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Condy Green

HOUSE OF REPRESENTATIVES

HEARINGS

BEFORE THE COMMITTEE

on

SELECT COMMITTEE ON INTELLIGENCE

COMMITTEE BUSINESS

VOLUME 24

Thursday, November 6, 1975

Washington, D. C.

Official Reporters to Committees

CC
1 COMMITTEE BUSINESS

2 - - -

3 Thursday, November 6, 1975

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5 House of Representatives,
6 Select Committee on Intelligence,
7 Washington, D. C.
8

9 The committee met, pursuant to notice, at 10:05 a.m.,
10 in Room 2118, Rayburn House Office Building, the Honorable
11 Otis G. Pike (chairman), presiding.

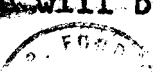
12 Present: Representatives Pike (chairman), Giaimo, Stanton,
13 Dellums, Murphy, Aspin, Milford, Hayes, Lehman, McClory,
14 Treen, Johnson and Kasten.

15 Also Present: A. Searle Field, Staff Director;
16 Aaron B. Donner, Counsel ; Jack Boos and Peter Hughes, Com-
17 mittee staff.

18 - - -

19 Chairman Pike. The committee will come to order.

20 We do not have a witness this morning because Mr. Colby
21 is testifying before a Senate committee this morning. He is
22 unpacking his bags and he will be here at two o'clock this
23 afternoon, at which time we will start in open session on the
24 subject of possible CIA use of our media. How far we will be
25 able to go in open session with that, I do not know.



1 It is my understanding that Mr. McClory has some
2 business he wishes to bring before the committee and I am
3 happy to recognize him at this time.

4 Mr. McClory. Mr. Chairman, the so-called Boyatt
5 Memorandum in the amalgamated form has been received, I
6 believe, in the committee's office. I haven't had a chance to
7 study it myself, but it is there and it is available for re-
8 view by the staff and by the members. It is accompanied by
9 an affidavit from Mr. Boyatt attesting to the fact that his
10 memorandum is contained in the amalgamated material. It is
11 all classified.

12 Chairman Pike. What is the degree of classification?

13 Mr. Donner. Secret, Mr. Chairman.

14 Chairman Pike. Do we have any knowledge of how it was
15 put together?

16 Mr. Field. Mr. Chairman, I don't believe we do. Perhaps
17 Mr. McClory could address himself to that.

18 Mr. McClory. I have asked Mr. Hyland how it was put
19 together and he explained it to me as containing the entire
20 Boyatt Memorandum. In general, it is contained in parts.
21 In some instances there are other materials contained
22 in the paragraph from other memoranda. There was some re-
23 arrangement made in order to make it chronological. As I
24 understand, the Boyatt Memorandum was not always chronological.

25 I understand there is some narrative added for the

1 purpose of making it understandable and coherent. Otherwise
2 there is not any material inserted which is purported to have
3 been prepared earlier than was prepared for this purpose.

4 It looks to me as though it is a helpful and a useful bit
5 of information for us.

6 I just think it bears some careful study before we get
7 into a question of complete satisfaction with it or some kind
8 of general criticism of it.

9 The same explanation of it was given to Mr. Aspin as was
10 given to me. Perhaps I should yield to him for a comment
11 about it.

12 Mr. Aspin. Thank you, Mr. McClory.

13 It looks all right to me too. I just glanced at it.
14 I don't know how it looks when you read it through and read it
15 carefully, but the paragraphs are paragraphs and in most
16 cases the Boyatt paragraphs are maintained as paragraphs.

17 Chairman Pike. How do we know that?

18 Mr. Aspin. That is what Mr. Hyland said. Mr. Boyatt's
19 affidavit attests that everything he wrote, every word that he
20 wrote is in there somewhere. There were two exceptions and he
21 pointed those out in his affidavit.

22 Chairman Pike. Do you mean the things he wrote are not
23 in there or things that he wrote are embellished somehow?

24 Mr. Aspin. What he wrote is in there. Things he did not
25 write, but written by other people, are also in there, but

1 there is nothing that he wrote that was left out.

2 Chairman Pike. Now about material which was neither
3 what he wrote nor what somebody else dissented to, or was
4 somebody else's dissent but was recently written. Is there
5 anything of that in there?

6 Mr. Aspin. Apparently there is and it is not written in
7 a form in which it would -- what it said is that it is not
8 written in a form as a rebuttal but just as an introduction.
9 For example, the opening paragraph is a brief introduction
10 to the subject and that was written just recently.

11 I think it is very hard to make a judgment until you
12 read the document and I haven't even read the document.

13 Chairman Pike. Is there anything else?

14 Mr. McClory. Mr. Chairman, I know the staff has prepared
15 a number of subpoenas and they have prepared them together
16 with reasons for them. I am not certain I want to move the
17 issuance of all of these subpoenas, but I think it is
18 appropriate that we have an explanation of the need for them
19 by the staff and I do want to affirm that I want this committee
20 to get all of the information that we require, that we deem
21 necessary for our investigation.

22 I would just like to add this, that I would hope that we
23 are getting down toward the end of the road as far as getting
24 information is concerned. I would hope that these subpoenas
25 would lead us toward a conclusion of the investigation. I say



1 that merely because I know that we want to conclude the
2 committee's hearings and work, I assume, by the end of the
3 year, leaving a month for us to prepare our report, to consider
4 it, and if there are any additional views, minority views or
5 whatever, we will have a chance to do that.

6 Chairman Pike. To whom are the subpoenas to be
7 addressed?

8 Mr. McClory. I think the staff could assist us by
9 explaining what they regard as their needs for additional
10 information, and the reasons why we need it. I would suggest
11 Mr. Field take them up seriatim. I think there are nine of
12 them.

13 Chairman Pike. Mr. Field.

14 Mr. Field. We have put together nine subpoenas which
15 we feel as a staff we would like to have issued by the com-
16 mittee. They are primarily dealing with the national security
17 level of responsibility, materials that we feel are necessary
18 in order to determine --

19 Chairman Pike. When you say "national security level,"
20 do you mean the National Security Council?

21 Mr. Field. National Security Council, that is right, Mr.
22 Chairman.

23 That are necessary to determine who runs such things as
24 the CIA and how these decisions are made.

25 The first subpoena we have would be to the Assistant to



1 the President for National Security Affairs and --

2 Chairman Pike. Who at the present time is the Assistant
3 to the President?

4 Mr. Field. I believe the subpoena would still be T
5 directed to Dr. Kissinger because General Showcroft has not been
6 sworn in yet. It will be directed to the office so it really
7 makes no difference in terms of who is occupying the office.

8 The subpoena would be for all 40 Committee records of
9 decisions taken since January 20, 1965, reflecting approval of
10 covert action projects.

11 The reason for the subpoena is that we would like to see
12 the minute -- "the minute" is a word of art; it is really a
13 one or two paragraph statement authorizing covert action
14 projects or programs, and by seeing who signs off, on
15 what type of project, and by seeing the type projects that are
16 approved over the years, we may be able to determine whether
17 there is a pattern which would distinguish the covert action
18 projects which come from the President down as opposed to the
19 CIA up, or from the State Department up.

20 The only way we can do this and see also that the
21 degree of information which is provided to those who make
22 these decisions -- the only way we can do this is to see the
23 actual documents.

24 Mr. McClory. Mr. Chairman, I move the --

25 Chairman Pike. Mr. Johnson.



1 Mr. Johnson. I have a question on that.

2 You say you only want those which have been approved.
3 Why don't you want to find out those that may have been dis-
4 approved? We ought to find out whether or not they ever dis-
5 approved any that were recommended from other sources. Why
6 haven't you wanted to get those?

7 Mr. Field. In our interviews of people who have served
8 on the National Security Council primarily and some people
9 who served on the 40 Committee, it doesn't appear there have
10 have ever been any disapprovals. In other words, these things
11 are usually worked out ahead of time and this is something of
12 a pro forma decision-making process.

13 Mr. Johnson. You are saying there have been no dis-
14 approvals since 1965?

15 Mr. Field. To the best of our knowledge, there have been
16 no disapprovals at that level.

17 Mr. Johnson. You are satisfied that then is the case
18 and that is the reason you are not asking for anything further?

19 Mr. Field. To the best of my knowledge, that is true.

20 Mr. McClory. Mr. Chairman, I move that the committee issue
21 the subpoena.

22 I know you, Mr. Chairman, have requested this information.
23 It seems to me one of our responsibilities is to determine
24 whether or not the mechanism which the Congress has established
25 and is implemented by executive orders, are being complied with.

1 I think we have some evidence here that the 40 Committee
2 has been circumvented with regard to some covert operations
3 and I think we should determine what they have approved and
4 what they haven't approved because that kind of information is
5 essential for us to make an intelligent report.

6 Chairman Pike. I agree with you, but I would like to know
7 a little more about it. When is it to be returnable?

8 Mr. Field. I believe the subpoenas are returnable next
9 Tuesday, which is the 10th of November -- 11th of November.

10 Chairman Pike. It appeared to me that the testimony of
11 the Administration has been that the 40 Committee is a
12 creature of the President. The President can use or ignore the
13 40 Committee if he wishes to do so.

14 I would not be greatly shocked if the allegation were
15 made that these items were protected by executive privilege.
16 I would like to ask the gentleman from Illinois what he would
17 propose to do if the information is denied to us?

18 Mr. McClory. Until that assertion is made, I wouldn't
19 know what to do. I would like to know, first of all, whether
20 or not executive privilege is going to be raised and I would
21 like to know the reasons for it.

22 As I understand the 40 Committee, it is a mechanism set
23 up which involves decision-making by that committee and it is
24 not just a presidential action.

25 All that this subpoena seeks to do is determine which



1 covert activities were authorized by the 40 Committee and
2 then we would know which ones were not. At least we would
3 know --

4 Chairman Pike. We wouldn't know which ones were not.
5 We would only know which ones were.

6 Mr. McClory. We would know that some were not. Unless
7 the 40 Committee authorizations included all the covert
8 operations that we have investigated.

9 Chairman Pike. I have no difficulty whatsoever agreeing
10 with the gentleman that we need the information; that we
11 should have the information.

12 Once again, I fail to share the gentleman's congenital
13 optimism that we are going to get the information and the
14 question becomes, what are we going to do if we don't?

15 I personally have a certain reservation about signing
16 subpoenas on behalf of the committee if, after the items are
17 subpoenaed and the items subpoenaed are not delivered, we are
18 not going to do anything about it.

19 I would be happy to joint the gentleman in support of the
20 subpoenas if I could get some assurance from him that if the
21 items are not delivered we are going to do something about it.

22 Mr. McClory. Well, Mr. Chairman, the request for this
23 information originally came from a member of our staff.
24 Subsequently, you wrote a letter --

25 Chairman Pike. I have requested the information, absolutely.



1 Mr. McClory. You requested that information be furnished
2 to a member of the staff. I would assume that if, in
3 response to the subpoena, the information was supplied
4 through the staff and the staff was satisfied that the infor-
5 mation had been examined and what it contained, that under
6 such circumstances we might not then want to say that you
7 have to deliver physically the records before this committee.

8 So I don't think that you can speculate on what may occur
9 following the issuance of the subpoena, but this would
10 indicate formal action on the part of the committee that we
11 want that information and we feel we need that information for
12 purposes of our investigation.

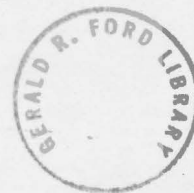
13 Chairman Pike. It does seem to me that when I asked for
14 the information as Chairman of the Committee, on the Committee's
15 behalf, we indicated that we needed it. You are now indicating
16 that we should subpoena it. I would agree with you if I
17 thought we were going to go anywhere with it, if we didn't
18 get it.

19 My question is not what we will do if we do get it. My
20 question is what we will do if we don't get it.

21 Mr. Johnson. Mr. Chairman, it is not clear to me as to
22 what response you received to your request.

23 Chairman Pike. None.

24 Mr. Johnson. You didn't even get an acknowledgement that
25 you requested it?



1 Chairman Pike. I guess we got an acknowledgement.

2 Mr. Field. I think we can add a little bit to this.

3 In response to your request, we did receive summaries of
4 information which were frankly worthless because they were
5 sanitized to the point where even if we showed them to people
6 serving on the 40 Committee, they could not identify what they
7 had done.


