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7/25/75

Mr Buchen
talked to
Mike Rozak
since Monroe Leigh
was on the Hill.



TRANSMITTED BY:
(Date & Time Stamp)

RECEIVED BY:
(Date & Time Stamp)

DEPARTMENT OF STATE
Operations Center

LDX MESSAGE RECEIPT

DEPARTMENT OF STATE

1975 JUL 25 PM 1 07 S/S #

75 JUL 25 PM 1:24
SIR

LDX MESSAGE NO: 866, CLASSIFICATION Unclassified, NO SITUATION ROOM

DESCRIPTION OF MSG. Opinion re constitutionality of Snyder Amendment

FROM: Monroe Leigh, L, 29598, 6425
Officer Office Symbol Extension Room Number

LDX TO: White House, DELIVER TO: Mr. Philip Buchen, EXTENSION: 456-2632, ROOM NUMBER: 2nd Floor West Wing

FOR: CLEARANCE ☐ INFORMATION ☐ PER REQUEST ☐ COMMENT ☐

REMARKS:

VALIDATED FOR TRANSMISSION BY: 72h
Executive Secretariat Officer



SNYDER AMENDMENT

Precluding Use of Appropriated Funds to Negotiate an Agreement on the Panama Canal

During consideration in the House of Representatives of the Department of State Appropriations Bill (H.R. 8121), Congressman Snyder introduced an amendment to prevent appropriated funds from being used to negotiate a new treaty that would relinquish any U.S. rights in the Panama Canal Zone. The amendment, as adopted by the House, states:

None of the funds appropriated in this title shall be used for purposes of negotiating the surrender or relinquishment of any U.S. rights in the Panama Canal Zone. [H.R. 8121, § 104.]

This amendment, or one similar to it, will soon be considered in the Senate.

The purpose of this memorandum is to discuss the constitutionality of the Snyder Amendment, in particular whether Congress, by restricting the use of appropriations or otherwise, can constitutionally prevent or inhibit the President from "negotiating" particular treaty terms.

Statutory restrictions on what treaty terms the President can negotiate are inconsistent with the treaty-making process set forth in the Constitution. Article II, Section 2 of the Constitution assigns very specific functions to the President and to the Senate:

He [the President] shall have Power, by and with the Advice and Consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls,



Thus, in the exercise of treaty-making powers, there are prerogatives and roles for the executive and legislative branches of government. This allocation and separation of powers is fundamental to our constitutional system.

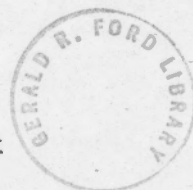
In practice, the effective conduct of the foreign relations of the United States requires close coordination between the legislative and executive branches of our government in carrying out their respective constitutional responsibilities with regard to the making of treaties. However, as the Supreme Court has stated, the limits of those responsibilities are clear:

[The President] makes treaties with the advice and consent of the Senate; but he alone negotiates. Into the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it. [U.S. v. Curtis-Wright Corp., 299 U.S. 304, 319. (1936).]

Accordingly, legislation purporting to preclude the President from negotiating treaty terms which he considers to be in the national interest would not be a proper subject for congressional action under the Constitution. Similarly, in exercising a proper legislative function, such as the appropriation of funds for the conduct of executive branch activities, the Congress may not properly impose conditions which would otherwise be unconstitutional. See Henkin, Foreign Affairs and the Constitution, p. 113. Just as Congress cannot limit who the President nominates for an ambassadorship, so it cannot restrict the subject matter of treaties to be negotiated and submitted to the Senate.

It is, therefore, the opinion of the Department of State that inasmuch as Section 104 of H.R. 8121 purports to restrict the President in the exercise of a power exclusively reserved to him by the Constitution, it cannot be considered a constitutionally valid exercise of the legislative authority of the Congress.

Monroe Leigh
Monroe Leigh
Legal Adviser
Department of State



TRANSMITTED BY:
(Date & Time Stamp)

RECEIVED BY:
(Date & Time Stamp)

DEPARTMENT OF STATE

DEPARTMENT OF STATE
Operations Center

LDX MESSAGE RECEIPT

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WHITE HOUSE
SITUATION ROOM

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Statutory restrictions on what treaty terms the President can negotiate are inconsistent with the treaty-making process set forth in the Constitution. Article II, Section 2 of the Constitution assigns very specific functions to the President and to the Senate:

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Monroe Leigh
Monroe Leigh
Legal Adviser
Department of State



Friday 9/12/75

Meeting
9/15/75
10 a.m.

10:45 Walter Warren's office called to advise they
are sending over the memo for your meeting
on Monday 9/15 at 10 a.m.

The following people will be attending:

Walter Warren
Charles Gladson
Denis Neill
Robert Wolthius

11:15 Material attached.

