

The original documents are located in Box 4, folder “Arab Boycott - Congressional Contempt Citation Against Rogers Morton” of the John Marsh Files at the Gerald R. Ford Presidential Library.

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THE WHITE HOUSE

WASHINGTON

November 12, 1975

MEMORANDUM TO: JACK MARSH

FROM: RUSS ROURKE *Rourke*

Jack, Jim Sparling advises me that he is presently preparing an option memo for Morton on the contempt citation situation. The memo will contain the following five options:

- 1) Surrender
- 2) Compromise
- 3) Announce to American firms that the principle of confidentiality will no longer be observed in the future. (This would appear to me to be a part of Option 1 rather than an option in itself.)
- 4) Get the matter into the courts and have them decide the public course of action.
- 5) "Stonewall it"

In brief, Sparling will basically counsel Morton to offer the material to John Moss on a confidential basis. This would, of course, both protect the business community and provide Moss with the material he wants. If Moss rejects this compromise, then Sparling believes that opinion will shift in Morton's favor when they get to Full Committee (on the theory that Moss is simply out to embarrass the Administration).

Sparling readily admits that to provide Moss with the material, on a "confidential basis", is tantamount to sending a press release to the Washington Post.

cc: MFriedersdorf



November 12, 1975

MEMORANDUM FOR: MAX FRIEDERSDORF

FROM: JACK MARSH

Let's take some time today and talk about the Morton contempt citation.

Russ -- Call Jim Sparling and get his assessment of that situation.



RED TAG

THE WHITE HOUSE

WASHINGTON

November 19, 1975

MEMORANDUM FOR:

JACK MARSH

THRU:

MAX L. FRIEDERSDORF *M. L.*
VERN LOEN

FROM:

CHARLES LEPPERT, JR.

SUBJECT:

Contempt citation against Rogers
C. B. Morton - Secretary of Commerce

Enclosed is a copy of the wording of the resolution issued by the Subcommittee on Oversight and Investigations against Rogers C. B. Morton.

In checking with Lew Berry, minority counsel on the Committee on Interstate and Foreign Commerce, he advises that most of the House of Representatives are planning on leaving tonight at close of business for the Thanksgiving recess. Tomorrow's session is just pro forma.

Full Committee meetings are scheduled for December 2, 3 and 4 including the contempt citation. Although it is listed second on the list, that does not necessarily mean that it will be called in that order. However, the contempt citation is expected to be heard one of those three days.

Attachment

[Faint circular stamp]

Resolution issued by the Subcommittee on Oversight and Investigations
against Rogers C. B. Morton, Secretary of Commerce -November 11,
1975

RESOLVED, that the Subcommittee finds that Rogers C. B. Morton
Secretary of the United States Department of Commerce in contempt
for failure to comply with the subpoena ordered by the Subcommittee
and dated July 28, 1975, and that the facts of this failure be reported
by the Chairman of the Subcommittee on Oversight and Investigations to
the Committee on Interstate and Foreign Commerce for such actions
that Committee deems appropriate.

Chairman - Rep. John E. Moss (D-Calif.)





THE SECRETARY OF COMMERCE
Washington, D.C. 20230

December 1, 1975

Honorable Harley O. Staggers
Chairman, Committee on Interstate
and Foreign Commerce
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

The purpose of this letter is to set forth the basis for my declining to disclose the documents subpoenaed by your Subcommittee on Oversight and Investigations.