8 There is another point, and the staff feels we should be
9 able to enforce this subpoena under all conditions because
10 executive privilege, which is one of the few things you would
11 watch for in this case, has been waived. We have received
12 verbatim original 40 Committee minutes in a few instances.

13 Chairman Pike. I think you could only say it has been
14 waived in those instances in which we have received it.

15 Mr. Field. Certainly I would feel the executive would
16 have a difficult time maintaining there was a distinction
17 between those instances and other instances. Either executive
18 privilege applies or it does not apply. I don't think they
19 could distinguish upon the event.

20 Chairman Pike. I would like to hear from the other
21 members of the committee on the subject.


22 Mr. Dellums. I appreciate the comment you have made and
23 the question you have raised because I think it goes to the
24 heart of the matter. I think we are in a situation where the
25 staff has much more courage than this committee. I think the



1 staff at this point is much more diligent than the committee
2 and I am inclined to agree with you that it doesn't make sense
3 for us to sit here and issue all these subpoenas if and when
4 the time comes when they say no -- we realize they often do say
5 no; we have had extraordinary experiences with the Administra-
6 tion saying no -- and to sit here as one member of the com-
7 mittee along with you, Mr. Chairman, and watch the majority of
8 this committee back away from important principle confronta-
9 tions with respect to the use of information I think is a
10 frivolous act and I think your question is well taken and I
11 don't think it should simply be directed to the distinguished
12 Ranking Minority person. There are many members on our side
13 of this aisle who have backed away from confrontation and I
14 would personally add great personal disappointment.

15 I think we have an awesome responsibility here. There
16 are some critical, critical problems, and this is not a
17 small-time ballgame. This is an important set of critical
18 issues where life and death have hung in the balance on some
19 of these absurd and insane projects. For us to assume the
20 responsibility to investigate, issuing subpoenas all over
21 hell and back and then they say no and we back away routine-
22 ly, I am inclined to agree with you, Mr. Chairman.

23 I am not interested in voting for any more subpoenas if
24 all we are going to do is sit here and look ridiculous. Every
25 time there is an important principle of confrontation, we



1 acquiesce at the level of expediency with the major justi-
2 fication being, will the members on the floor of Congress back
3 our plea, and I think there are much more important questions
4 involved.

5 Mr. McClory. Will the gentleman yield?

6 Mr. Dellums. I yield to my colleague.

7 Mr. McClory. I would like to make this comment, that it
8 seems to me the determination of the committee to get infor-
9 mation has paid off in results. The criticism of the Director
10 of the CIA is not that he has withheld information, but that he
11 has been too forthcoming with information and I think all of
12 these moves, the letters from the Chairman, the subpoenas,
13 the actions, the compromises, everything, it seems to me,
14 are in the direction of getting information for this committee.

15 I would not want to downgrade the talents or the industry
16 of this committee in getting essential information for our
17 investigation. I think we have been highly successful and I
18 think that the issuance of these subpoenas today would be a
19 further expression of determination that we want the balance
20 of the information and at the same time recognition that we
21 have had great volumes of information upon which to substan-
22 tially do our work and that this would enable us to complete
23 our investigation.

24 Mr. Stanton. Will the gentleman yield?

25 Chairman Pike. Mr. Dellums has the time.



1 Mr. Dellums. I would yield to my colleague after one
2 comment.

3 I am inclined to agree with the distinguished Ranking
4 Minority person with respect to the forthcoming nature of the
5 testimony of Mr. Colby, but I don't think that is at issue
6 here.

7 What is here at issue is whether we have challenged the
8 State Department, whether we have challenged Mr. Kissinger,
9 whether we have challenged the material with respect to the
10 Security Council, the 40 Committee; very important considerations
11 here.

12 Mr. Colby has come. He has been before us many times.
13 He has given us an extraordinary amount of information.
14 Sometimes we had to hassle for it, but we got the information.

15 The critical crunch comes where we talk about the
16 involvement of the State Department, where we talk about the
17 involvement of Mr. Kissinger; where we are asking for sub-
18 poenas with respect to the National Security Council, the 40
19 Committee, we are right back in the same ballgame we were in
20 earlier this week where by a vote of eight to five we backed
21 away from what I consider an important fight. That is all I
22 am suggesting.

23 I agree with you with respect to Mr. Colby, but that is
24 not at issue here.

25 I yield to my colleague from Ohio.



1 Mr. Stanton. I would point out to the Minority Leader
2 of this committee that the sanitized version from the State
3 Department hasn't come over yet.

4 Chairman Pike. It has. Do you mean on Mr. Boyatt?

5 Mr. Stanton. Yes.

6 Chairman Pike. A document has been received.

7 Mr. Stanton. Does it clearly indicate whether the --

8 Chairman Pike. I have no idea.

9 Mr. Stanton. I really feel that the original stonewaller
10 is the Secretary of State and he is going to stonewall all the
11 way through this because he damned well can't afford to have
12 his record on the record as far as his policy decisions
13 in the Intelligence Community are concerned. If it did I
14 think it would reflect on not Mr. Schlesinger leaving, but
15 Mr. Kissinger leaving.

16 Chairman Pike. Would the gentleman yield to me?

17 Mr. Dellums. I yield.

18 Chairman Pike. In fairness to the Secretary of State
19 in this case and his role as Special Assistant to the
20 President for National Security Affairs, I think very frankly
21 that as far as the operations of the 40 Committee are con-
22 cerned, there may well be a legitimate argument about
23 presidential privilege, and my point is simply that I take a
24 rather dim view of posturing, or charading and pretending
25 that we are going after information without some assurance

1 from the committee that we are really going after the informa-
2 tion. I think there may be in this case a legitimate argument
3 against us.

4 Mr. Stanton. I would oppose the idea and the concept
5 that we are getting cooperation out of the State Department
6 because we are not.

7 As of this point today, no one on this committee can
8 honestly say we are getting a free flow of information and it
9 is strictly because of the policies of the Secretary of State
10 who has sat in front of this committee and has stonewalled
11 it real tough and I think that anybody that takes any differ-
12 ent viewpoint hasn't been listening to him.

13 Chairman Pike. Mr. Treen.

14 Mr. Treen. I just want to ask a couple of questions.

15 I have before me a copy of a letter dated October 20,
16 1975 from the Chairman of the Committee to the President.
17 Does that constitute the extent of the written request for
18 information on this subject?

19 Mr. Field. That is correct, Mr. Treen.

20 Mr. Treen. What happens to the request to permit Mr.
21 Rushford to visit the National Security Council Offices to
22 obtain this information on October 22nd?

23 Mr. Field. Mr. Treen, I believe in your briefing book
24 you will see a series of pages --

25 Mr. Treen. I don't have a briefing book.



1 Chairman Pike. I don't think any of us have a briefing
2 book.

3 Mr. Field. Do you have a folder?

4 Mr. Treen. I have an attachment which is a comment --
5 we are dealing with the subpoena directed to --

6 Chairman Pike. I think it is possible that the Minority
7 side is in possession of documents that the Majority side has
8 not been made aware of.

9 What are you talking about when you refer to a briefing
10 book?


11 Mr. Field. I thought you were in possession of a brief-
12 ing book.

13 Chairman Pike. Are you in possession of a briefing book
14 and, if so, could the Chairman have access to it, please?

15 Mr. Field. There apparently is no briefing book, Mr.
16 Chairman.

17 Mr. Treen. What response have we had to our request thus
18 far?

19 Mr. Field. I believe you have before you a series of
20 pages which indicate the information which is provided to
21 Mr. Rushford and as you can see, what it does is, it lists
22 hundreds of decisions made each year from 1965 on, but each
23 decision is capitalized in one, two, three or four words:
24 Media Projects; Covert Action, which really doesn't mean very
25 much.



1 Mr. Treen. ~~The~~ letter, Mr. Field, says "I have asked a
2 member of the committee staff, Gregory Rushford, to obtain for
3 the committee a list of the 40 Committee authorizations since
4 1965."

5 What I am getting at, obviously, is ^{this} have they in good
6 faith complied with what we have requested in this letter?
7 Perhaps we have made some other requests, but all I have
8 before me is a request for a list and it looks like they have
9 given a list. What we are now subpoenaing, it seems to me,
10 is all 40 Committee records of decisions.

11 Mr. Field. If you look at the list, you can see what they
12 authorized in that list. You have much better preception than
13 I.

14 Mr. Treen. Have they refused to give us the record of
15 decisions?

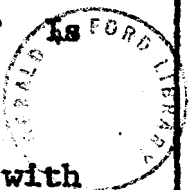
16 Mr. Field. There is a set of documents for each year
17 about an inch thick, for each year since 1965, which they have.
18 It is a summary of the minutes.

19 Mr. Treen. In whose possession is that?

20 Mr. Field. It is in the possession of the National
21 Security Council.

22 Mr. Treen. Who is the custodian of those records?
23 there a secretariat?

24 Mr. Field. When we were dealing with it, it was with
25 General Showcroft. He had it on his desk. Somebody had gone



1 through that and made up the list here. What we want is
2 the original list of decisions that have been made. They
3 refer to it as a list of decisions and we so refer to it.

4 Mr. Treen. They ^(or refuse?) refer ^{- check steno notes} to giving us the list?

5 Mr. Field. Yes. Definitely. Categorically.

6 Mr. Treen. Can you tell us why they can't give it to
7 us? Perhaps you can't do it in open session.

8 Mr. Field. Because it is very sensitive. They have not
9 asserted executive privilege, if that is what you are driving
10 at. As of right now they have not.

11 Mr. Treen. Or presidential privilege?

12 Mr. Field. That is correct.

13 Mr. Treen. How about the effort to -- you said something
14 about some deletions. You have gotten some documents with
15 words taken out, is that the idea?

16 Chairman Pike. We have some documents with the meaning
17 taken out.

18 Mr. Field. There are deletions in the documents you have.
19 You will notice as you go along, "Payment to a political
20 figure in _____ country" which doesn't help us very much.

21 Mr. Treen. We have gotten actual copies of the documents
22 but with some deletions or have they drawn up a document, a new
23 document in response to what we have asked for?

24 Mr. Field. All we have is what you have before you.
25 It is just a summary of each decision. Usually about five words



1 long, maybe five words less.

2 Mr.Treen. What about the request from Mr. Rushford to
3 go up and visit --

4 Mr. Field. When he visited that is what he was given and
5 that is all.

6 Mr.Treen. He wasn't permitted to look through books or
7 records, is that correct?

8 Mr. Field. He was not shown the original documents. He
9 did not look through books.

10 Mr.. Treen. The next question is, why do we choose the date
11 1965? I think ~~that~~ ^{there} has been a general understanding that we
12 would cover the period from 1960 or 1961 forward.

13 Mr. Field. Just an effort to keep our request reasonable.
14 We figured a ten-year period was a good sampling of the
15 decisions that had been made.

16 Mr. Treen. As I understand the 40 Committee by that name
17 was formed around 1971?

18 Mr.Field. You will notice that the first few pages you
19 have are titled "303 Committee Decisions."

20 Mr. Treen. Would it be correct or proper to suggest if
21 we are going to go back prior to '71, we talk about the 303
22 Committee or whatever the name was? You want to cover the
23 predecessors to the 40 Committee as well, don't you?

24 Mr. Field. Yes. We could do it to make it technically
25 correct.



1 There is a great deal of negotiation going into this.
2 Before the letter went to the President on October 20th, we
3 had a fair degree of contact with General Scowcroft
4 and his staff and they know what it is we want and were
5 requesting.

6 We had identified that folder of documents and indicated
7 that is what we wanted. They said they could give us a summary
8 but not that.

9 I do think we understand what we are talking about, even
10 if the letters don't sometimes spell it out in great detail.

11 Mr. Treen. I think you have answered the question.

12 I will observe this, Mr. Chairman, before yielding back.
13 I, for one, am not inclined, either, to issue subpoenas ~~upon~~
14 which we do not intend to pursue. Several members have com-
15 mented to that effect. Whether or not I would ultimately want
16 to demand the information depends a great deal on why the
17 agency that has it tells me we shouldn't have it.

18 In order to solve my problem of wanting to know the reasons
19 why it is withheld before taking action, ~~then~~ I guess I
20 wouldn't be able to vote for the subpoena now.

21 Mr. Johnson. It seems to me we are mixing up our doctrines
22 here. The classification problem has been pretty effectively
23 resolved between us and the Administration.

