denial of my Freedom of Information request of August 27 and to initiate a new FOI request.

I appeal your denial of the August 27 request on the grounds that the indices requested are NSC records (as they would have to be if they are subject to the provisions of E.O. 11652), and that the invocation of the 552(b)(1) exemption implies that no "reasonably segregable portion" of the records is, or can be, declassified.

There is no basis in the statute to assert that a government agency can create a record which is not a record of that agency and, as such, is exempt from the provisions of the statute.

The new FOI request is as follows: I would like a copy of the document designated as NSC 29. I further request that you allow me to inspect any records in the possession of the NSC concerning any investigation, pursuant to NSC 29, of the production or procurement of raw materials in South America.

Sincerely,

Jonathan A. Bennett
Jonathan A. Bennett

SEP 22 1975

RECEIVED

* See FOI # 308 A for handling of paras. 1-3.

1001 Woodycrest Avenue
Bronx, New York 10452

October 21, 1975

Mrs. Jeanne W. Davis
Staff Secretary
National Security Council
Washington, D.C. 20506

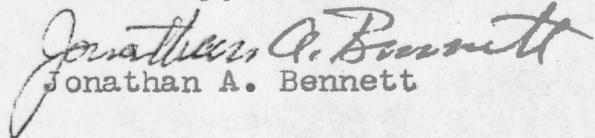
Dear Mrs. Davis:

In a letter of September 22, 1975, I made the following
Freedom of Information request:

I would like a copy of the document designated as NSC 29.
I further request that you allow me to inspect any records
in the possession of the NSC concerning any investigation,
pursuant to NSC 29, of the production or procurement of
raw materials in South America.

I have yet to receive any reply to this request. In
accordance with 5 U.S.C. 552(a)(6)(C) I deem the delay to
be a denial of my request, and I hereby appeal that denial.

Sincerely,


Jonathan A. Bennett

NOV 13 1975

RECEIVED

(FOI 448-A)

Dear Mr. Bennett:

In response to your letter of October 21, 1975 in which you appeal the National Security Staff denial of your request for a copy of NSC 29, I have reviewed this document and have determined that it may be declassified and released to you.

The NSC regulations governing our response to Freedom of Information Act requests state that there will be a charge for reproducing documents that contain more than three pages, unless the fee is specifically waived. In this instance we have decided to waive the copying charge and are enclosing a copy of NSC 29 herewith.

Enclosure

Mr. Jonathan A. Bennett
1001 Woodycrest Avenue
Bronx, New York 10452

(FOI 448-A)

Dear Mr. Bennett:

In response to your letter of October 21, 1975, I have carefully reviewed your appeal of the National Security Council Staff decision to deny release of NSC 29 and have determined that certain portions of NSC 29 may now be declassified and released. Other portions of this document, however, contain information which remains classified pursuant to Executive Order 11652, and exempt from the General Declassification Schedule under Section 5 (B) (3) of that Order. Accordingly, these portions are exempt from compulsory disclosure under 5 U.S.C. 552 (b) (1).

The NSC regulations governing our response to Freedom of Information Act requests state that there will be a charge for reproducing documents that contain more than three pages, unless the fee is specifically waived. In this instance we have decided to waive the copying charge and are enclosing a copy of NSC 29 herewith.

Enclosure

Mr. Jonathan A. Bennett
1001 Woodycrest Avenue
Bronx, New York 10452

(FOI 448-A)

Dear Mr. Bennett:

I have your letter of October 21, 1975 appealing the National Security Council Staff denial of your request for a copy of NSC 29.

I have carefully reviewed your appeal and have determined that NSC 29 is properly classified and is, moreover, exempt from the General Declassification Schedule under the provisions of Executive Order 11652, Section 5 (B) (3). Accordingly, it is exempt from compulsory disclosure pursuant to 5 U.S.C. 552 (b) (1). In addition, NSC 29 is also exempt from release pursuant to 5 U.S.C. 552 (b) (5).

You should know that you have the right to seek judicial review of this denial under the provisions of 5 U.S.C. 552.

Mr. Jonathan A. Bennett
1001 Woodycrest Avenue
Bronx, New York 10452

~~TOP SECRET~~

SECURITY INFORMATION

COPY NO. 38

NSC 29

A REPORT
TO THE
NATIONAL SECURITY COUNCIL

by

THE EXECUTIVE SECRETARY

on

SECURITY OF STRATEGICALLY IMPORTANT
INDUSTRIAL OPERATIONS IN FOREIGN COUNTRIES

August 26, 1948
WASHINGTON

DECLASSIFIED

Authority Nsc list of declassified
numbered documents
By WHTM NLF Date 5/8/00

~~TOP SECRET~~

NSC 29

August 26, 1948

NOTE BY THE EXECUTIVE SECRETARY

to the

NATIONAL SECURITY COUNCIL

on

SECURITY OF STRATEGICALLY IMPORTANT
INDUSTRIAL OPERATIONS IN FOREIGN COUNTRIES

The enclosed report on the subject, prepared by the NSC Staff with the advice and assistance of representatives of the Departments of State, the Army, the Navy, the Air Force and of the National Security Resources Board, and of the Central Intelligence Agency, is circulated herewith for consideration by the National Security Council at its next meeting.