As you know, these documents are reports filed by United States exporters who have received requests for information originating in Arab Nations which participate in the secondary boycott of the State of Israel. These documents contain considerable details of individual commercial transactions, some of which have not yet been consummated, and for this reason are deemed confidential under Section 7(c) of the Export Administration Act of 1969. The issue of disclosure of information deemed confidential under Section 7(c) has nothing to do with the secondary boycott of the League of Arab Nations against the State of Israel and this controversy could just as easily have arisen over the disclosure of any other export information collected under the Act, such as for example, the proprietary data submitted by an exporter in export license applications, pursuant to the licensing requirements imposed under the Act on grounds of national security, foreign policy or short supply. Yet, because of my refusal to violate the mandate of Congress contained in Section 7(c), I have been charged by certain members of the Congress and representatives of the Press as supporting the secondary boycott of Israel and your committee is scheduled to meet tomorrow to consider referring to the House a citation for contempt of Congress voted by the Subcommittee on Oversight and Investigations.

Although the boycott has nothing to do with my declining to comply with the Subcommittee's subpoena, I would first like to set the record straight as to my position regarding this boycott.



The United States policy in opposition to this boycott contained in Section 3(5) of the Act, was enacted in 1965. Upon becoming Secretary of Commerce seven months ago, I went on record as fully endorsing this policy. In view of my personal concerns about the manner in which the Department of Commerce was complying with the spirit and intent of the Act, and in light of requests by the Congress that the Department review its position, the following steps were taken:

- o The Department instituted the most massive publicity campaign since 1965, to inform U. S. exporters of the United States policy enounced by the Congress, to request and encourage exporters not to comply with boycott-related requests for information, and to remind them of the reporting requirements under our Export Administration Regulations. As part of this campaign, copies of the pertinent parts of our regulations were mailed out to some 30,500 firms listed in the American International Traders' Index and several articles were published in Commerce Today.
- o Coupled with this publicity campaign, all violations of the reporting requirements have been investigated and, as a result thereof, 212 firms have been warned, civil penalties have been imposed against four firms, and charges are pending against two additional firms.
- o Simultaneously, I instituted a policy of referring to the Departments of State and Justice for appropriate action any boycott-related request for information which involved discrimination against Americans on religious or ethnic grounds.
- o In September, I amended the reporting requirements under our regulations to require reporting firms to indicate whether or not they had complied, or intended to comply, with the reported boycott-related requests for information. Since



1965, the answer to that question in the Department's reporting form had remained optional, and had not been answered by many reporting firms. A copy of Export Administration Bulletin No. 146 of September 25, which implements this decision, is enclosed for your information.

- o On November 20, acting on my recommendation, the President directed that the regulations be amended to prohibit exporters from complying with any boycott-related requests which involved discrimination on the basis of race, color, religion, national origin or sex, and also to require related service organizations such as banks, insurers, freight forwarders, and shipping companies to report the receipt of any boycott-related requests directly to the Department. A copy of Export Administration Bulletin No. 149 of November 20, which implements this directive, is also enclosed.
- o On November 28, I announced that effective December 1, the Department would cease to disseminate trade opportunities known to contain restrictive trade clauses or boycott-related provisions against another country friendly to the United States. I am enclosing a copy of Circular No. 21 of November 26, which sets out this new policy.

Mr. Chairman, I believe that these actions speak for themselves, and I will not dignify with any further comment, the allegations of those who would have the Congress and the American people believe that I am covertly supporting the boycott.

I would now like to turn to the issue at hand, that is my inability to make the national interest determination required under Section 7(c) of the Act to allow the unrestricted disclosure of the reports filed by U.S. citizens under an express pledge of confidentiality.



Section 7(c) which was first enacted in 1949, is clear on its face. In effect, it prohibits me from publishing or disclosing to anyone, information obtained under the Act, which is deemed confidential or submitted in confidence, unless I can determine in good faith that the withholding thereof would be contrary to the national interest. I did not write this law, nor can I change it for the sake of avoiding a political confrontation. If the Congress, after twenty-five years, believes the law should be changed, then it should do so by legislative amendment and not by citing me for contempt of Congress in discharging my responsibilities under a law passed by the Congress. There is a disagreement between the Attorney General of the United States and three law professors selected by the Subcommittee on Oversight and Investigations, as to whether or not the confidentiality provisions of Section 7(c) are intended to apply to requests by Congressional Committees. The views of these three professors were submitted to the Attorney General. After careful consideration of the issues raised, on November 11, the Attorney General reiterated to Chairman Moss his initial opinion that Section 7(c) applied to requests by the Congress. This is not a question of executive privilege but of statutory construction. It is a purely legal issue and should therefore be determined by the courts. I have repeatedly stated that I would abide by a court decision, but until such time as a court decides otherwise, I must rely on the advice of the Attorney General of the United States.