*Will have
to move this
to 10:30
or
10:45*



Wednesday 9/10/75

Meeting
9/15/75
10 a.m.

4:45 We have scheduled the meeting which had been requested by Walter Warren of AID for 10 a.m. on Monday 9/15.

Charles Gladson and Denis Neill will accompany him.

(Denis Neill is in Congressional Relations at AID and may be contacting our Congressional office to see if someone from there can also attend.)



Monday 9/8/75

11:50 Walter Warren, Deputy General Counsel of AID, said 632-8556
they have a separation of powers problem that the
Administrator wants him and the General Counsel (Charles Gladson)
to discuss with you for guidance.

Would hope to come over today or early tomorrow (one of the
gentlemen is leaving around 12 o'clock); but it can be done
later in the week if you aren't available.





DEPARTMENT OF STATE
AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON

OFFICE OF
THE ADMINISTRATOR

SEP 5 1975

MEMORANDUM FOR: Honorable Philip Buchen
Counsel to the President
The White House

SUBJECT: Compliance with Senate Appropriations
Committee Demands for Information and the
Doctrine of Separation of Powers

I became seriously concerned about the subject problem when I recently received a request from the Chairman of the Subcommittee on Foreign Operations for magnetic tapes which are described in such a manner as to comprise the master files for two significant AID financial record systems. The implications of providing such a broad scope of raw data, along with other instances of legislative intervention in the management of this executive Agency, have prompted me to seek White House guidance.

Fortunately I enjoy a genuinely good personal relationship with the Subcommittee Chairman, which I hope not to jeopardize. However, the implications of the request and other such activities of the Committee include the potential for further legislative interference, not only in AID's affairs, but also in the affairs of other executive Departments and agencies. In a recent informal telephone survey of 12 Departments and agencies, AID's Office of General Counsel has ascertained that no similar request for magnetic tapes had been received by Departments and agencies which were surveyed. Thus, I believe the tape request may be a precedential occurrence.

Enclosed is a copy of a memorandum to me from AID's General Counsel describing, with some particularity, the request for the magnetic tapes and other instances of the Committee's intervention in AID management.



- 2 -

I would appreciate your providing the White House views on this matter and its broad implications for other executive Departments and agencies, so that I may consider whether to meet with Senator Inouye concerning the request and such other possible encroachments.

Enclosure

A handwritten signature in black ink, appearing to read "Dan Parker", with a long horizontal flourish extending to the right.

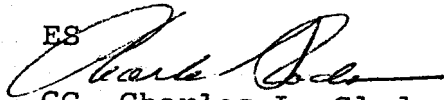
Daniel Parker
Administrator



DEPARTMENT OF STATE
AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

AUG 29 1975

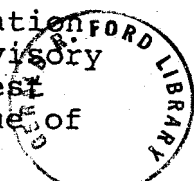
INFORMATION MEMORANDUM FOR THE ADMINISTRATOR

THRU: ES 
FROM: GC, Charles L. Gladson
SUBJECT: Compliance with Senate Appropriations
Committee Demands for Information and the
Doctrine of Separation of Powers.

A.I.D.'s policy in its relationship with the Congress is to comply to the fullest extent possible with requests for information. In pursuance of this policy we have provided the Senate Subcommittee on Foreign Operations of the Committee on Appropriations with an extremely large volume of information over the past several years. A recent request from the Subcommittee, however, has caused us to review our policy and consider A.I.D.'s posture in relation to the longstanding constitutional doctrine of separation of powers. This request standing alone would cause us some concern, but when considered with a number of other items bearing upon legislative interference with executive prerogatives we believe it advisable to establish some definite limitations.

The Request for Tapes

On August 4, 1975, we received a request from Senator Daniel Inouye, Chairman, Subcommittee on Foreign Operations, Senate Committee on Appropriations (Attachment A) for possession of data used for Agency planning purposes. Senator Inouye explained that the Subcommittee was requesting these computer tapes to afford the Committee staff an opportunity to conduct a number of special analyses with the data contained in the tapes. When viewed in relation to other Appropriations Committee requests for information notification requirements, and some exercise of supervisory action in the past several years, we believe this latest demand is part of a growing trend that raises the issue of the constitutional doctrine of separation of powers.



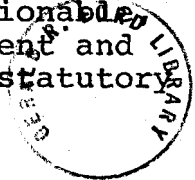
Other Sensitive Requests for Information, Notification
Requirements and Obligations for Committee Prior Approval

To summarize our concern regarding the request for the tapes, we hereinafter briefly detail several of the other items of Congressional intervention by the Senate Subcommittee on Foreign Operations over the past several years.