24 Chairman Pike. You mean the declassification.

25 Mr. Johnson. They sent it up to us in classified form.



1 We do not release it except by going through this process
2 we have all agreed upon. It should not be withheld from us on
3 the basis of its sensitivity. The only legal doctrine, as I
4 understand it, under which it could be withheld would be
5 executive privilege.

6 Now, has executive privilege ever been extended to a
7 prior President? In other words, can President Ford say that
8 he is relying on the doctrine of executive privilege with some-
9 thing that occurred in the Johnson Administration to prevent
10 us from having this information, because we don't have the
11 problem with such classification.

12 Chairman Pike. I don't know the answer, but if ~~you are~~
13 asking me, my guess is the doctrine of executive privilege
14 probably has been used to conceal or withhold documents
15 from prior administrations.

16 Mr. Johnson. Was that on the basis of executive privilege
17 or classification? Has it ever been decided in the courts,
18 or has it been asserted in the Congress? It doesn't seem
19 to make any sense from what I understand of executive
20 privilege to say because Johnson had a conversation with Rusk
21 that Ford can prevent it from being disclosed except on the
22 basis of its secret sensitive nature. Well, we don't have that
23 problem.

24 Chairman Pike. I get back to my basic question: Let us
25 assume that you are absolutely correct and they do not provide

R. FORD

1 the information. What are we going to do about it?

2 Mr. Johnson. I have felt a minority of the committee
3 the other day took a mistaken viewpoint of the majority of the
4 committee members' belief and reaction to the vote. It is not
5 my feeling that any member of this committee will stand for
6 the notion that the executive branch has the right to withhold
7 legitimate information that this committee has the right to
8 have.

9 I don't think that any member of Congress could accept
10 that as a premise. I feel like there is a certain amount of
11 -- I don't want to get into criticism of any member, but it
12 seems to me there is a certain amount of petulance prevalent
13 in the committee staff, if not on the committee itself, with
14 respect to the outcome of the vote the other day, because I
15 don't feel that the members who were in the majority on that
16 particular vote were by that doctrine saying that this com-
17 mittee does not have the right to information, or that it will
18 not pursue that information which it deems to have the right
19 to have.

20 I don't feel that is a fair characterization of the
21 outcome of the vote the other day.

22 If we want this information, then I think we ought to
23 assume that the members of Congress will pursue it.

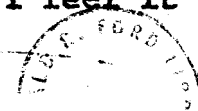
24 Chairman Pike. Mr. Aspin.

25 Mr. Aspin. Let me go to the question you raised, Mr.

1 Chairman, about what we are going to do about it. I think
2 that is very important and I think the point that you and Mr.
3 Dellums and Mr. Stanton have raised about us backing away
4 from the State Department I think ought to be addressed.

5 We have issued in this committee several subpoenas.
6 One subpoena went to information from Mr. Colby who was not
7 giving us information about current covert activities. We
8 did not get the information. We voted in this committee a
9 resolution of necessity and at the time it was in the Rules
10 Committee we reached an agreement and we compromised. We
11 compromised with Mr. Colby. We compromised because he present-
12 ed the information which deleted fifty words in two instances
13 and we agreed not to release the information except under
14 certain circumstances, so in that case we reached a compromise
15 and for some reason that was acceptable to this whole com-
16 mittee.

17 Now, we ran into another situation. We issued a sub-
18 poena for the Boyatt Memorandum from the State of State.
19 We all know what we went through on that position. The
20 Secretary of State eventually compromised with us and we
21 reached a compromise which did not satisfy everybody on the
22 committee. So my question is, I guess, Mr. Chairman, in
23 deciding this thing -- I am constantly amazed, I guess, at the
24 degree of antagonism which Secretary Kissinger has in this
25 Congress. I guess it is understandable and maybe I feel it



1 sometimes myself, but you can't compromise with Mr. Colby
2 on the one hand and then not compromise -- and then object
3 when we compromise with Mr. Kissinger on the other hand.

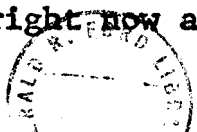
4 So my question is, does the compromise bother the com-
5 mittee members, because if we cannot compromise and if we
6 issue subpoenas, and we are going to go right down the track
7 with those subpoenas, come hell or high water, no matter
8 what, no matter what evidence comes up, no matter what kind of
9 situation, then I think we should not issue the subpoenas.

10 But, if we can issue subpoenas because we need the in-
11 formation, and if it comes in a form in which we can compro-
12 mise, as we did with Mr. Colby, and as we did with an eight
13 to five vote with Mr. Kissinger, then if that is acceptable
14 I would like to vote for the subpoena.

15 Mr. McClory. I would say not with respect to this
16 particular subpoena, but with respect to some of the sub-
17 poenas, the staff has indication that the material will be
18 forthcoming if the subpoena is issued. In other words, the
19 agency involved wants to respond to a subpoena and not just
20 deliver the material in response to a letter, or some other
21 less formal request.

22 I think the subpoena in the first instance indicates a
23 desire on the part of the committee to get the information and
24 that the committee feels that it requires that information.

25 I don't think we have to cross the bridge right now as to



1 whether or not some alternative proposal, some compromise
2 method of getting the information wouldn't be acceptable,
3 as the committee decided with respect to the Boyatt Memorandum
4 or with respect to other information.

5 Mr. Aspin. We have a good case of importance here. I
6 think we can make the case that the counsel, Mr. Field, is
7 making, that this is important.

8 I came in expecting to vote for this subpoena, but the
9 words of the Chairman and of Mr. Stanton and Mr. Dellums make
10 me think maybe I shouldn't because if it is the view of this
11 committee, or if people on this committee think once we issue
12 a subpoena we can never compromise from that, we have to go
13 down the road and, by God, bang our heads against the wall
14 no matter where that leads, then I am going to be much more
15 reluctant. I don't know the feeling of the members on that
16 question.

17 If we are going to compromise in cases where we have to,
18 as we did happily with Mr. Colby, and unhappily with Mr. Kis-
19 singer, then I would vote for the subpoena. I don't know what
20 the attitude of the committee is on subpoenas, but I don't
21 want to go through another thing like we went through two days
22 ago.

23 Mr. Dellums. Will the gentleman yield?

24 Mr. Aspin. I will yield to Mr. Dellums.

25 Mr. Dellums. Let me try to respond to your question.




1 I recall the gentleman from Wisconsin in the debate
2 the other day saying, "If I had known that the last subpoena
3 was so narrowly focused, maybe I would not have voted for the
4 subpoena."

5 My point is, I think the way you answer your own
6 question is that if you believe by virtue of your vote that
7 this information is important at this particular moment, then
8 I do think that binds you to stand behind that subpoena.

9 Now, the reason why you said the other day -- we can go
10 back to the record and check it -- that you backed away from
11 the subpoena this last time was because you weren't quite sure
12 at that particular moment that you voted how narrowly focused
13 that subpoena was.

14 I think (1) your responsibility this morning is to
15 determine whether the mandate of the subpoena is sufficiently
16 broad enough to allow you to fight it all the way to the end
17 if it becomes a matter of principle in terms of the ability
18 of the committee. I think you ought to satisfy yourself on
19 that. Then if you are satisfied and you then vote for it,
20 I think that you are honor bound and duty bound to stand
21 behind that subpoena. I think you should vote against the
22 subpoena on the ground you already established, that it is
23 too narrowly focused.

24 Mr. Aspin. Let me say this gets to the point of the
25 thing.



1 When we voted on the subpoena for the Boyatt Memorandum,
2 I knew nothing about what is called the dissent channel in
3 the State Department. That was a very good reason for us not
4 to have the information except in the form in which we have it

5 Now, if we vote for a subpoena and after we vote for the
6 subpoena information comes to us that shows that the situation
7 is different, then you are saying I cannot change my mind;
8 I cannot change my vote, therefore I cannot vote for the sub-
9 poena because I don't know what information will come in later.

10 The gentleman from California apparently was willing
11 to compromise with Mr. Colby when we sent that subpoena for
12 him. He supplied the information not the way we wanted it.
13 He deleted fifty words in twelve instances and he insisted --
14 the only way we got that information was agreeing not to release
15 it except with the approval of the President, so we compromised
16 in that case.

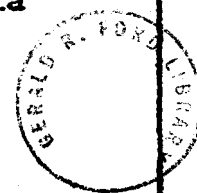
17 If the gentleman believes that we have to sit with the
18 subpoena no matter what information comes in later, then I
19 would have to vote no against the subpoena because I don't
20 know what information is going to come in later.

21 Chairman Pike. Would the gentleman from California
22 yield to me?

23 Mr. Dellums. Yes, I yield.

24 Chairman Pike. I would like to correct a couple of
25 misstatements of fact, I think.

 In the Colby instance there were fifty words deleted,



but we were permitted to verify the words which were deleted.

I know what the words deleted were, and I made a judgment that in this case there was a legal ground based on sources and methods which required the deletion or made the deletion of those words a legitimate exercise.

In the case of the new subpoena, I just plain don't know what arguments will be made against it. I haven't got the slightest idea. You are impressed by the dissent channel argument. The more I looked into the dissent channel, the less impressed by it I was. I found it was six months before Mr. Boyatt ever got an answer. He never got an answer from the Secretary of State. He got an answer from some other middle level official, which would mean we could never get a copy of the answer either.

I am therefore not particularly impressed by the dissent channel argument.

I personally am perfectly willing to sign subpoenas to get information, but I do feel that we ought to have some understanding about what is going to happen if we don't get the information.

You talk about compromise. I have shown in the view of some members of the committee, in fact, in your view, too great a willingness to compromise. You opposed the compromise, as I recall it, which I made with the President. You voted against that compromise.


1 I think I have shown a willingness to compromise at
2 least as great as yours, in that I worked one out that you
3 voted against.

4 The foregoing was as to the release of information.
5 What we are now talking about is the right of Congress to get
6 information. On that I have a great deal of difficulty
7 compromising.

8 I am willing to compromise requests and the letter was a
9 request. What we got in response to the letter was, as our
10 staff has said, essentially meaningless and worthless. Now
11 we are escalating the level to a subpoena. No matter how many
12 times Mr. Kissinger refers to a subpoena as a request, a sub-
13 poena is not a request. A subpoena is a subpoena.

14 We have had requests which have been ignored. As far
15 as I am concerned, I think subpoenas should be enforced.

16 Mr. Aspin. Let me ask lawyers here either on the
17 committee or on the staff, if we issue these subpoenas in this
18 kind of way and then reach some kind of an accommodation, if
19 we use subpoenas in effect as a way of making a request,
20 because we can get action on it faster, I guess, are we
21 demeaning the subpoena? Are we misusing it? Are we using
22 it badly? Is the subpoena something that is very important
23 that we ought to use only occasionally when we really
24 need it or is it something we can use in this way? I don't
25 know. I am asking.

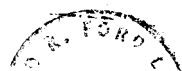


1 Mr. Stanton. That, to me, as a legislator, is ridiculous
2 First of all, a subpoena is an extraordinary power whenever
3 used by a legislative body and you don't need to be a lawyer
4 to understand that. The simple fact of the matter is if we
5 have to use it as an ordinary tool to get ordinary requests
6 in terms of conducting this investigation, then we will
7 never get anywhere in terms of getting cooperation from the
8 Administration.

9 Mr. Field. I think Mr. Donner has some information that
10 would be very helpful on the legal background of the subpoenas
11 and so forth.

12 Mr. Donner. Returning to the subpoena with Colby, it was
13 the opinion of the legal staff of this committee, with the
14 delivery to the Chairman with the fifty words deleted, there
15 was substantial compliance, especially with the view that the
16 Chairman himself verified the words. The doctrine of substan-
17 tial compliance is a well established doctrine.

18 A subpoena, however, sir, is not an invitation to
19 negotiate. A subpoena is a command by a duly authorized body
20 of government to deliver -- a subpoena duces tecum -- to
21 deliver information. While we can accept in law the doctrine
22 of substantial compliance -- the words are self-explanatory
23 -- the question is that anything short of substantial com-
24 pliance is non-compliance and it is a legal mandate from an
25 authorized body directing another body -- in this instance, an



1 executive agency -- to deliver materials. The idea of
2 temporizing subpoenas -- it is not an acceptable doctrine
3 in law that it has been my experience to encounter.