The report was initiated by a memorandum from the Department of State to the Executive Secretary, NSC, on security measures [in the Venezuelan oil fields] with the suggestion that the NSC Staff study the problem and make appropriate recommendations. In its study, the NSC Staff broadened the scope of the report [from the particular Venezuelan oil problem] to the general security problem of strategically important industrial operations in foreign countries.

It is recommended that, if the enclosed report is adopted by the Council, it be submitted to the President with the recommendation that he approve the conclusions contained therein and direct that they be implemented by all appropriate Executive Departments and Agencies of the U. S. Government under the coordination of the Secretary of State.

SIDNEY W. SOUERS
Executive Secretary

Distribution:

The Secretary of State
The Secretary of Defense
The Secretary of the Army
The Secretary of the Navy
The Secretary of the Air Force
The Chairman, National Security
Resources Board

August 26, 1948

D R A F TREPORT BY THE NATIONAL SECURITY COUNCIL

on

SECURITY OF STRATEGICALLY IMPORTANT
INDUSTRIAL OPERATIONS IN FOREIGN COUNTRIESTHE PROBLEM

1. To determine the measures to be taken for the protection against sabotage of industrial operations in foreign countries producing materials [of strategic importance to the security of the United States] and to assign responsibility for those measures.

ANALYSIS

2. Many materials of strategic importance [to the United States] are produced in foreign countries where the existence of strong [communist] parties or [communist-dominated] labor unions, the probable presence of [Soviet agents], and the lack of effective industrial security procedures combine to render the production and shipment of such materials vulnerable to sabotage or subversive activities. It must be assumed that [the Kremlin] will take full advantage of these conditions and make every effort, particularly in time of war or crisis, to disrupt the supply of such materials [to the United States and its allies].

3. [The situation in Venezuela illustrates the problem. Venezuela's petroleum production, amounting to about one-fifth of the daily production in the United States, is of special importance to this country. Venezuela has a strong communist party.

and certain of its labor unions in the oil industry are communist-controlled. Since the war, communists from Europe are known to have established themselves in the country. The USSR maintains a diplomatic mission in Caracas which can closely direct the activities of local communists and provide a cover for special agents and saboteurs. Preliminary reports by U. S. Government agencies and by American oil companies indicate that the Venezuelan oil industry is highly vulnerable to sabotage, that adequate protective plans are lacking, and that a comprehensive survey is urgently needed. Two American oil companies in Venezuela have instituted limited security survey and planning operations, but in view of the political and technical problems involved will be unable to put into effect fully adequate and coordinated security measures. Similar situations exist in other countries.

4. The direct protection of industrial operations in foreign countries must remain in time of peace a local responsibility. Foreign governments do, however, sometimes request from the United States technical assistance in assessing the vulnerability of important industrial operations or in devising plans for the security of such operations. In other cases, these operations might be of sufficient importance to merit the United States taking the initiative in determining their vulnerability. It may even be desirable for the United States to keep under constant surveillance the threat to especially important industrial operations in foreign countries. [During World War II, limited activities of this general character were carried on by the U. S. Government.] There is at present no

agency of the U. S. Government charged with undertaking governmental activities in this important field. The Central Intelligence Agency has a limited number of qualified experts who, although now engaged in other duties, could undertake surveys of the vulnerability to sabotage of industrial operations abroad and could obtain information regarding the threat to such operations.

CONCLUSIONS

5. The national security of the United States requires that all practicable and appropriate measures be taken to minimize the vulnerability of strategically important industrial operations in foreign countries.

6. U. S. Governmental activities to promote industrial security in foreign countries of enterprises of strategic importance to the United States should be coordinated by the Secretary of State who should avail himself of the assistance of interested agencies and should keep such agencies fully informed.

7. The Central Intelligence Agency should be directed to undertake, upon request of the Secretary of State, the responsibility (1) to make surveys of the security of specific industrial operations in foreign countries which are producing materials of strategic importance to the United States, (2) to develop plans for the protection of such operations, [and (3) to establish continuous intelligence surveillance of industrial operations of vital importance and under special threat.]

8. The Secretary of State should be empowered, either on his own initiative or upon the request of the Secretary of Defense, the Chairman of the National Security Resources Board or the heads of other interested Government agencies, to call upon the Central Intelligence Agency to undertake specific projects of the type mentioned in the foregoing paragraph.