1. In 1973 the Senate Appropriations Committee added a provision to the Foreign Assistance and Related Programs Appropriations Act, 1974, requiring A.I.D. to notify the Appropriations Committees 5 days in advance of any obligations for projects of which the Committees had not been specifically informed beforehand. In 1975 this provision was re-enacted as section 113 of the Foreign Assistance and Related Programs Appropriations Act, 1975, and expanded to require prior notification for virtually all A.I.D. programs and to lengthen the notification period from 5 to 15 days. The Senate Appropriations Committee originally recommended that funds for such projects could only be obligated with the prior approval of the Appropriations Committee, a provision which we believed to be unconstitutional. The approval requirement was deleted from the Bill as a result of a point of order raised on the Senate floor by Senator Javits, and "prior notification" was substituted for "prior approval".

Nevertheless, because of our relationship with the Appropriations Committees, the prior notification requirement constitutes a substantial intervention by the Appropriations Committees in the day-to-day management of A.I.D. programs. Section 113 presently requires that "None of the funds made available under this Act for [various A.I.D. programs] shall be available for obligation for activities, programs, projects, countries, or other operations unless the Committees on Appropriations of the Senate and House of Representatives are previously notified fifteen days in advance."

Ordinarily, the fifteen day notification is satisfied by the Congressional presentation at Committee hearings. However, this is long in advance of the passage of the bill, and still further in advance of implementation of the program under the bill. Thus, the minor changes which become necessary at later times must be sent back for renotification. It is not that Congressional oversight of country programs is objectionable, but necessary minor changes due to day-to-day management and foreign policy considerations are held up under this statutory barnacle.



2. In late 1974, Senator Inouye obtained from Secretary Kissinger a written commitment (Attachment B) that no A.I.D. programs relating to assistance to Portugal and Portuguese colonies or disaster relief for Cyprus would go forward without the specific "prior approval" of the Subcommittee on Foreign Operations. This commitment was made despite the fact that the full Congress had authorized funds for these purposes and the Congress had not delegated authority to the Senate Subcommittee on Foreign Operations to approve these projects.

3. In our hearings before the Senate Subcommittee on Foreign Operations this July on our FY 1976 appropriations, Senator Inouye, the Subcommittee chairman, questioned Administration witnesses on A.I.D. plans for internal reorganizations. From the context of the discussion it was apparent that the Chairman did not believe A.I.D. should reorganize internal management and program functions of A.I.D. without the prior approval of the Appropriations Committee. (See galley proofs of Hearings on Foreign Assistance and Related Programs, Appropriation Act, 1975, before the Subcommittee on Foreign Operations of the Senate Committee on Appropriations, 94th Cong., 1st Sess., at 621, 762-767, Attachment C.) We indicated to Senator Inouye that we were not contemplating an internal reorganization, but we nevertheless view his concern as a potential infringement on the prerogatives of the President and of A.I.D.

4. Subsequent to the hearings we received a letter from Senator Inouye dated July 24, 1975 (Attachment D), in which he again asked to be kept fully advised of any A.I.D. decisions relating to reorganization. We inferred he would not approve reorganizations which were inconsistent with his ideas from his questions at the above-referenced hearing and from his letter stating, among other things: "I would like to be kept fully advised as to the status of this matter, particularly in the event any consideration is given to returning the worldwide population program to the geographic bureaus." We believe any attempt to impose such a control on the internal affairs of A.I.D. would be a violation of the separation of powers principle, and the Chairman's statement in the July 24 letter might be viewed as having a "chilling effect" on any future decision or implementation of such reorganization.

5. During the consideration of the FY 1975 Appropriations Act, the Senate Subcommittee on Foreign Operations reported out a bill deleting the \$40 million Administrative Expenses account for A.I.D. We fund a portion of our operating expenses from



this account. This reduction would have had a catastrophic impact on A.I.D. programs, from which we would have to derive the \$40 million for fixed operating costs. On the Senate floor, Senator Inouye stated that the Committee struck this account because A.I.D. has not complied with Subcommittee requests to establish a single appropriation account containing all A.I.D. operating expenses. He went on to state that since the Committee struck the \$40 million Administrative Expenses account, "AID has discovered it will now be possible to comply with the Committee's request beginning with FY 1976." (121 Cong. Rec. S.4341 (daily ed. March 19, 1975)). The fact that A.I.D. was forced to submit an authorization bill in the manner specified by the Appropriations Committee or forfeit substantial funds already authorized demonstrates one specific instance where the Senate Subcommittee on Foreign Operations has substituted its judgment for that of the Executive Branch.

With this history of increasing requests for information and Subcommittee attempts to substitute its judgment for that of A.I.D. management, the Subcommittee's demand for A.I.D. computer tapes has caused us to re-evaluate our basic policy on complying with requests for information. Past practice has demonstrated that this request for two computer tapes will probably be followed by additional requests for computer programs and other Agency planning data recorded by computer.