4 Mr. Murphy. The gentleman leaves out a very important
5 element in the law on subpoenas: substantial compliance.
6 It is who determines the substantial compliance.

7 Mr. Aspin is arguing that in an instance we determined
8 substantial compliance, when we didn't go forward to the
9 House of Representatives for enforcement.

10 What he is asking is, if this committee issues a sub-
11 poena and we get information back and we deem it to be in
12 substantial compliance with our subpoena, then it is satis-
13 fied.

14 Mr. Donner. That is correct, sir.

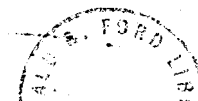
15 Mr. Murphy. In the usual course of subpoenas, you have a
16 third arbitrator who determines substantial compliance and
17 that is a judge, and we don't have that here.

18 Mr. Donner. In this sense, sir, -- you are absolutely
19 correct, Mr. Murphy. After delivery of the material to the
20 body that requested it, the body can determine that the
21 material delivered is in substantial compliance. You are
22 absolutely correct, sir.

23 Mr. Aspin. I will yield to Mr. Dellums.

24 Mr. Dellums. I would like to set the record straight.

25 First of all, you could go back to the verbatim transcript.



1 The gentleman from California did not support the Colby
2 compromise and I don't appreciate you in any way distorting
3 the record because I have not in any way at any time voted for
4 any effort to dilute or in any way water down the thrust of
5 this committee.


6 I think that we have now immortalized the precedent of
7 compromise and I think the record will show I warned against
8 the first compromise and I think that is the situation that
9 we are in now.

10 This is my final comment: When you mention we may learn
11 new information after we have issued a subpoena which is a
12 demand for information, they can always come up with new in-
13 formation and subtleties and nuances which can preclude this
14 committee from gathering information.

15 I think that is an absurd assertion and I don't mean that
16 in a demeaning fashion; I mean it to be as objective as I can
17 make it.

18 Over the past weeks and months we have been the victim of
19 many, many pieces of new information that precludes the
20 ability of this committee to function and I don't think that
21 is appropriate.

22 Mr. Aspin. It is true the gentleman did vote against
23 that compromise, but that compromise never did seem to cause
24 the dissension in the committee that this last compromise
25 caused and I don't know exactly the reason for that.



1 I voted against the original compromise and for the
2 second compromise.

3 The question I am asking is -- and this will determine
4 how I vote on those subpoenas -- if it is impossible, if it
5 is the view of the members, once you issue a subpoena, you
6 cannot accept substantial compliance of anything less than
7 exactly what we asked for -- in other words, if we are going
8 to get upset with each other and accuse each other of things
9 when we accept some kind of compromise, then I don't vote for
10 subpoenas because I don't know how they are going to turn out.

11 If we can accept substantial compliance in something short
12 of what we demand and we vote on it by a majority, it carries,
13 and we are not accusing each other of selling out, then I
14 would be very happy to vote for the subpoena.

15 I don't want to be in the position of having voted for
16 a subpoena, voting for substantial compliance and being
17 accused of selling out when I am trying to do the job.

18 Mr. Glaimo. Will you yield?

19 Mr. Aspin. I yield.

20 Mr. Glaimo. I want to make sure I understand the
21 gentleman correctly.

22 Do you say you are in favor of supporting a subpoena
23 if the subpoena in essence says "Mr. Addressee, this is a
24 subpoena but don't be fooled by it because it doesn't really
25 mean what a subpoena usually means; it means an invitation for

1 you to come back with a counter offer and work something out."

2 Is that your impression?

3 Mr. Aspin. No.

4 Mr. Glaimo. That is what it sounds like.

5 Mr. Aspin. If the gentleman will let me explain, I will
6 try and explain it one more time.

7 What I am saying is that I think when you issue a sub-
8 poena, you ought to have in your own mind that it is your
9 intention to go all the way; that it is important to get that
10 information and we should go all the way with it. However,
11 when we issue subpoenas we, of course, do not know the points
12 of view that the other side will raise, or what other kinds of
13 situations might arise.

14 If it turns out that they produce something that is
15 less than substantial compliance, and we vote it is substantial
16 compliance, then I think we have accepted it.



1 Mr. Giaimo. Will you yield again?

2 When I support the subpoena I intend to go all the way.
3 I intend that the subpoena be honored but I can't go all the
4 way when the gentleman from Wisconsin doesn't support me in
5 the subpoena.

6 Chairman Pike. Mr. Kasten.

7 Mr. Kasten. I believe there is a motion before us.
8 I move the previous question.

9 Mr. Hayes. I object, Mr. Chairman.

10 Chairman Pike. You can't object. You can vote it down
11 but you can't object to a person moving the previous question.

12 We will ask all in favor of the previous question say
13 aye.

14 Contrary, no.

15 The noes appear to have it.

16 Mr. Hayes is recognized.

17 Mr. Hayes. Thank you, Mr. Chairman.

18 Mr. Donner, would you mind discussing for my edification
19 a little bit about the specificity of one of the subpoenas
20 which says give us everything, I believe since 1965, in the
21 way of minutes. Is that kind of a request an appropriate
22 request for us to be making by way of the subpoena, or is
23 that a fishing expedition?

24 Mr. Donner. I am at a disadvantage for a moment. I have
25 to get a copy of it.



1 Mr. Field. We discussed this in some detail earlier
2 and described what it is that we are looking for here. We
3 have seen these documents. They consist of approximately --

4 Mr. Hayes. I heard you explaining it.

5 Mr. Field. They have it. They are ready to hand it
6 over. It will not be a physical problem to comply with it.

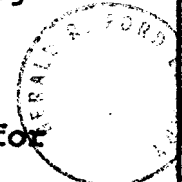
7 Mr. Hayes. I am not worried about any kind of physical
8 problems but there is a matter of compliance when a subpoena
9 is sloppily drawn and doesn't cut directly into what we are
10 looking for. Some of the subpoenas do.

11 For example, it seems to me that part of the subpoenas
12 discuss specific subjects and specific dates and the
13 relationship of the subject to the date. Others simply say,
14 whatever has happened since a particular date forward and what
15 I am getting down to is, do we in fact -- what is our reason
16 for it?

17 I haven't had anybody give me a memorandum as to why we
18 are particularly doing this. I haven't been in a caucus to
19 discover that nor have I been in an executive session here.

20 When I practice law I don't generally do it out in front
21 at the counsel table in a courtroom with the gentlemen there
22 and spectators and witnesses and everybody else sitting
23 around watching the process.

24 Chairman Pike. I will take the responsibility for
25 that, Mr. Hayes. One of the things which I have tried to do



1 is be as open as possible in these hearings. I don't like
2 executive sessions. I believe the American people are
3 entitled to the truth and I would rather not settle issues
4 like this in secret caucuses. It is my view that it is much
5 better to let the people know what our problems are, what our
6 issues are and the manner in which we are proceeding and I
7 will take the responsibility for that.

8 Mr. Hayes. Then that answers my question then, Mr.
9 Chairman.

10 Mr. Field. Mr. Hayes, can I address the sloppily drawn
11 subpoena. This subpoena is specifically drawn and identifies
12 the exact documents. There is no question in the minds of
13 the addressee as to what we are referring and we have reason
14 to believe everything in there -- we know -- pertains to the
15 legitimate work of this committee.

16 Mr. Hayes. You have reason to believe that is the case,
17 is that what you mean, or you know?

18 Mr. Field. Every 40 Committee decision is a covert
19 action approval. Those actions are very much within the
20 intelligence community's responsibilities and problems and
21 within this committee's work. We do want to see who approved
22 them, who signed off on them, how specific they were and what
23 the reasons were that were given for these projects.

24 Mr. Hayes. Mr. Field, you discussed a minute ago as
25 well the thought that you have that the executive can't begin



1 to distinguish on an issue-by-issue basis compliance, that
2 after all they may have waived executive privilege for
3 example, and I really don't know where that doctrine of waiver
4 of executive privilege comes along, whether it is selective,
5 nonselective. I don't know of any cases on the matter and I
6 feel distinctly uncomfortable when we seem to be approaching
7 this whole matter on a very strange basis.

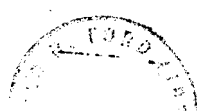
8 For example, when Mr. Dellums discussed one of the ways
9 he is approaching it is on the basis of staff assertiveness,
10 that he lodged you, most properly in his view, for being
11 aggressive and in his terms being more aggressive than some
12 members of this committee.

13 I don't really feel I am down here to be aggressive,
14 and I don't feel, quite frankly, that the entire matter is
15 getting adequate debate. As a matter of fact, I think one
16 could assume that the debate is beginning to center on the
17 fact as to what Mr. McClory or others who in the past have
18 not followed some direction here, or some so-called assertiveness
19 tends to do later on in the hypothetical and this is the
20 problem that I have.

21 Mr. Dellums. Will the gentleman yield because you used
22 my name?

23 Mr. Hayes. Not because I used your name but I will be
24 glad to yield.

25 Mr. Dellums. I appreciate it. I am in total, absolute,



1 unequivocal disagreement with my colleague. I think we are
2 here to be assertive.

3 Mr. Hayes. I wouldn't have guessed otherwise what you
4 thought.

5 Mr. Dellums. If you are going to yield, yield. If
6 not, I won't try to take the time because I won't be combative
7 with my colleague.

8 Chairman Pike. Is there any further discussion?

9 Mr. Dellums. I haven't finished my comments. I wanted
10 to respond to him.

11 Mr. Aspin. Mr. Chairman?

12 Chairman Pike. Does the gentleman from Indiana continue
13 to yield to the gentleman from California?

14 Mr. Hayes. Mr. Chairman, I will yield at your pleasure.

15 Mr. Dellums. It is your pleasure, man, you tell me if
16 you want to yield or not.

17 Mr. Hayes. I will be happy to yield.

18 Mr. Dellums. Maybe the honeymoon is over, and that is
19 fine, too. The truth will out anyway.

20 I think we are here to be assertive and I think to
21 challenge the staff on a subpoena referred to as sloppy is
22 rather absurd. If we knew how to specify documents in these
23 subpoenas with greater specificity than we do at this moment,
24 we wouldn't need to have an investigation because that requires
25 and demands in the first instance an extraordinary knowledge



1 of all the facts and information.

2 Why we are bothering with an investigation is to try to
3 narrow down as clearly as we possibly can an avenue of
4 concern --


5 Chairman Pike. Gentlemen, let me just suggest to you
6 that it is my understanding that we have nine subpoenas before
7 us this morning. We are now talking about the first one. It
8 is 11:06 a.m. The clock continues to tick and I would simply
9 suggest that I think we basically understand the issues and I
10 don't see any real reason why we can't vote on it.

11 Mr. Aspin, you see a real reason?

12 Mr. Aspin. Just 30 more seconds in support of something
13 Mr. Hayes has said. Not to be asking for and I don't think
14 Mr. Hayes was asking for closed meetings or secret meetings
15 or other things. But you know we come into a meeting like
16 this and we have a stack of these subpoenas on the desk and we
17 don't know what they are about, we haven't been given any
18 prior information about them.

19 And if it is going to cause a problem with our
20 colleagues, if we vote for these subpoenas and then accept
21 as substantial compliance something which is less and that is
22 going to cause a lot of heartache -- this vote on the subpoena
23 tends to be very important.

24 To come in and get a quick briefing and go ahead and
25 bang through these worries me a little. That is for the



1 future.

2 Chairman Pike. Mr. Aspin, I want to assure you I have
3 never seen the subpoenas either. All of this stack of
4 subpoenas came from my left and not either from me or from
5 my right.

6 Mr. Aspin. You mean politically from your left?

7 Chairman Pike. No, I mean geographically from my left.

8 Mr. Murphy.


9 Mr. Murphy. Thank you, Mr. Chairman.

10 I think what is bothering some of the members should
11 not really be a problem here. I don't think there is any
12 difficulty if we are satisfied that the material we are looking
13 for is identified specifically in issuing the subpoena. What
14 I think some of my colleagues are bothered by is when they
15 vote to issue a subpoena that corrals them as far as a vote
16 to cite somebody who they feel is not in compliance with the
17 subpoena, and I say that is a distinct, separate step and I
18 think as long as we are satisfied with the specificity of the
19 subpoena that is all we are concerned with right here.
20 Whether or not we have compliance will be a later vote.