Mr. Chairman, as a former member of the House, I have the utmost respect for that body and I fully recognize its right to access to the information which it requires to perform its legislative functions. From the day when the Subcommittee on Oversight and Investigations first requested the documents which it has subpoenaed, I sought to cooperate with the Subcommittee to the fullest extent permissible under Section 7(c) of the Act. I promptly transmitted to the Subcommittee complete statistical summaries of the information contained in these reports. Upon being advised by Chairman Moss that this information was inadequate, I offered to provide the Subcommittee with copies of all the reports, after deleting the names of the reporting firms and details of the individual transactions. All of the requests from the Subcommittee



for information and documents not involving the confidentiality provisions of Section 7(c) have been promptly complied with. On November 24, in a last effort to settle amicably this controversy with Chairman Moss, I wrote him urging that he seriously consider two avenues which would avoid a settlement of the issue in a political forum. First, I requested him to reconsider the suggestion made by a member of his Subcommittee on September 22 --which he had then rejected out-of-hand -- to seek a judicial determination of whether or not the confidentiality provisions of Section 7(c) apply to requests by Committees of the Congress. Second, I offered to make the national interest determination required under Section 7(c) of the Act, to provide the Subcommittee on a confidential basis with copies of all the reports which it had requested. I am enclosing a copy of this letter for your information.

On November 26, I received the Chairman's response, a copy of which is also enclosed. In this letter, he rejects my first suggestion on the grounds that judicial review may be obtained more promptly through a writ of habeas corpus following my arrest, or in the course of a criminal prosecution to be instituted against me under 2 USC 192. Incredibly, Chairman Moss concludes his letter with the statement:

"I reiterate these steps which I will take, will be taken with no intent to embarrass or harm you or with any sense of diminished respect for you as an individual."

Mr. Chairman, I respectfully submit that prompt judicial review of this issue can, and should, be obtained with the consent of the Committee. This judicial review would not delay in any way the Subcommittee's access to the information which it has requested, since I stand ready and willing to provide today on a confidential basis all the reports which the Subcommittee has requested. If the court were to conclude that Section 7(c) does not apply to the Congress, the Committee would then be free to disclose or publish these as it sees fit. On the other hand, if the court upholds the Attorney General's interpretation of that statutory provision, then it would be up to the Congress to amend the law, if it considers such an amendment to be in the national interest.



However, Chairman Moss has also rejected my offer to provide these documents on a confidential basis. He cites several reasons for his rejection.

His first reason is that it would preclude the Subcommittee from releasing this data to Federal prosecutors, if violations of law were discovered. On August 6, 1975, I made the national interest determination required under Section 7(c) to authorize representatives of the Department of Justice to have access on a confidential basis to all the reports of boycott-related requests filed with the Department, in connection with their investigation of possible civil rights and antitrust violations. On October 15, I made a second national interest determination to provide members of the Office of the U.S. Attorney for the Southern District of New York, access to these documents on the same basis. Thus, although federal prosecutors have already reviewed all the documents which Chairman Moss has requested, I would have no difficulty in stipulating in my national interest determination to Chairman Moss, that the Subcommittee could transmit any of those documents to the Department of Justice for whatever additional investigations it saw fit to request.