Recommendation for Meeting with Senator Inouye

It is our belief that the Subcommittee on Foreign Operations is not seeking a confrontation with the Executive Branch with regard to the issue of separation of powers. The increasing attempts to interfere with the management of A.I.D. programs can probably be attributed to the overzealous, not necessarily concerted, efforts of Subcommittee staff members. It is not in A.I.D.'s interest to seek a direct legal confrontation on this issue. It is our further belief that if you bring this issue directly to Senator Inouye's attention, he might agree to re-establish a normal relationship between his Subcommittee and A.I.D. If not, A.I.D. will require strong policy guidance from the White House.

In order to demonstrate to the Subcommittee on Foreign Operations that the Subcommittee's demands for information and other intrusions into the day-to-day management of A.I.D. programs risk violating the doctrine of separation of powers, we recommend that you consider contacting Senator Inouye to advise him that the Executive Branch views this matter as one of serious concern.



The data magnetically recorded on the tapes contain accounting information regarding programs previously approved and funded, which information, if in printed form, might be determined to be within the power of Congress to properly request. However, we believe that a request for computer tapes containing unassimilated raw data, in the context of the totality of the above-described circumstances, does raise the well established constitutional principle of separation of powers.

Summary of Separation of Powers Doctrine

The doctrine of separation of powers is not expressly stated in the Constitution, but is implicit in its history and structure. The framers did not consider it to be a question of mere theory but a matter of obvious necessity. Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579, 593 (1952) (Frankfurter J., concurring opinion). During the constitutional debates James Madison stated that it was essential to the preservation of liberty that the legislative, executive and judiciary powers be separate, and essential to the maintenance of that separation that the three branches be independent of each others. 2 FARRAND 34, Records of the Federal Convention of 1787 (rev. ed. 1966).

The independence of the three branches of government has been frequently affirmed by the Supreme Court. See e.g., Myers v. United States, 272 U.S. 52, 116 (1926); United States v. Klein, 13 Wall. (80 U.S.) 128, (1872). The successful working of the American system requires that persons entrusted with power in any of the three branches of government not be permitted to encroach upon the powers confided to the others. Kilbourn v. Thompson, 103 U.S. 168, 190-191 (1880). The Supreme Court has often held that the constitutional separation of powers must be protected and preserved. In Humphrey's Executor v. United States, 295 U.S. 602 (1935) the Court unanimously stated:

The fundamental necessity of maintaining each of the three general departments of government entirely free from the control or coercive influence, direct or indirect, of either of the others, has often been stressed and is hardly open to serious question. So much is implied in the very fact of the separation of the powers of these departments by the Constitution; and in the rule which recognizes



their essential co-equality. The sound application of a principle that makes one master in his own house precludes him from imposing his control in the house of another who is master there. 295 U.S. 602 at 629-630.

A.I.D. and Separation of Powers

The Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2151, et. seq., gives to the President authority to create an agency to administer foreign assistance. The President has delegated much of his statutory authority through the Secretary of State to the Administrator of A.I.D. There is no provision in the Foreign Assistance Act to provide the chairman of the Appropriations Committees with a role in the management of A.I.D. programs.

We believe that when the chairman of the Senate Subcommittee, which deals specifically with the appropriations for a particular executive program, makes demands on the Administrator of that program for information concerning daily management decisions of the program, this goes far beyond the legislative oversight function; it invades the realm of activity constitutionally vested in the Executive and statutorily vested in the President under the Foreign Assistance Act, and it violates the doctrine of separation of powers.

We suggest that you consider meeting with Senator Inouye after seeking further guidance from the White House.

Attachments: A/s





Subj: LEG - 2, LEG - 6

JOHN L. MCCLELLAN, ARK., CHAIRMAN

WALTER E. WATSON, WASH.
JOHN C. STENNIS, MISS.
JOHN O. PASTORE, R.I.
ROBERT C. BYRD, W. VA.
GALE W. MC GILL, WYO.
MIKE MANSFIELD, MONT.
WILLIAM PROXMIRE, WIS.
JOSEPH M. MONTOYA, N. MEX.
DANIEL K. INOUE, HAWAII
ERNEST F. HOLLINGS, S.C.
BIRCH BAYH, IND.
THOMAS F. EAGLETON, MO.
LAWTON CHILES, FLA.
J. BENNETT JOHNSTON, LA.
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Hiram L. FONG, HAWAII
EDWARD W. BROOKE, MASS.
MARK O. HATFIELD, OREG.
TED STEVENS, ALASKA
CHARLES MCC. MATHIAS, JR., MD.
RICHARD S. SCHWABER, PA.
HENRY BELLMON, OKLA.