21 Chairman Pike. Are we ready to vote?

22 Mr. Treen.

23 Mr. Treen. Mr. Chairman, we are going to get ready to
24 vote and I just want on the record the reasons for the vote I
25 am going to cast. I don't believe that sensitivity alone is



1 sufficient basis for us not to issue subpoenas. If that is
2 the only reason given to us by the executive branch that is
3 not sufficient because we have covered the problem of
4 sensitivity. We have worked out a procedure. There is not
5 much doubt in my mind as a member of the committee and an
6 attorney that we have the right to get the information that
7 we are subpoenaing but there is a different issue and that is
8 whether or not we want to enforce that right.


9 There may be reasons that appear now or appear later
10 where we don't want to exercise that right. Now, upon the
11 appearance of those reasons it might cause me to elect not to
12 go forward, not because we don't have the right but because
13 of some other reason why we should not go forward.

14 So I need to know the reasons now, the specific reasons,
15 why the executive branch will not be forthcoming with
16 documents ~~and~~ I tend to believe that if we issue subpoenas
17 they should be enforced and, accordingly, I have no recourse but
18 to vote "present" on the subpoenas because we do not know what
19 reasons might be ~~proper~~ ^{proffered} which would cause some or all of us to
20 decide not to exercise our legal right.

21 Mr. Stanton. Mr. Chairman.

22 Chairman Pike. Mr. Stanton.

23 Mr. Stanton. I am going to vote for the subpoenas and
24 not for the doctrine anybody has enunciated here today.
25 Certainly I don't see any question about the fact of the



1 matter that we entered into an honest compromise with
2 Mr. Colby. I think for anybody to characterize what we did
3 with Dr. Kissinger in the same category is misleading people.
4 Frankly, I feel that we have got to issue subpoenas or we might
5 as well fold up the committee.

6 Chairman Pike. Mr. Kasten, I think if you care to renew
7 your motion, it might carry right now.

8 Mr. Kasten. Mr. Chairman, I move the previous question.

9 The Chairman. The previous question has been moved.

10 All in favor of the previous question say aye.

11 Contrary, no.

12 The noes appear to have it.

13 Mr. Milford.

14 Mr. Milford. I didn't want to delay the procedures but
15 make a parliamentary query. Are we voting on all the subpoenas?

16 Chairman Pike. No, we haven't heard but about the first
17 one at this point. We are voting on one subpoena.

18 Mr. Milford. This would be to the Assistant to the
19 President; is that correct?

20 Chairman Pike. That is correct.

21 Mr. Dellums. Mr. Chairman.

22 Chairman Pike. Mr. Dellums.

23 Mr. Dellums. One brief comment.

24 I think there is a point not made when we discussed the
25 Colby compromise versus the Kissinger compromise on the issue



1 of substantial compliance.

2 What we had in the instance of Mr. Colby was information
3 about the committee where we could scrutinize that information
4 and each of us could arrive at a judgment as to whether we
5 thought that was substantial compliance. The difference
6 between the Colby situation and the Kissinger situation is
7 that the information never was before us for us to determine
8 whether there was substantial compliance. We may very well
9 have bought a pig in a poke and that is the point I am trying
10 to make.

11 We never got the information for any member of this
12 committee to determine substantial compliance. We bought it
13 on the basis of an assertion, not on the basis of information
14 before us.

15 So I think to talk about the Kissinger compromise
16 vis-a-vis the Colby compromise is really not to address the
17 reality of the situation. They were two very, very different
18 situations.



1 Chairman Pike. The question, if there is no further dis-
2 cussion, is on the motion of Mr. McClory that subpoena number
3 one be authorized. This requires a roll call vote, and the
4 Clerk will call the roll.

5 The Clerk: Mr. Giaimo.

6 Mr. Giaimo. Present.

7 The Clerk. Mr. Stanton.

8 Mr. Stanton. Aye.

9 The Clerk: Mr. Dellums.

10 Mr. Dellums. Aye.

11 The Clerk. Mr. Murphy.

12 Mr. Murphy. Aye.

13 The Clerk. Mr. Aspin.

14 Mr. Aspin. Present.

15 The Clerk. Mr. Milford.

16 Mr. Milford. Aye.

17 The Clerk. Mr. Hayes.

18 Mr. Hayes. Present.

19 The Clerk. Mr. Lehman.

20 Mr. Lehman. Aye.

21 The Clerk. Mr. McClory.

22 Mr. Treen. Aye by proxy.

23 The Clerk. Mr. Treen.

24 Mr. Treen. Present.

25 The Clerk. Mr. Kasten.



1 Mr. Kasten. Aye.

2 The Clerk. Mr. Johnson.

3 Mr. Johnson. Aye.

4 The Clerk. Mr. Pike.

5 Chairman Pike. Aye.

6 By a vote of nine ayes, no nays, and four presents, the
7 subpoena will be issued.

8 Does somebody want to make a motion -- and since this is
9 your package over there, would you care to make the motion?

10 Mr. Treen. No.

11 Mr. Johnson. What motion is appropriate?

12 Chairman Pike. For the second subpoena.

13 Mr. Murphy?

14 Mr. Murphy. These are not numbered. Which is the second
15 one?

16 Mr. Field. I believe the subpoenas are in the sequence
17 we want. This would be to the Assistant to the President for
18 National Security Affairs for all the minutes of the National
19 Security Council Intelligence Committee, its working group
20 and its economic intelligence subcommittee held since Novem-
21 ber 8, 1971.

22 Mr. Johnson. Mr. Chairman, if the staff doesn't care to
23 go into any more detail than that on it, I move the subpoena
24 be issued.

25 Chairman Pike. Mr. Johnson moves that the second subpoena



1 be authorized. Mr. Treen?

2 Mr. Treen. I have an amendment to the motion.

3 Chairman Pike. The gentleman will state his amendment.


4 Mr. Treen. The amendment would alter the subpoena to
5 insert instead of the date November 8, 1971, the date of
6 January 20, 1961. And I am going to offer this amendment
7 probably on all the subpoenas because I think if we are going
8 to cover this area, I think we should be consistent with what
9 we stated before that we will cover the period of the last
10 four Presidential administrations, so I would move we start
11 with January 20, 1961.

12 Mr. Field. Mr. Chairman, one comment on that. The reason
13 for the date November 8, 1971, is that none of these three
14 subcommittees existed prior to that date, and apparently no
15 similar type of subcommittee existed prior to that date.

16 Now, we can check on that and get back on whether there
17 was one.

18 Mr. Treen. There was no National Security Council prior
19 to that?

20 Mr. Field. This is the National Security Council
21 Intelligence Committee, its working group, and its economic
22 intelligence subcommittee. That subcommittee was definitely
23 new. And the intelligence committee which is actually a sub-
24 committee which deals -- it is a consumer of intelligence,
25 did not exist as a subcommittee or anything like that prior to



1 November 8, 1971.

2 Mr. Treen. And the working group, and so forth?

3 Mr. Field. Apparently that is true.

4 Mr. Treen. Well, if you aren't certain, I would like to
5 stick to the date, and if it wasn't formed until 1971, then,
6 of course, there is nothing in existence so there is no
7 problem. If you are certain of course, I would be pleased to
8 withdraw the amendment.

9 I would be pleased, if I could, Mr. Chairman, to change
10 my motion to read "from the inception of the National Security
11 Council Intelligence Committee, working group and the economic
12 intelligence subcommittee."

13 Chairman Pike. Is there objection? The Chair hears
14 none. Without objection, the amendment is agreed to.

15 Is there any further discussion on the issuance of the
16 subpoena? The Clerk will call the roll.

17 The Clerk. Mr. Giaimo. . .

18 Mr. Giaimo. Present. .

19 The Clerk. Mr. Stanton. .

20 Mr. Stanton. Aye. .

21 The Clerk. Mr. Dellums. .

22 Mr. Dellums. Aye. .

23 The Clerk. Mr. Murphy. .

24 Mr. Murphy. Aye. .

25 The Clerk. Mr. Aspin.



1 Mr. Aspin. Present.

2 The Clerk. Mr. Milford.

3 Mr. Milford. Aye.

4 The Clerk. Mr. Hayes.

5 Mr. Hayes. Present.

6 The Clerk. Mr. Lehman.

7 Mr. Lehman. Aye.

8 The Clerk. Mr. McClory.

9 Mr. Treen. Aye by proxy.

10 The Clerk. Mr. Treen.

11 Mr. Treen. Present.

12 The Clerk. Mr. Kasten.

13 Mr. Kasten. Aye.

14 The Clerk. Mr. Johnson.


15 Mr. Johnson. Aye.

16 The Clerk. Mr. Pike.

17 Chairman Pike. Aye.

18 Nine ayes and four presents, and the subpoena will be
19 issued.

20 Mr. Field. Mr. Chairman, the next subpoena is to the
21 Assistant to the President for National Security Affairs for
22 all Washington Specction Action Group meeting minutes relating
23 to (a), the October 1973 Middle East War and subsequent
24 troop alert; (b), the Cyprus crisis of 1974; and (c),
25 Portugal coup of April 25, 1974.



1 As a matter of comment, the Washington Special Action
2 group was established in 1969 and for that reason we have not
3 picked any prior events. This is a crisis mechanism within
4 the National Security Council similar to the Watch Committee
5 in the intelligence community.

6 Mr. Johnson. I move the issuance of the subpoena.

7 Chairman Pike. The question is on the motion of
8 Mr. Johnson that we issue the subpoena. Is there any discus-
9 sion?

10 (No response.)

11 The Clerk will call the roll.

12 The Clerk. Mr. Giaimo.

13 Mr. Giaimo. Present.

14 The Clerk. Mr. Stanton.

15 Mr. Stanton. Aye.

16 The Clerk. Mr. Dellums.

17 Mr. Dellums. Aye.

18 The Clerk. Mr. Murphy.

19 Mr. Murphy. Aye.

20 The Clerk. Mr. Aspin.

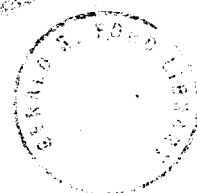
21 Mr. Aspin. Present.

22 The Clerk. Mr. Milford.

23 Mr. Milford. Aye.

24 The Clerk. Mr. Hayes.

25 Mr. Hayes. Aye.



1 The Clerk. Mr. Lehman.

2 Mr. Lehman. Aye.

3 The Clerk. Mr. McClory.

4 Mr. Treen. Aye by proxy.

5 The Clerk. Mr. Treen.

6 Mr. Treen. Present.

7 The Clerk. Mr. Kasten.

8 Mr. Kasten. Aye.

9 The Clerk. Mr. Johnson.

10 Mr. Johnson. Aye.

11 The Clerk. Mr. Pike.

12 Chairman Pike. Aye.

13 By a vote of ten ayes, three present, the subpoena is
14 authorized.

15 The next item, Mr. Field.

16 Mr. Field. The next subpoena is to the Assistant to the
17 President for National Security Affairs. It is for all
18 intelligence reports furnished to the National Security Council
19 by the Central Intelligence Agency, the Defense Intelligence
20 Agency, and the National Security Agency between October 15,
21 1973 and October 28, 1973, relating to the 1973 Middle East
22 War and the military activities of the Soviet Union. The
23 reason the staff would like this information is that we have a
24 number of indications that the troop alert which the United
25 States went into shortly after the 1973 Mideast War may have



1 been the result of faulty intelligence or other problems, and
2 we feel this information might well provide an answer to that.

3 Chairman Pike. Does somebody want to move the issuance
4 of this subpoena?

5 Mr. Dellums. I move it.

6 Chairman Pike. Mr. Dellums moves the issuance of this
7 subpoena. Is there any discussion? The Clerk will call the
8 roll.

9 The Clerk. Mr. Giaimo.

10 Mr. Giaimo. Present.

11 The Clerk. Mr. Stanton.

12 Mr. Stanton. Aye.

13 The Clerk. Mr. Dellums.

14 Mr. Dellums. Aye.

15 The Clerk. Mr. Murphy.

16 Mr. Murphy. Aye.

17 The Clerk. Mr. Aspin.

18 Mr. Aspin. Present.

19 The Clerk. Mr. Milford.

20 Mr. Milford. Aye.

21 The Clerk. Mr. Hayes.

22 Mr. Hayes. Aye.

23 The Clerk. Mr. Lehman.

24 Mr. Lehman. Aye.

25 The Clerk. Mr. McClory.



1 Mr. Treen. Aye by proxy. .

2 The Clerk. Mr. Treen. . .

3 Mr. Treen. Present.

4 The Clerk. Mr. Kasten.

5 Mr. Kasten. Aye. . . .

6 The Clerk. Mr. Johnson. . .

7 Mr. Johnson. Aye. . . .

8 The Clerk. Mr. Pike. . . .

9 Chairman Pike. Aye. . . .

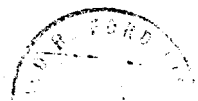
10 By a vote of ten to three, the subpoena will be issued.