The second reason given by Chairman Moss is that a pledge of confidentiality would place unconstitutional limits on the authority of the Congress to discharge its legislative and oversight responsibilities. Frankly, Mr. Chairman, I find this argument difficult to comprehend when previous and current Chairmen of Committees of the Congress have found no difficulty in providing such assurances of confidential treatment over the last 25 years, thereby recognizing the sensitivity of information which is deemed confidential or submitted in confidence pursuant to the Export Administration Act and its predecessor statute.

To give but a few examples, this restriction on the use of the information did not raise constitutional difficulties when Congressman Oren Harris, then Chairman of the House Special Subcommittee on Legislative Oversight, requested access to files of this Department relating to International Expeditors Inc.; nor did it concern Congressman Benjamin Rosenthal in August of last year, when he requested on behalf of the House Subcommittee on Europe, certain confidential



material pertaining to commodities licensed for export to the Soviet Union. On the Senate side, it did not bother Senator Henry Jackson in April of last year, when he requested, on behalf of the Senate Subcommittee on Permanent Investigations, access to applications for licenses issued to export material and technology to the Soviet Union and Eastern Europe; nor did it raise difficulties with Senator Frank Church, in July of last year, when he requested, on behalf of the Senate Subcommittee on Multinational Corporations, access to export licensing documents required by the Subcommittee in connection with it's study on East-West Trade. I am enclosing copies of the letters sent to the Department by these four Chairmen, and the Department's responses thereto. There are other examples available, Mr. Chairman, which I will be most happy to provide, if you wish.

Would any one seriously believe that those Committee Chairmen are men capable of abdicating the constitutional prerogatives of the Congress? I submit, that in providing the Department with the necessary assurances of confidentiality, they acted as responsible officials who are sworn to uphold the laws of the United States, including the confidentiality provisions contained in Section 7(c) of the Export Administration Act.

In concluding, Mr. Chairman, I would urge your Committee not to be swayed by emotion or political expediency and to recognize that the issue before you is not one of contempt, but rather of the scope of Congress' own statute. I sincerely believe that it is vital to the welfare of our government and of our Nation, that differences which arise between the legislative and executive branches be resolved in a fair and responsible manner. I would hope that the solutions suggested in my letter of November 24 to Chairman Moss would be considered by the full Committee as the fair and responsible way to resolve this matter.

Sincerely,

Secretary of Commerce

Enclosures





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Washington, D.C. 20230

December 1, 1975

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Sincerely,

Secretary of Commerce

Enclosures



December 2, 1975

MEMORANDUM FOR: JACK MARSH
FROM: CHARLIE LEPPERT
SUBJECT: Interstate and Foreign Commerce

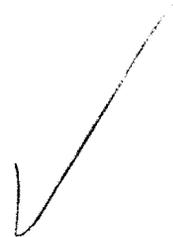
The Committee on Interstate and Foreign Commerce did not consider the Morton contempt resolution this morning. The Committee will vote on the Morton contempt resolution tomorrow, December 3, 1975. Committee sources indicate that some Democratic Committee Members will vote against the Morton contempt resolution but that the vote will be close. A motion to table and a motion to recommit the Morton contempt resolution will be offered when the Committee meets on this matter tomorrow. The Committee did, by voice vote, report out a short term natural gas bill.



THE WHITE HOUSE

WASHINGTON

December 2, 1975



MEMORANDUM FOR: JACK MARSH
FROM: CHARLIE LEPPERT
SUBJECT: Interstate and Foreign Commerce

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Morton

December 3, 1975

MEMORANDUM FOR: RUSS ROURKE

FROM: JACK MARSH

Give Jimmy Baker a call. He is Under Secretary of Commerce. Moorhead is in London. We have this matter coming up involving Reg Morton in the Interstate and Foreign Commerce Committee and we will need all the votes we can get. Maybe someone early Wednesday could give him a call and inquire about the possibilities of his returning to help Morton out if Morton needs him.