JAMES R. CALLOWAY
CHIEF COUNSEL AND STAFF DIRECTOR

AUG 7 11 36 AM '75
EXECUTIVE SECRETARIAT

Sept 11, 1975
United States Senate
674C

COMMITTEE ON APPROPRIATIONS
WASHINGTON, D.C. 20510

August 4, 1975

vj Due 8/14/75

ACTION: SER/DM for Murphy sig
INFO: AA/SER, AA/LEG, AA/PPC
LEG/LPCS, Parker/Murphy logs

The Honorable Daniel Parker
Administrator
Agency for International Development
Department of State
Washington, D. C. 20523

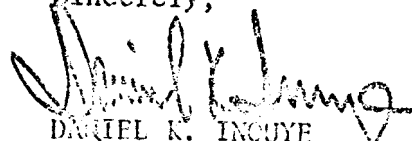
Dear Mr. Parker:

In May 1975, the Senate Appropriations Committee requested and obtained descriptive material covering several of AID's data processing systems through your Office of Legislative Affairs.

The staff of the Subcommittee on Foreign Operations has reviewed this material and has identified two data files which are of particular interest to the Subcommittee in its review of AID operations. These files are the Availability Master File of the Funds Control System, and the master file for the Project Analysis and Information System.

The Subcommittee on Foreign Operations would like to obtain these files in machine processable form, that is, magnetic computer tape, so that the staff might perform a variety of special analyses upon the data. It would be appreciated if these files could be made available as soon as possible so that the analyses might begin without delay.

Sincerely,


DANIEL K. INOUE
Chairman, Subcommittee
on Foreign Operations



ATTACHMENT B



THE SECRETARY OF STATE
WASHINGTON

December 18, 1974

Dear Mr. Chairman:

The State Department will submit to the Appropriations Committee for prior approval programs relating to the Assistance to Portugal and Portuguese Colonies, ^{and} Famine and Disaster Relief for Cyprus and ~~Middle East Special Requirements Fund~~, when they have been developed.

Sincerely,



Henry A. Kissinger

The Honorable
Daniel K. Inouye,
Chairman, Subcommittee on
Foreign Operations,
Committee on Appropriations,
United States Senate.



ATTACHMENT C

REORGANIZATION PLANS

Senator INOUE. All right. I appreciate it. Mr. Parker, this committee has frequently and strongly supported centralized administration of AID's population planning efforts. In fact, our committee report has the following language: "The committee strongly supports the centralized administration of AID's population planning effort. Such an approach has much to offer other functional categories which altogether too often find their direction and impetus sapped by bureaus organized along political and geographical lines."

Are you taking any administrative measures to organize AID along functional lines?

Mr. PARKER. No, sir. At the present time, we are not. Implementation of the management improvement efforts that we have undertaken is enough to fully occupy us at this time.

Senator INOUE. We have received word that you have plans to reorganize the population planning effort. What shape would this reorganization take?

Mr. PARKER. Mr. Chairman. I don't know what you have heard, but I can say that at the present time we have no serious plans for reorganization underway. We are fully engaged in carrying out the management changes that we have discussed, and at the present time we are not involved in reorganization considerations.

Senator INOUE. May I suggest you study a memorandum from Mr. Charles A. Mann, Subject: A study of the organizational placement of AID's population/family planning activities.

Mr. PARKER. Mr. Chairman, there is a significant, albeit possibly subtle, difference in planning a reorganization and considering possible organizational arrangements.

Now, in the latter, we are continually engaged in hypothesizing, if you will, in various organization formats. We are undertaking certain studies of certain operations with the objective of learning how they can be strengthened and how they can be made more relevant to the program.

For example, in the Office of International Training, we are currently soliciting bids from a number of contractors to undertake a study of that complete office and its functions.

To say that we anticipate reorganizing it would be premature. I wouldn't say that until we see what the review and study of it would indicate.

Senator INOUE. We are hoping that you would consider taking administrative steps to organize AID with other functions along functional lines.

Mr. PARKER. In this instance, Mr. Chairman, I would point out under title XII that we are proposing—and which does in a sense centralize the research and development for the food and production—productivity improvements and nutrition improvements into a separate section.

OPERATING EXPENSES

Senator INOUE. Mr. Parker, we are glad to see the separate authorization and appropriation of operating expenses. What assurance can we have that costs proposed for funding under this account will not be shifted to program accounts?



also sponsor eight regional conferences on methodology of health sector planning and analysis for LDC leaders in a direct effort to help LDC's help themselves. AID has drawn on the professional resources of HEW, the University of Michigan and the Johns Hopkins School of Public Health for guideline development, analysis and training.