11 The next item, Mr. Field. .

12 Mr. Field. The next subpoena is to the Assistant to the
13 President for National Security Affairs. It is for all docu-
14 ments furnished by the Arms Control and Disarmament Agency's
15 standing consultive commission, the Central Intelligence
16 Agency, and Defense Intelligence Agency, the National Security
17 Agency and the Department of Defense since May 1972, relating
18 to adherence to the provisions of the Strategic Arms
19 Limitation Treaty of 1972 and the Vladivostok agreement of
20 1974.

21 Chairman Pike. How does that come within our jurisdic-
22 tion, Mr. Field?

23 Mr. Field. Mr. Chairman, one of the most important
24 pieces of strategic intelligence which this country should be
25 concentrating on is the adherence to the SALT I agreements.



1 We have substantial information which would indicate that
2 there may be an attempt to distort figures either by those who
3 are in favor of detente and seeking a second SALT II agreement
4 or by those who oppose that. It is a similar type problem
5 to the changing of figures which we looked into in the Tet
6 offensive. Only in this case we feel it is probably of
7 greater strategic importance. One of the ways that we will
8 be able to determine this is to compare the reports coming
9 in from the different agencies.

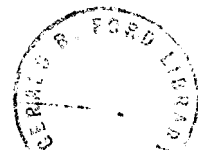
10 Chairman Pike. Do you have any indication whatsoever from
11 the White House that they would be willing to provide such
12 information?

13 Mr. Field. Mr. Chairman, we have been trying now for a
14 few weeks to get this information. There is an obvious
15 problem with us getting this. It relates very much to a recent
16 crisis which has taken place in the Executive Branch. There
17 may or may not be improprieties involved. This has been
18 indicated to us, and, quite frankly, we will not get this
19 information short of a subpoena.

20 Chairman Pike. Do you have any indication that you will
21 get it with a subpoena?

22 Mr. Field. I really can't answer that, Mr. Chairman. I
23 just don't know.

24 Chairman Pike. You either have an indication or you
25 have no indication, one way or the other.



1 Mr. Field. That is correct.

2 Chairman Pike. Mr. Treen.

3 Mr. Treen. I don't seem to have that particular sub-
4 poena. In looking through here, I don't locate that one.

5 Mr. Milford. Mr. Chairman, I don't have copies of these
6 subpoenas, either.

7 Mr. Treen. My question is, what efforts, Mr. Field, have
8 been made to obtain the information described in the subpoena?

9 Mr. Field. Mr. Treen, we have met with people at the
10 Central Intelligence Agency. We have met with people who work
11 with the National Security Council staff. We have sent let-
12 ters. We have asked for briefings. We have asked for the
13 information. We have asked for information from the Depart-
14 ment of Defense. We have had a group on our staff working on
15 this almost constantly for, as I say, over a week. And they
16 are not making progress in getting the information.

17 Mr. Treen. Have you written requests for the information?

18 Mr. Field. Yes, we have. I have a letter here which I
19 brought with me, which is a written request.

20 Mr. Treen. Just give us the date and who signed the let-
21 ter.

22 Mr. Field. This particular letter was November 4, and it
23 is a follow-up to the efforts which we have been making prior
24 to that time.

25 Mr. Treen. Is this ~~the~~ subject we have been into at all



1 other than by staff investigation, the material that you are
2 seeking now?

3 What I am concerned about is, are we going to be able to
4 cover all these bases? It is November 6, and we are trying to
5 wind up by mid-December, or before Christmas, and I am wonder-
6 ing --


7 Mr. Field. Mr. Treen, I can only say this is a subject
8 which I think the staff feels is very -- it is a follow-up on
9 the Tet offensive problem of whether or not intelligence
10 estimates are altered in order to satisfy political objectives.
11 It happens to be probably the most sensitive and important one
12 in this day and age, and we have, as I say, a number of, I
13 think, credible reports that there may be either double book-
14 keeping or different sets of figures going to the top levels
15 depending on whose political camp you happen to be in when you
16 are serving in an intelligence function. If that is taking
17 place, it would be a serious problem for our intelligence
18 community.

19 Mr. Treen. I don't want to hold up any more, but can I
20 see that letter?

21 Chairman Pike. Mr. Kasten.

22 Mr. Kasten. I don't understand the nature of the request
23 that the Committee has made for this information.

24 Mr. Chairman, you signed a letter requesting this informa-
25 tion from the Central Intelligence Agency?



1 Chairman Pike. Is that one that I signed?

2 Mr. Field. I think I signed that.

3 Chairman Pike. Mr. Field signed it apparently. I do not
4 recall signing it.

5 Mr. Kasten. This was a letter of two days ago referring
6 to requests that had been made in the past. What requests
7 had been made in the past?

8 Mr. Field. The normal process we follow is obviously
9 we work for usually a fair period of time trying to get
10 these things on oral request, getting briefings, that type of
11 thing. Ordinarily a letter follows a fair amount of time after
12 that. The letter, itself, is usually generated by a reluc-
13 tance to provide the material through an informal request.

14 Mr. Kasten. I am not satisfied with that answer.

15 You were working with the CIA and all of a sudden decide
16 we want to go into this one area. That was a decision that was
17 made by the staff; is that right?

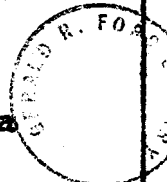
18 Mr. Field. No, the information came to the staff as to the
19 possible --

20 Mr. Kasten. It is a subject matter that has never been
21 discussed to my knowledge in the Committee.

22 Mr. Field. That is correct.

23 Mr. Kasten. So it was a decision made by the staff or a
24 decision made by the Chairman in consultation --

25 Chairman Pike. Would the gentleman yield? It was a



1 decision, I believe, made by the staff not in consultation with
2 the Chairman, but with the ranking Minority Member.

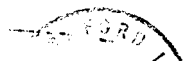
3 Mr. Kasten. It was a consultation made by the staff with
4 Mr. McClory?

5 Chairman Pike. That is correct. There are none of
6 these subpoenas which have been prepared either at the request
7 of or in consultation with the Chairman. All of them have
8 been prepared in consultation with Mr. McClory and the staff.

9 Mr. Kasten. My only point is I don't think we want to be
10 issuing subpoenas if the information would be available to us
11 through normal channels. We are talking about a letter
12 here of two days ago. I am not sure we have received a response
13 to this letter, and even this, I think you would admit, is a
14 kind of sloppy procedure if we are formally requesting
15 certain information.

16 Mr. Field. Mr. Kasten, I have spoken personally with
17 Mr. Bolton, who would be the one to decide and arrange for the
18 delivery of this information. He has told me it will not be
19 forthcoming without a subpoena. With a subpoena it will prob-
20 ably be forthcoming.

21 The only other thing I would mention is the fact that
22 it is now November 6 and we simply cannot do any kind of a
23 job on something that comes in here after the end of this
24 month. If we are going to get this information, if somebody
25 says to me you will get it with a subpoena, you will not get



1 it without it, then I have to come before the Committee and
2 say it is an important subject; it is something which does
3 relate to things we have looked into in the past and I need a
4 subpoena to get it. That is all I am saying.

5 Mr. Kasten. I misunderstood your answer to the Chairman's
6 question of five minutes ago, when you said you didn't know
7 if we would have a response to this with or without a subpoena.

8 Mr. Field. I was just told now of a follow-up on this.

9 Mr. Kasten. I don't have any objection to this.

10 Mr. Stanton. I move the previous question.

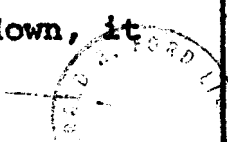
11 Mr. Field. Will the gentleman withhold for a moment?

12 Mr. Stanton. I withhold...

13 Chairman Pike. Mr. Milford.

14 Mr. Milford. I am a little concerned as to whether or
15 not we have the jurisdiction to get into this problem, and
16 I would certainly like to know more information about voting
17 for such a subpoena.

18 Mr. Field. Mr. Chairman, the jurisdiction would flow
19 from the fact that we are asking to see intelligence estimates,
20 intelligence reports, intelligence estimates, for example, of
21 Soviet strength and Soviet deployment as to whether it is in
22 compliance or not in compliance with the SALT agreements and
23 those intelligence reports are generated by the intelligence
24 community, and they are a reflection of the quality of their
25 work; and if they have been in any way shaded up or down, it



1 would be important to our examination of whether or not they
2 are performing accurately, objectively, and so forth.

3 Mr. Milford. This is also getting into the middle of a
4 very important matter that is in progress right now, too. I am
5 reluctant to see us get into this area at all.

6 Mr. Stanton. I don't think you have to worry about it. We
7 won't get any compliance.

8 Chairman Pike. Mr. Giaimo.

9 Mr. Giaimo. Mr. Chairman, I think in the interest of dis-
10 cussion, comment has been made as to whether or not the sub-
11 poena is necessary, whether we could get the information with-
12 out a subpoena. I don't think that is important. That is one
13 of the reasons I am voting present on these subpoenas, because
14 I don't think this Committee is serious about enforcing;
15 witness what we did last week. I think the message is out
16 loud and clear to the Executive Branch we are sending you sub-
17 poenas, but if you don't really like to give us the informa-
18 tion we are asking for, don't bother to do it, because we are
19 not going to back the Chairman and support the enforcement of
20 the subpoenas. That is why I am voting present. I think we
21 have already created the harm last week.

22 And one final comment: I am not voting present with the
23 gentleman from Wisconsin, for the same reasons he is voting
24 present.

25 Chairman Pike. Mr. Treen.



1 Mr. Treen. Mr. Chairman, I would like to move that the
2 subpoena before us now -- I believe we have a motion on the
3 floor to issue the subpoena -- that the issue be deferred until
4 the next meeting of this Committee.

5 Mr. Milford. I object.

6 Chairman Pike. You can vote no, but it is a perfectly
7 legitimate motion.

8 The question is on the motion by Mr. Treen to defer action
9 on this particular subpoena to the next meeting of the Commit-
10 tee.

11 All those in favor of the motion, signify by saying aye.

12 (Chorus of ayes.)

13 Contrary?

14 (Chorus of noes.)

15 The Chair is in doubt. All those in favor, signify by
16 raising hands.

17 Three ayes. All those opposed to the delay, raise their
18 hands.

19 Seven noes. The motion is not -- the gentleman asked for
20 a record vote on delay. All those in favor of a record vote,
21 raise their hands.

22 Three. That is a sufficient number, I believe, in a
23 thirteen-man committee, and the Clerk will call the roll.

24 The Clerk. Mr. Giaimo.

25 Mr. Giaimo. No.



1 The Clerk. Mr. Stanton. .

2 Mr. Stanton. No. . .

3 The Clerk. Mr. Dellums. .

4 Mr. Dellums. No. .

5 The Clerk. Mr. Murphy. . . .

6 Mr. Murphy. No. . .

7 The Clerk. Mr. Aspin. . .

8 Mr. Aspin. No. . .

9 The Clerk. Mr. Milford. . .

10 Mr. Milford. Aye. . .

11 The Clerk. Mr. Hayes. . .

12 Mr. Hayes. Aye. . .

13 The Clerk. Mr. Lehman. . .

14 Mr. Lehman. No. . . .

15 The Clerk. Mr. McClory. . .

16 Mr. Treen. Aye, by proxy. .

17 The Clerk. Mr. Treen. .

18 Mr. Treen. Aye. . .

19 The Clerk. Mr. Kasten. .

20 Mr. Kasten. Aye. .

21 The Clerk. Mr. Johnson. . .

22 Mr. Johnson. No. . .

23 The Clerk. Mr. Pike. . .

24 Chairman Pike. No. .

25 By a vote of five ayes to eight nays, the motion is not

1 agreed to. The question is on the issuance of the subpoena,
2 and the Clerk will call the roll.