9. The National Military Establishment, the National Security Resources Board and other agencies concerned with strategic materials of importance to the security of the United States should make available to the Secretary of State all pertinent information having to do with security of industrial operations [of strategic importance to the United States] in foreign countries and should refer to the Secretary of State any requests or suggestions for United States Governmental operations to promote the protection of industrial enterprises abroad.

TOP SECRET
ATTACHMENTS

THE WHITE HOUSE
WASHINGTON

NSC

November 20, 1975

MEMORANDUM FOR: JEANNE DAVIS

FROM: PHILIP W. BUCHEN

P.W.B.

By your memorandum dated November 14 you asked me to review and clear with the Justice Department Freedom of Information Committee the NSC's alternative responses to Mr. Joseph P. O'Grady's request for release of NSC 68/4.

The age of this document and the fact that its release will not likely cause any damage to the national security make its continued classification as a Top Secret document unnecessary and untenable. Furthermore, it is our opinion that if Mr. O'Grady was refused this document and he brought an action for its release in the Federal District Court, that he would have a very high probability of success. Accordingly, we recommend the selection of Option 1.

This response has been cleared with Robert Saloschin, Chairman of the Freedom of Information Committee at the Department of Justice.

TOP SECRET
ATTACHMENTS



THE WHITE HOUSE
WASHINGTON

November 20, 1975

MEMO FOR: PHIL BUCHEN

FROM: JAY FRENCH *JF*

Attached at Tab A is an FOIA appeal from Jeanne Davis which Jim Wilderotter and I have reviewed.

After discussing this request with the appropriate Justice officials, we recommend that you sign and forward the attached memo to Jeanne Davis.



MEMORANDUM

NATIONAL SECURITY COUNCIL

~~TOP SECRET~~
Attachments

(FOI 366-A)
November 14, 1975

MEMORANDUM FOR MR. PHILIP W. BUCHEN

FROM: JEANNE W. DAVIS *JWD*

SUBJECT: FOIA Appeal for Release of NSC 68/4

We are responding to a Freedom of Information Act (FOIA) appeal for the release of NSC 68/4, a 1950 document on "United States Objectives and Programs for National Security," and we have assembled the attached materials for General Scowcroft's consideration.

We ask that you review my memorandum and clear the alternative responses with the Department of Justice. So that we may provide the appellant with a timely response, we would appreciate receiving your comments by next Wednesday, November 19, 1975.

Attachments

~~TOP SECRET~~
Attachments



NSC

Tuesday 11/25/75

9:35 Steve Schencke of NSC called to say they had sent a memo from Jeanne Davis on 8/28/75 concerning a Congressional request for material on Saudi Arabia; they wanted to clear a final response to State to make sure it was O.K. 3587

Checked with Jay, who said he had referred it to Justice, who "ducked it." Steve will be called by Jay.



Wednesday 9/8/75

3:25 JAY:

Mr. Buchen asked me to pull the previous material from our safe on Saudi Arabia -- said they keep quoting from the previous.

Asked me to give you both of the memos of 8/28 frm. NSC and have you review them.

Said to tell you he has some problems with the fact that certain of the letters are not classified and what bothers is that if they're not classified, couldn't the Congressional Committee get them under the FOA? He doesn't know if we made that distinction before. Doesn't know of any defense.

Eva



9/3
to JaySECRET ATTACHMENTS

August 28, 1975

FREEDOM OF INFORMATION ACT APPEAL

MEMORANDUM FOR: PHILIP W. BUCHEN
FROM: Jeanne W. Davis *JW*
SUBJECT: Mr. William Beecher Request
for Information on Himself

In early July the NSC received a request from Mr. William Beecher (Tab A) for information in NSC files concerning him. In response to this request we reviewed the NSC files and also the papers from President Nixon's files in the second floor vault for any NSC papers which might refer to Beecher.

Because Beecher was involved in the public disclosure of the U. S. position at the SALT negotiations, which resulted in an extensive investigation within the Executive Branch, we knew that we had files relating to him and the newspaper articles he had written. Until we had located and examined the documents, however, we didn't know whether the documents were NSC papers or papers from the White House Office of the Assistant to the President for National Security Affairs. After we reviewed the materials we had collected and were able to determine that almost all of them were White House documents, we addressed our review of Mr. Beecher's FOIA request to the documents properly a part of the NSC files.

While Mr. Beecher's request of July 1 was under consideration, we received from the Department of Defense a referral (Tab B) containing NSC/WH documents they had retrieved from their files in response to an FOIA request Beecher had directed to them. Defense asked that we review the documents and respond directly to Beecher.