Environmental health is one of AID's major concerns. Approximately \$39 million is proposed for environment and disease control. AID is helping poor countries find low-cost methods to meet their rural water needs. Programs planned for fiscal year 1976 include a \$9 million loan to Bolivia to develop a rural community potable water and waste system. This project will provide for construction of simple potable water systems, with water delivered to communities through public taps, standpipes and wells.

AID is working with the World Bank, WHO, and other donors to develop a global plan for water borne disease epidemic control. Cholera epidemics which attack all continents but the Americas is a focal point. A primary factor in this vital international search is the AID funded cholera research laboratory in Bangladesh which is field testing new vaccines for cholera control.

Cooperative efforts are also under way to study how the United States can contribute to control of snail fever, schistosomiasis, one of the greatest hazards in rural areas. AID will continue to support, \$1.5 million in 1976, an international effort to control river blindness in the Volta River Basin. Kuwait, the African Development Bank, and Japan have joined the United States in financing this program.

Malaria remains the most serious biological hazard to expansion of agricultural production. Despite previous major successes in reducing the impact of the disease, it has recurred in Pakistan, India, Nepal, Thailand, Indonesia, Central American and Haiti. AID will support antimalaria programs in Indonesia, Haiti, Ethiopia, Pakistan, and WHO research on methods of malaria control other than DDT. AID, in cooperation with WHO, will continue testing of biodegradable analogues of DDT in village scale tests in Indonesia.

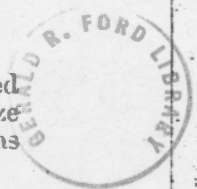
The adverse impact of capital projects, such as roads and irrigation systems, on biological environment will be assessed and ways to reduce major environmental diseases which affect the rural majority will be identified. The U.S. Environmental Protection Agency will assess the relevance of U.S. methodologies for water pollution control to developing country needs and capabilities.

In summary, the basic groundwork for reducing birth rates, death rates, disease, and malnutrition has been laid in many countries. However, substantial population increases will continue over many years even if the two-child family becomes the norm in this century, since the bulk of LDC populations are in the youngest age groups and still have their childbearing years ahead. Thus, major efforts are needed now if reduction in the rate of population growth is to have any chance of realization.

Senator INOUE. Thank you very much.

FUNCTIONAL REORGANIZATION

In the opening session I asked that functional programs needed functional direction and that the agency will do well to reorganize itself along functional lines. To my dismay, I learned not only was



that not the case, but consideration was being given to dismantling one bureau of population which had been organized along functional lines.

Why is there such an opposition attitude concerning organizing along functional lines? It would appear in any management group that this would be the chain of command, but here in AID it is not so.

Mr. MURPHY. Well, Mr. Chairman, I respectfully request the opportunity to disagree with you. We have missions in 40 countries overseas which are supposed to develop integrated programs. We have in Washington, for most programs a regional assistant administrator who reviews the proposals coming from the field. This regional assistant administrator is responsible for everything that goes on in his regional geographic area, including of course the field activities on population and health.

If we were to have a functional arrangement of our organization, each mission director in the field would be taking orders from five or six different officials in Washington. How we would get those five or six different officials in Washington to agree on the development of what I call really integrated country programs is a mystery to me.

I just do not believe that that would work and I would be less than candid if I didn't put my opinion right on the record. We might have some coordinating mechanism and that in fact is the reason why we are undertaking the study you referred to on Tuesday.

COORDINATING INTERREGIONAL PROGRAMS

Senator INOUE. Speaking of coordination, how does one coordinate worldwide functions under your setup?

Mr. MURPHY. Well, Mr. Chairman, we have, in addition to the regional bureaus and the Population and Humanitarian Assistance Bureau, the Technical Assistance Bureau, which Mr. Farrar heads. We have lodged in that bureau probably the best expertise that the agency has in food and in nutrition and in health and in education and in development administration.

The expertise of the Agency on Population and Family Planning is lodged in the Population and Humanitarian Assistance Bureau. The assistant administrators, receive proposed programs from the field, which are put together by function by mission directors. They are then subjected to a very careful review under the aegis of the regional assistant administrator with substantial input from the specialists in the functional categories that are available to them from the Technical Assistance Bureau.

These specialists in the Technical Assistance Bureau are sent out on temporary duty assignments to render major assistance to the people in our field missions on the development of logical projects that will fit together in all respects.

Frankly, it is my judgment that the system that we have now for other than population is the best system. We simply cannot have a situation where a mission director could be receiving orders from five or six different people in Washington.

Senator INOUE. Well, you have regional directors who supervise and integrate and coordinate all of the activities such as health and so on, but you have a health bureau chief in Washington, don't you?



Mr. MURPHY. We have a bureau or an office in the Technical Assistance Bureau, which is the Office of Health.