3 The Clerk. Mr. Giaimo.

4 Mr. Giaimo. Present.

5 The Clerk. Mr. Stanton.

6 Mr. Stanton. Aye.

7 The Clerk. Mr. Dellums.

8 Mr. Dellums. Aye.

9 The Clerk. Mr. Murphy.

10 Mr. Murphy. Aye.

11 The Clerk. Mr. Aspin.

12 Mr. Aspin. Present.

13 The Clerk. Mr. Milford.

14 Mr. Milford. No.

15 The Clerk. Mr. Hayes.

16 Mr. Hayes. Present.

17 The Clerk. Mr. Lehman.

18 Mr. Lehman. Aye.

19 The Clerk. Mr. McClory.

20 Mr. Treen. No, by proxy.

21 The Clerk. Mr. Treen.

22 Mr. Treen. No.

23 The Clerk. Mr. Kasten.

24 Mr. Kasten. Present.

25 The Clerk. Mr. Johnson.



1 Mr. Johnson. Aye. ...

2 The Clerk. Mr. Pike. ...

3 Chairman Pike. Do I understand you voted Mr. McClory
4 no on that by proxy, because if you did, the Chair votes no,
5 also.

6 Mr. Giaimo. Mr. Chairman.

7 Chairman Pike. Mr. Giaimo.

8 Mr. Giaimo. Change present to no.

9 Chairman Pike. Mr. Murphy.

10 Mr. Murphy. I would like to ask the gentleman from
11 Louisiana, this is Mr. McClory's subpoena, is it not?

12 Chairman Pike. I would simply say the gentleman is out
13 of order in asking that question at this particular time.
14 We have a vote in progress. We can't interrupt it for debate.

15 Mr. Dellums. Parliamentary inquiry.

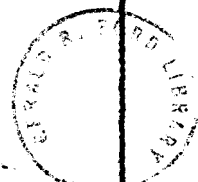
16 Chairman Pike. State it.

17 Mr. Dellums. Isn't a proxy supposed to be signed by
18 the person?

19 Chairman Pike. The proxy is, I understand, here, and I
20 accept the existence of the proxy. We have to have a little
21 faith around here, and I suggest it is valid.

22 Mr. Dellums. My colleague suggests I don't challenge it,
23 and I won't.

24 Chairman Pike. By a vote of -- I have been asked to
25 suspend, pending a reconsideration by the gentleman from



1 Louisiana.

2 Mr. Treen. Mr. Chairman, I ask permission to change
3 Mr. McClory's vote to aye.

4 Chairman Pike. Mr. McClory asks unanimous consent to
5 go off no, on aye. Is there objection? Off no, on aye, and
6 I believe I am correct in saying that would require unanimous
7 consent in his absence. The Chair goes off no, on aye.

8 Mr. Giaimo. Mr. Chairman.

9 Chairman Pike. Yes.

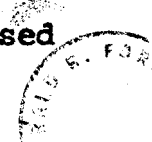
10 Mr. Giaimo. Off no, on present. And I know we are in the
11 midst of a vote, and I run the risk of being out of order, but
12 I do this to point up the futility we are now approaching in
13 this Committee.

14 Chairman Pike. The gentleman is out of order; he is cor-
15 rect in that sense.

16 By a vote of seven ayes, two nays, and four present, the
17 subpoena is authorized. I want to remind the Committee that
18 it takes seven votes to authorize a subpoena from this Com-
19 mittee.

20 Mr. Field, what is your next subpoena?

21 Mr. Field. The next subpoena would be directed to the
22 Secretary of State. It is for all State Department documents
23 relating to recommendations for covert action made to the
24 National Security Council and the 40 Committee from January 20,
25 1965, to the present. The reason for this, as I discussed



1 earlier, covert action really comes from three sources; from
2 within CIA; it comes sometimes down from the President; and
3 it also comes from within the State Department.

4 We have access to the covert action recommendations made
5 by CIA; through the 40 Committee minutes we will have them
6 from the President; and we now would like to have access to
7 the data from the State Department.

8 Mr. Milford. Mr. Chairman.

9 Chairman Pike. Mr. Treen.

10 Mr. Treen. I am having a little difficulty --

11 Chairman Pike. Very frankly, I am finding it a little
12 difficult, too. This is Mr. McClory's operation, and he is
13 not here. I am having a little difficulty with this, myself.

14 Mr. Treen. I just wonder if we can ask Mr. Field if he
15 would give us the name of the person to whom it is directed,
16 and then if we can look through and find it.

17 Mr. Field. It is directed to the Secretary of State.
18 And it is for all State Department documents relating to
19 recommendations for covert actions made to the National
20 Security Council and the 40 Committee from January 20, 1965,
21 to the present.

22 Mr. Johnson. I would like to ask a question.

23 Chairman Pike. Mr. Johnson.

24 Mr. Johnson. Is it the intention here to get all docu-
25 ments that were utilized in the preparation of the recommendation



1 or just the recommendation to the National Security Council
2 with respect to the covert action, itself?

3 Mr. Field. Mr. Johnson, I don't believe we can get the
4 documents leading to the document that went to the National
5 Security Council because those would be recommendations made by
6 mid-level officials, and I believe the Committee has expressed
7 itself on that matter.

8 Mr. Johnson. It is my understanding that the intention
9 is simply to get the document that went to the National
10 Security Council and not all the documents relating to what
11 went to the National Security Council; isn't that correct?

12 Mr. Field. That is correct.

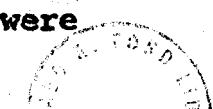
13 Mr. Johnson. So what you really want to say is all
14 State Department documents recommending covert action made
15 to the National Security Council.

16 Mr. Field. That amendment may well be appropriate.

17 Mr. Johnson. I would make that amendment and then move
18 the adoption. I guess I have two motions there.

19 Chairman Field. The gentleman asked unanimous consent to
20 amend the subpoena as to -- would you repeat the amendment?

21 Mr. Johnson. That the subpoena be amended to provide for
22 all State Department documents recommending covert action
23 made to the National Security Council, not all of those docu-
24 ments relating to the recommendation, itself, that were
25 generated within the Department.



1 Chairman Pike. In other words, you don't want the docu-
2 ments of the State Department relating to other people's recomm-
3 mendations?

4 Mr. Johnson. It is my understanding that what is
5 requested here is simply the document that went from the State
6 Department to the National Security Council.

7 Chairman Pike. But in many cases the document, it would
8 seem to me, would include there the State Department comments
9 on other people's recommendations.

10 Mr. Johnson. If that went to the National Security
11 Council, isn't that what you are after?

12 Chairman Pike. You will really have to ask Mr. McClory,
13 Mr. Johnson. I think what he is after is the appearance of
14 getting information from Dr. Kissinger, but I am not really
15 sure what he is after.

16 Mr. Johnson. Well, I am just saying this is my under-
17 standing of what is requested, and I think that the subpoena
18 is enlarged to the point where you would have volumes and
19 volumes of information, if possible, that you don't really
20 want; isn't that correct?

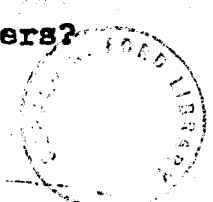
21 Mr. Field. And that we won't get.

22 Mr. Johnson. You won't get except in amalgamated form.

23 Mr. Field. We may get it that way.

24 Mr. Giaimo. Would that include the Boyatt papers?

25 Mr. Field. No, it would not.



1 Chairman Pike. Did you offer the motion to accept
2 the subpoena as amended?

3 Mr. Giaimo. Yes.

4 Mr. Treen. I have an amendment.

5 Chairman Pike. The gentleman will state it. Now is the
6 proper time.

7 Mr. Treen. I move the subpoena be amended to change the
8 date from January 20, 1965 to January 20, 1961.

9 Chairmen Pike. Is there objection to the amendment of
10 the gentleman from Louisiana?

11 Without objection, the amendment is agreed to. The ques-
12 tion is on the issuance of the subpoena as moved by the gentle-
13 man from Colorado. The Clerk will call the roll.

14 The Clerk. Mr. Giaimo.

15 Mr. Giaimo. Present.

16 The Clerk. Mr. Stanton.

17 Mr. Stanton. Aye.

18 The Clerk. Mr. Dellums.

19 Mr. Dellums. Aye.

20 The Clerk. Mr. Murphy.

21 Mr. Murphy. Aye.

22 The Clerk. Mr. Aspin.

23 Mr. Aspin. Present.

24 The Clerk. Mr. Milford.

25 Mr. Milford. Aye.



1 The Clerk. Mr. Hayes. . .

2 Mr. Hayes. Present. . .

3 The Clerk. Mr. Lehman. . .

4 Mr. Lehman. Aye. . .

5 The Clerk. Mr. McClory. . .

6 Mr. Treen. Aye, by proxy. . .

7 The Clerk. Mr. Treen. . .

8 Mr. Treen. Present. . .

9 The Clerk. Mr. Kasten. . .

10 Mr. Kasten. Present. . .

11 The Clerk. Mr. Johnson. . .

12 Mr. Johnson. Aye. . .


13 The Clerk. Mr. Pike. . .

14 Chairman Pike. Aye. . .

15 By a vote of eight ayes, five present, the subpoena is
16 authorized. . .

17 What is your next order of business, Mr. Field?

18 Mr. Field. Mr. Chairman, the next subpoena would be to
19 the Director of Central Intelligence, and it is for all
20 requests from the Central Intelligence Agency to the Internal
21 Revenue Service from July 1, 1966, to date, for tax informa-
22 tion and/or official action. This is in relation to the
23 examination the staff is giving the dissemination of tax
24 return information between the Central Intelligence Agency
25 and the IRS.



1 Mr. Hayes. Mr. Chairman.

2 Mr. Giaimo (presiding). The gentleman from Indiana.

3 Mr. Hayes. May I be recognized for the purpose of speak-
4 ing to the proposed subpoena?

5 Mr. Giaimo. You are recognized.

6 Mr. Hayes. I would like to point out the schedule is
7 overly broad, I think, in any regard and also deviates from
8 the explanation by counsel. I would suggest that if anybody
9 intends to move the issuance of this subpoena, they withhold
10 that motion until such a time as the specific request is
11 cleaned up.

12 Let me point out that you are talking about request for
13 tax information and/or official action. I think it is so
14 subject to misinterpretation and almost any kind of interpreta-
15 tion that refusal could easily be made on it and not only that
16 but any kind of compliance could be considered compliance.

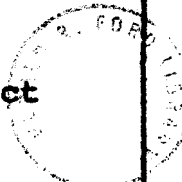
17 Mr. Dellums. Would the gentleman yield?

18 The first two words are important. It says "all requests".

19 Mr. Hayes. That is right.

20 Mr. Dellums. "From the Central Intelligence Agency to
21 IRS for certain information". It is not as I read this sub-
22 poena, asking for the tax information and/or official action.
23 It said all requests for information, or requests for specific
24 action. It is not asking for the information.

25 Mr. Hayes. First of all, I think in order to correct




1 you, there isn't anything specific about this request. It
2 simply says all requests for tax information and/or official
3 action. Now definitions of what official action could be,
4 definition of what tax information is, I think this simply
5 gives rise to having literally trunkloads of many kinds of
6 innocuous things down here along with what we may or may not
7 be looking for. I don't know quite what we are looking for. I
8 have an idea. But I would suggest this one could easily be
9 cleaned up and a little more work put to it.

10 I would simply ask you if you would, because I can't sup-
11 port it in the present form.

12 Mr. Donner. I understand your feelings, Mr. Hayes.
13 However, in consultation with the staff member who prepared this
14 request, Mr. Hughes, what we have come up with in the investi-
15 gation is that there was apparently informal mechanisms by
16 which a relationship existed between the IRS and the CIA, and
17 they are only represented by, in instances of memos, of
18 conversations, for example.

19 Mr. Hayes. Would you suggest, then, that is an appropriate
20 thing to subpoena? In the law, memorandums of conversations
21 in handwriting or typewriting or other written form are per-
22 fectly acceptable as evidence and, of course, we can even go
23 beyond that here, I think.

24 Mr. Donner. I was about to concur with you and say that
25 it may be appropriate that the subpoena be amended to all



1 written requests and memoranda of request, and I think your
2 suggestion is well taken, and I know the staff would appreciate
3 it if you would move in that regard, sir.