One of the documents retrieved in Beecher's file by Defense is National Security Study Memorandum (NSSM) 3 (Tab C) concerning

SECRET ATTACHMENTS

U. S. Military Posture and in no way refers to Beecher, by name or otherwise. The second document is a Secret/Eyes Only November 1969 memorandum from Mr. Kissinger to the Secretaries of State and Defense (Tab D) conveying the President's order of an embargo on discussions of U. S. troop withdrawals. Clearly, it is a document which emanated from the White House, is not contained in NSC files, and should be categorized as being among the Nixon materials subject to the order of the Court.

In my letter of August 1, 1975 to Mr. Beecher (Tab E) I indicated that we had located in NSC files and reviewed two documents which referred to a meeting he had with an NSC Staff member one of which we released to him. The other document (Tab F) is a memorandum from the NSC Staff member to Mr. Kissinger recommending further action on Mr. Beecher's request for information on strategic planning. This document contains nothing more than the personal advice of one of our staff members and we informed Mr. Beecher that it was being withheld under 5 U. S. C. 552 (b)(5). At that time I also informed Mr. Beecher that we had identified other materials which refer to him but that these records are part of President Nixon's papers and are not subject to review in response to a request under the FOIA.

Mr. Beecher has now appealed (Tab G) the NSC Staff decision to withhold one of the NSC documents we reviewed in response to his request and Secretary Kissinger must respond to this appeal by September 10.

Before we forward this appeal, along with the NSC Staff recommendations, to Mr. Kissinger for review we would like your guidance on three points relating to this request:

1. Although there is no substantive objection to the release of the memorandum (Tab F) containing the recommendations of an NSC Staff member, we are reluctant to set a precedent of releasing such internal communications and thus would like to know if this document has properly been and should continue to be withheld under 5 U. S. C. 552 (b)(5).
2. NSSM 3 (Tab C) in no way refers to Mr. Beecher although it was referred by Defense as one of the documents they have in their file on Beecher. Because Defense believes it pertains to Beecher, does the NSC Staff have to review the NSSM for release and so inform Beecher, or may we declare that it does not fall under his request since it does not refer to him?



3. Under the FOIA, must we review a document referred from another agency when the same document would have been excluded from our own review, specifically in the case of the memorandum at Tab D which is a record from the Nixon Administration?

We would appreciate your thoughts on these matters and your recommendations on how we should handle the Beecher appeal.



MEMORANDUM

NATIONAL SECURITY COUNCIL

3221

*9/3 given
to
Jany
w/
material
from
Spec
Agreements
file*

August 28, 1975

MEMORANDUM FOR: PHILIP BUCHEN

FROM:

for Jeanne W. Davis ^{*MM*}

SUBJECT:

Congressional Request for Presidential
Correspondence on Saudi Arabia

You will note that Secretary Kissinger has decided to deny the Senate Foreign Relations Committee Request for Presidential Correspondence to leaders of Saudi Arabia.

I would like to advise the State Department of this decision and ask them to inform the Senate Foreign Relations Committee. The attached draft memorandum to George Springsteen would do that and would use the language provided me in your memorandum of May 16 attached at Tab C.

In view of the sensitivity of this issue I would appreciate it if you could take one final look at this draft memo to Springsteen and let me know if you think that any changes should be made.



THE WHITE HOUSE
WASHINGTON

*Classified
down*

May 16, 1975

MEMORANDUM FOR:

JEANNE DAVIS

FROM:

PHILIP W. BUCHEN

SUBJECT:

Senate Foreign Relations
Committee Request for
Presidential Correspondence
on Saudi Arabia

In response to your memorandum of May 12 on the above subject, I comment as follows:

1. Preferred option: I prefer option 2 of this draft memo under which appropriate representatives of the Senate Foreign Relations Committee would be permitted to review the classified letters, but would not be provided with copies of those letters. Option 1 -- providing copies to the Committee on a classified basis -- tracks too closely the procedure required under the Case Act for "international agreements." Adopting that option might be interpreted as an acknowledgement that these letters in fact represent an "international agreement," a position we have rejected in the case of the Nixon-Thieu letters. Option 3 -- total denial-- strikes me as unnecessarily belligerent and inappropriate in view of the low sensitivity of these particular letters and the Senate's unquestionable legitimate inquiry into the scope and nature of U. S. commitments in the Middle East.
2. Legal basis for denial: For language to support option 3, I would suggest the following:

The letters in question do not constitute international agreements because they do not bind the U. S. as a Nation. They are not in any way analagous to treaties and do not abrogate in any way treaty power of the Senate.



In truth and in fact the letters in question represent nothing more than confidential communications between heads of state. As such, to provide them to the Congress would irreparably harm the ability of a President to conduct the foreign relations of the United States. If the President's correspondence with other heads of state is subject to being provided to the Congress, the result would be a significant chill in the candor and utility of such confidential exchanges. As President Ford recently indicated, "it would not be wise to establish the precedent of providing correspondence between the heads of state."