Senator INOUE. With what does that Office of Health concern itself?

Mr. MURPHY. Mr. Farrar can tell you in greater detail and may want to supplement my remarks, but what that office does basically is two things, as I understand it. One, it makes available to the regional bureaus in Washington and to the missions in the field, and the latter is extremely important, what I consider to be the best expertise the Agency has in the field of health.

Senator INOUE. I thought the regions already had the best expertise?

Mr. MURPHY. No. They have country desks and then loan officers and development loan resource officers and very capable people in several of the functional fields, but the senior expertise of the Agency in each functional field is lodged in the Technical Assistance Bureau.

In addition, the Technical Assistance Bureau is responsible for our outreach to the vast reservoir of experienced technical people in the United States. It is through the Technical Assistance Bureau that the regional bureau is able to identify the particular expert that they need on a particular project, whether he be in the University of Wisconsin or Kansas State University or whatever university or other institution.

The Technical Assistance Bureau is the bureau we look upon to be the last word in any particular functional area with the exception of population. That population activity is lodged in the Population and Humanitarian Assistance Bureau.

So if there is an aberration in the organization at all, Mr. Chairman, it is in the population area and it is not in the other functional areas.

Senator INOUE. Let's assume that country X in Africa has a problem where there are certain insects that carry diseases so the government of country X calls upon the ambassador and says, "Could you provide us with assistance." The ambassador calls upon its mission director and says, "I think this is a good idea."

The mission director now goes to the regional administrator, is that correct?

Mr. MURPHY. First he will turn to whatever expertise he has available locally for advice, guidance, and so forth. That is simply his initial step. His next step is to move into the regional bureau with a proposed project.

Say it is the tsetse fly in Africa, a devastating insect keeping large areas of arable land uncultivated.

Senator INOUE. He goes to the regional bureau.

Mr. MURPHY. He goes to the regional bureau with a project and it is looked at in terms of balance with the rest of the country's programs that the mission director is proposing. The regional bureau will then turn to Mr. Farrar's bureau for assistance, because this would fall in both the health and agriculture areas.

Senator INOUE. But Mr. Farrar's bureau has no authority to approve or disapprove?

Mr. MURPHY. Mr. Farrar's bureau does not have authority to approve or disapprove, but his bureau has authority to review the project, participate in its design and development, and, if he has



objection to it, Mr. Chairman, you may rest assured that his objections are noted and carefully considered.

Senator INOUE. Mr. Farrar's bureau is the support bureau?

Mr. MURPHY. That is right, professional technical support bureau for all bureaus. It is our intent, and we believe we have achieved it to a large extent, that that bureau be the reservoir not only for our direct hire, senior experienced personnel in each of these functional fields, but also the entry to such senior experience as we may not have in the Agency but which we have to reach out for into a university, another government agency, or to some other type of institution.

So, if you want the last answer on a health problem from a technical standpoint, you are probably going to get it from the Technical Assistance Bureau. That is because the regional bureaus do not attempt to maintain professional expertise at the same level, senior level, as the Technical Assistance Bureau does. That Bureau, in fact, as you say, serves all of the bureaus except Population and Humanitarian Assistance.

COORDINATION BETWEEN REGIONS

Senator INOUE. Is there coordination between regions?

Mr. MURPHY. Well, yes there is coordination between regions, Mr. Chairman, because, well, let's take the mandate I referred to earlier this morning. This is a very complex mandate that Congress has given us to improve the quality of life of the poorest majority in the developing countries.

The coordination among bureaus is directed toward executing this mandate and seeing to it that it has proper guidelines. That is provided by our Program and Policy Coordination Bureau headed by Mr. Birnbaum who is represented here by Mr. Shakow this morning.

This Bureau is responsible for providing overall guidelines on what it is we are supposed to do in the developing countries, demanding what Congress demands from us. They will set the criteria for reaching out to the rural poor, making sure that projects do not fail to reach the little man, and seeing to it that all other aspects of the mandate are accommodated.

They do this by development of guideline papers which are disseminated among the regional bureaus and provide the guidance with which the bureaus must conform.

Senator INOUE. In the organizational scheme, if the regional director wants assistance and wants to go to an administrator, he may do so without going through the regional bureaus?

Mr. MURPHY. Certainly. Each of these gentlemen with me are assistant administrators and have access to my office and Mr. Parker's office as well. They may come together or separately, but they may come. If Mr. Farrar has serious reservations about the technical proficiency of a particular project he is at liberty to state it; and I must tell you, Mr. Chairman, he is willing.

Senator INOUE. Is this why we find that we have on occasion one region carrying on a certain project unbeknown to another region?

Mr. MURPHY. Yes, this is certainly possible, Mr. Chairman.

Senator INOUE. Is that a desirable situation?