4 Mr. Hayes. I do move at this time, then, that the sched-
5 ule of the subpoena be amended to read all --

6 Mr. Giaimo. Are you offering an amendment?

7 Mr. Hayes. Yes, I would like to at this time, Mr.
8 Chairman, move that appropriate wording be added to the sched-
9 ule by staff, or I would suggest just simply that all memoranda
10 of request be produced relating to the subject matter, tax
11 information, and I assume you mean Internal Revenue code
12 information?

13 Mr. Giaimo. Are you writing an amendment or stating an
14 amendment?

15 Mr. Hayes. Mr. Chairman, no, I am not. I will simply
16 allow staff --

17 Mr. Giaimo. Has the gentleman's time expired?

18 Then the gentleman is still recognized.

19 Mr. Hayes. I have nothing further.

20 Mr. Dellums. Mr. Chairman.

21 Mr. Giaimo. The gentleman from California.

22 Mr. Dellums. I would like to propose an amendment along
23 the lines suggested by counsel and with unanimous consent, get
24 counsel to state the language, I would offer that amendment.

25 Mr. Donner. It is proposed, then, sir --



1 Mr. Giaimo. Is there objection to proceeding in this
2 way? You are asking for unanimous consent. The Chair hears
3 no objection. Go ahead.

4 Mr. Donner. -- that the schedule annexed to the subpoena
5 by the Committee be amended to read "all written requests and
6 memoranda of requests from the Central Intelligence Agency"
7 and then the balance of the wording would be the same.

8 Mr. Dellums. I so move that amendment, Mr. Chairman.

9 Mr. Hayes. Mr. Chairman, if I could ask Mr. Donner again,
10 do you think that the term "official action" means any
11 further elucidation in the schedule?

12 Mr. Field. I think what that is referring to is the
13 cases where a CIA proprietary begins to be examined by
14 IRS officials --

15 Mr. Hayes. Should we specify that?

16 Mr. Field. -- and some action is taken to stop the
17 audit, and we want to know how many times that took place
18 and did they continue to audit.

19 Mr. Donner. There are also suggestions that in certain
20 instances -- again, I concur. I understand your reading,
21 Mr. Hayes, is that where it is possible that agencies or
22 instrumentalities or businesses, let's say, who are doing
23 business with the CIA, had similar action taken as far as --
24 and then it also includes the area where there was convenient
25 relationships between the CIA and IRS and called for certain

1 action of one agency or the other. So I must say sometimes
2 the action, the word action, I concur, has a certain quality,
3 but it is intended to cover a broad aspect of relationships
4 between two executive agencies.

5 Mr. Hayes. You think it is adequate?

6 Mr. Donner. I understand your feelings for specificity;
7 however, the relationships have sometimes an ambiguous or
8 amorphous quality that are not susceptible to exact defini-
9 tion. I understand by what I am saying I am not being
10 completely responsive to you, but that is the best answer I
11 can give you.

12 Mr. Giaimo. The gentleman from Wisconsin.

13 Mr. Kasten. Mr. Chairman, first of all, I don't believe
14 there is a motion before us to --

15 Mr. Giaimo. There is a proposal to adopt a subpoena.

16 Mr. Dellums. And I have offered an amendment.

17 Mr. Giaimo. With unanimous consent request to amend the
18 subpoena.

19 Mr. Dellums. Yes.

20 Mr. Kasten. So there is no motion before us.

21 Mr. Giaimo. There is a proposal by the staff that we
22 take up the subpoena as amended, as I understand. Does someone
23 move that and at least we will have an item for discussion?

24 Mr. Dellums. I move it.

25 Mr. Giaimo. The gentleman from California moves for



1 adoption of the subpoena as amended. Is there discussion?

2 Mr. Kasten. Mr. Chairman.

3 Mr. Giaimo. The gentleman from Wisconsin.

4 Mr. Kasten. I would like to speak against the motion,
5 and I think with the problems we have in defining the mate-
6 rials, with the fact at least in the case of Mr. McClory, who
7 is supposed to have been working with this, a number of ques-
8 tions haven't been answered. I think it would be most proper
9 for the Committee to not issue the subpoena until we are able
10 to act in a more business-like deliberate way. I think that
11 the issuance of subpoenas is a very important -- we spent an
12 hour this morning talking about the importance of subpoenas,
13 and we are sitting here pasting this thing together with paper-
14 clips and Scotch tape, and as far as I am concerned, this is
15 not the method that the Committee ought to be following in
16 issuing a subpoena, and a delay of one day until meetings
17 tomorrow or until next week would not, in my opinion, be
18 critical.

19 I would hope that the motion does not pass.

20 Mr. Dellums. Mr. Chairman.

21 Mr. Giaimo. The gentleman from California.

22 Mr. Dellums. One comment to my distinguished colleague.

23 I do not see what we are doing this morning is in any way
24 different from the legislative process entered into by any sub-
25 committee or committee of this House, and that is the right of



1 any Member to offer amendment to any question proposed to the
2 Floor. I think the characterization of paperclips and scissor-
3 cutting, I think, is inappropriate. I think it is always the
4 legitimate business of any committee to amend any proposition
5 that comes before it.

6 Mr. Giaimo. The gentleman from Louisiana.

7 Mr. Treen. Two questions: One, what efforts have been
8 made to obtain the information and, secondly, why the date of
9 July 1, 1966? Have we had some written request prior to now?

10 Mr. Field. I think Mr. Hughes, who has been working on
11 this, can answer these questions.

12 Mr. Donner. It was a date chosen by arbitrary nature
13 with the idea of not making the request too onerous and trying
14 to limit it to a particular time frame.

15 Mr. Treen. What were the efforts made to obtain the
16 information prior to drawing of the subpoena?

17 Mr. Donner. This is Mr. Hughes, a member of our staff.

18 Mr. Hughes. Mr. Treen, the efforts made were about once
19 or twice a week to request the CIA contact man to deliver the
20 material, and there was a constant put-off of my request in
21 favor of some other sort of work.

22 Mr. Treen. Did you ever put your request in writing, sir?

23 Mr. Hughes. Yes, I did.

24 Mr. Treen. The letter is from you to the CIA; is that
25 correct?



1 Mr. Hughes. The letters were from Mr. Field, yes, but I
2 wrote them.

3 Mr. Murphy. Would the gentleman yield?

4 Mr. Treen. I would be glad to.

5 Mr. Murphy. Mr. Treen, number one, this is well within
6 the direction we received from the House in our resolution to
7 look into the operations of the IRS and the Central Intelligence
8 Agency.

9 Mr. Treen. I am not quarreling with that.

10 Mr. Murphy. I know and I hope the gentleman doesn't think
11 I am quarreling with him. But for a point of clarification,
12 I think here we have an instance far more important than what
13 the CIA is doing overseas. It is what the CIA allegedly has
14 done domestically in the United States. To me there is no
15 more important issues than the rights that are afforded every
16 citizen of the United States. I can almost accept some activi-
17 ties done overseas in pursuit of foreign nations that are try-
18 ing to dominate this nation.

19 What I cannot accept, and I want to know if it is going
20 on, is the CIA in their intelligence-gathering activities, or
21 the NSA, in their intelligence-gathering activities, are in
22 any way violating the rights of American citizens.

23 I think of all of the subpoenas, maybe this is not worded
24 correctly, but of all the subpoenas here today, this makes
25 more sense to the citizens of the United States than any other

1 one, and I think this Committee should have been spending much
2 more time in this area than the areas we have been involved in.

3 Mr. Treen. May I say to the gentleman I am inclined to
4 agree with him on that, and the purpose of my question is to
5 determine what efforts we are making prior to our going to
6 subpoenas. It seems here, and my follow-up question would be
7 what reasons did they give, Mr. Hughes, for not supplying this?
8 It wouldn't be a national security reason or anything like
9 that?

10 Mr. Hughes. No, sir; they gave only the reason that they
11 were busy on other things and didn't have time to attend to it.
12 They gave no reason of national security whatever.

13 Mr. Treen. That is all the questions ^{I have} I would move as
14 an amendment to the subpoena that the date be changed to
15 July 1, 1961. If we are interested, as Mr. Murphy points out,
16 in finding out what these agencies have done on the domestic
17 scene, that they would be serious, I see no reason for the
18 arbitrary date of July 1, 1966.

19 Mr. Giaimo. Is there objection? The Chair hears none,
20 and the amendment is adopted.

21 Mr. Murphy. I move the adoption of the subpoena, Mr.
22 Chairman.

23 Mr. Giaimo. The question is on the motion. All in
24 favor --

25 Mr. Kasten. Mr. Chairman, point of order. I think the

1 votes are here, but I think my motion to delay this until we
2 have it in proper form would take precedence. I would like a --

3 Mr. Giaimo. Did you make that motion to delay?

4 Mr. Kasten. I made the motion to delay this. Mr. Treen
5 was out of order in his motion, and I just want to ask for the
6 ayes and nays. We don't need a record vote.

7 Mr. Giaimo. The question is on the motion of the gentle-
8 man from Wisconsin. All in favor -- we will take a roll call
9 vote.

10 Mr. Kasten. I just want to get the motion finished. The
11 roll call vote on the subpoena will be sufficient.

12 Mr. Giaimo. All in favor of the gentleman's amendment,
13 signify by saying aye.

14 (Chorus of ayes.)

15 Mr. Giaimo. Opposed, no...

16 (Chorus of noes.)

17 Mr. Giaimo. The Chair is in doubt. So many in favor
18 will raise their left hands.

19 So many as opposed?

20 Six and three; the motion is not agreed to.

21 Mr. Treen. Mr. Chairman, then I guess I have to renew
22 my unanimous request to change the date to July 1, 1961.

23 Mr. Giaimo. Is there objection? The Chair hears none,
24 and the unanimous consent request is made, and the date will
25 be changed.



1 Now, the gentleman from Illinois is seeking recognition.

2 Mr. Murphy. Yes, Mr. Chairman. If Mr. Dellums would
3 yield to me, I think he made the motion prior, but I would
4 like to move the subpoena and the schedule attached thereto
5 as amended.

6 Mr. Giaimo. The question is on the motion. We will have
7 a roll call vote on this. The Clerk will call the roll.

8 The Clerk. Mr. Stanton.

9 Mr. Giaimo. Mr. Stanton votes aye by proxy.

10 The Clerk. Mr. Dellums.

11 Mr. Dellums. Aye.

12 The Clerk. Mr. Murphy.

13 Mr. Murphy. Aye.

14 The Clerk. Mr. Aspin.

15 Mr. Aspin. Present.

16 The Clerk. Mr. Milford.

17 Mr. Milford. Aye.

18 The Clerk. Mr. Hayes.

19 Mr. Hayes. Aye.

20 The Clerk. Mr. Lehman.

21 Mr. Lehman. Aye.

22 The Clerk. Mr. McClory.

23 Mr. Treen. Aye, by proxy.

24 The Clerk. Mr. Treen.

25 Mr. Treen. Aye.



1 The Clerk. Mr. Kasten.

2 Mr. Kasten. Present.

3 The Clerk. Mr. Johnson.

4 Mr. Johnson. Aye.

5 The Clerk. Mr. Giaimo.

6 Mr. Giaimo. Present.

7 Nine ayes, three presents, and the motion is agreed to.

8 Does the Staff Director have any further business?

9 Mr. Field. That concludes our subpoenas. I would point
10 out to the members we have a briefing book prepared for this
11 afternoon, which is available. If you like, we can bring it
12 to your office with somebody who will stay with it. It
13 deals with the question of CIA involvement with the media and the
14 detailee program. The books are ready.

15 Mr. Giaimo. The members are advised of the information
16 the Staff Director has.

17 The gentleman from California seeks recognition for what
18 purpose?

19 Mr. Dellums. To ask a question of counsel.

20 Mr. Giaimo. Okay. I am in a hurry to bang the gavel.

21 Mr. Dellums. Yes, it just occurred to my colleague from
22 Illinois and I that perhaps the last subpoena directed toward
23 the Central Intelligence Agency with respect to IRS informa-
24 tion may very well also be directed to IRS. Can the staff
25 tell us whether or not that is, in fact, true, or should we

FOR D L

1 not vote a similar --

2 Mr. Hughes. The IRS has cooperated in furnishing similar
3 information.

4 Mr. Dellums. I thank the gentleman.

5 Mr. Giaimo. The Committee will stand in recess until
6 two o'clock p.m. this afternoon.

7 (Whereupon, the Committee recessed until 2:00 o'clock p.m.
8 this afternoon.)

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