THE WHITE HOUSE
WASHINGTON

December 4, 1975

TO: JACK MARSH

FROM: CHARLIE LEPPERT

Jack, can I discuss this with you in reference to my conversation with Bill Brown - House Parliamentarian.

Morton
contempt

UNITED STATES OF AMERICA
HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
WASHINGTON, D.C. 20515

December 3, 1975

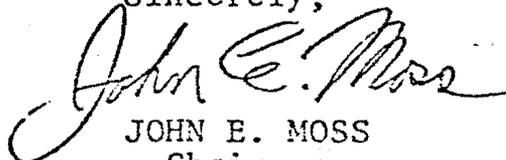
Honorable Rogers C. B. Morton
Secretary of Commerce
Washington, D. C. 20230

Dear Mr. Secretary:

I have received a letter from Representatives Timothy E. Wirth and H. John Heinz III which raises a question regarding your understanding of the procedures of the House of Representatives, in particular, Rule XI(k) regarding executive session and Rule XI(e)(2) regarding access of House Members to Committee records.

I would appreciate your furnishing me by 10:00 a.m. tomorrow (Thursday, December 4, 1975) a response to Congressmen Wirth and Heinz. Specifically, will you furnish the information on the terms suggested.

Sincerely,



JOHN E. MOSS
Chairman
Oversight and
Investigations Subcommittee

JEM:mlw

Enclosures

- (1) copy of letter dated December 3, 1975
- (2) copy of Rule XI(k) and Rule XI(e)(2)

Congress of the United States

House of Representatives

Washington, D.C. 20515

December 3, 1975

Honorable Harley O. Staggers, Chairman
Committee on Interstate and Foreign Commerce
House of Representatives
Washington, D.C. 20515

Honorable John E. Moss, Chairman
Subcommittee on Oversight and Investigations
House of Representatives
Washington, D.C. 20515

Dear Messrs. Chairmen:

The members of the Committee on Interstate and Foreign Commerce will soon be asked to cite Secretary Rogers Morton for contempt of Congress because of the Secretary's failure to honor a Committee subpoena for material relating to economic boycotts. We believe that the Congress has a constitutional right to receive this material and that Secretary Morton is obliged to honor a duly issued subpoena from the legislative branch.

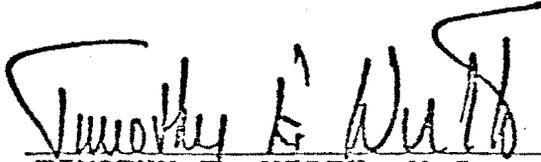
We understand, however, that Secretary Morton has expressed concern about preserving the confidentiality of the material in question. It is our view that the rules of the House of Representatives offer a series of safeguards that will satisfy the Secretary's concerns.

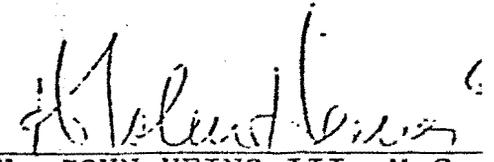
Secretary Morton may not yet fully understand the manner and the rules by which the Subcommittee and the Committee will dispose of this material. Along these lines, we propose that you immediately convey to Secretary Morton that the Committee on Interstate and Foreign Commerce and the Subcommittee on Oversight and Investigations will receive this material in executive session pursuant to the Rules of the House of Representatives governing Investigative Hearing Procedures. We specifically suggest that you make clear to Secretary Morton that the rules would preclude public disclosure of the material unless the Subcommittee voted to make disclosure and would limit access to the materials to Members and Subcommittee staff.

We are hopeful that Secretary Morton will be willing to deliver the material in question to this Committee once the Rules of the House are made clear to him. If he does not

make this material available to the Congress under these circumstances, we will then be prepared to find that Secretary Morton has failed to honor a duly-issued Congressional subpoena.

Sincerely,


TIMOTHY H. WIRTH, M.C.


H. JOHN HEINZ III, M.C.