Mr. MURPHY. I don't really see anything wrong with it, Mr. Chairman. I don't expect Mr. Kleine to be familiar with everything that



goes on in Africa, or Mr. Nooter to know everything that goes on in East Asia.

Senator INOUE. Isn't he supposed to know if he has tsetse flies, he has to know what progress Africa has on the tsetse fly.

Mr. MURPHY. That is different than I understood your question. The reservoir on expertise on the tsetse fly is the Technical Assistance Bureau. If Mr. Kleine has a problem there he turns to the Technical Assistance Bureau who will quickly inform him Africa has had the problem and our Technical Assistance Bureau has been working with them and Latin America will get the benefit of every bit of the agency's experience on the tsetse fly garnered in Africa. So there is cross-fertilization because of the senior technical experts in the Technical Assistance Bureau who are familiar with what is going on in their particular fields throughout the world.

Senator INOUE. How do you explain the fact that the Nutri-Bun has been very successful? I don't know if you know what a Nutri-Bun is, but we saw its success in the Philippines and we inquired as to whether it was being used elsewhere and they said, no, the other parts of the world were not aware of the success of the Nutri-Bun, and somehow its success has not gotten across.

Mr. MURPHY. It has now. We used the Nutri-Bun in Bangladesh with great success.

Senator INOUE. It has been used now because we complained.

Mr. MURPHY. Perhaps that contributed to it.

Senator INOUE. That is why we are talking about adequate coordinating. If we had a good thing in Bangladesh that has been a great success, why not employ it elsewhere? With a regional setup here, you keep it to yourselves. You have your political infrastructure there so you provide nations with a high gross national product per capita income with great support, and another reason there are people who should be getting greater support and are receiving almost no help.

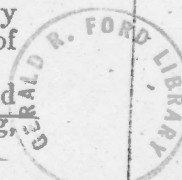
Mr. MURPHY. As I explained earlier, and first of all, let me comment further on the Nutri-Bun, if I may. It is used in a disaster relief situation and every time we have used it has been a disaster relief situation. There is a separate office for Federal Disaster Relief Coordination in AID and that office used the Nutri-Bun effectively in the Philippines and if it is confronted with a disaster in Bangladesh and Somalia it used it there.

Senator INOUE. That is in the Population Bureau? That is a functional category?

Mr. MURPHY. The Bureau for Population and Humanitarian Assistance; yes, sir.

Now, as regards the question about amounts of money being used in different countries in different areas, we alluded to this earlier, Mr. Chairman. One very important factor is its absorptive capacity. If a country has reached a certain stage of development and has personnel which have been trained over the years, it is able to do more things than a country that does not have that advantage. We are striving to correct those imbalances and I believe with some success. I won't deny it will be some time before we can use effectively in Africa the levels of aid that we have used in Latin America.

Senator INOUE. I am suggesting that what we are proposing would be the ultimate answer and for all I know we might be totally wrong.



but I would hope that your Agency will provide us with a memo on this problem of organization along functional lines.

Mr. MURPHY. We will be glad to.

[The information follows.]

A.I.D. COMMENTS ON FUNCTIONAL ORGANIZATION

Since the creation of A.I.D. in 1961, the Agency's economic assistance programs have been administered by strong geographic bureaus. This organizational pattern was established initially because of the increasing number of countries receiving economic assistance and because of the greater number of tools available for providing economic assistance. It has been maintained, despite the increasing sectoral emphasis in A.I.D. programs, for a number of reasons. Specifically, the Agency has recognized the continuing need for: 1) a single focal point in Washington to coordinate the total economic assistance program for each country or regional activity; 2) clear lines of responsibility between AID/Washington and the field; and 3) clear lines of coordination with international organizations and other donors. Mission Directors should not have to look to a number of individual points in Washington for guidance and assistance, but should have a strong representative of their interests in Washington.

In 1972, the Agency centralized responsibility for A.I.D. population programs in the Office of Population within a newly created Bureau for Population and Humanitarian Assistance. Centralization of the program was, in part, based on the rapid expansion of A.I.D. activities in this sector and the opportunity afforded for development of innovative approaches to program administration. This Office was given responsibility for planning, developing and monitoring the implementation of all population projects. The geographic bureaus retained responsibility for participating in the approval of country and regional population strategies and for reviewing all proposed population projects from the standpoint of appropriateness to specific country or regional needs.

The establishment of this central Office of Population was essentially an experimental organizational step for the Agency. It was the only time in recent years that the Agency has transferred a major segment—i.e., obligation of funds—of authority for approval of bilateral and regional assistance programs or of projects in a primary sectoral program area from the geographic bureau to a central functional bureau.

Agency management has now determined that, with three years of experience with centralized management of the population program and because of the new structure of the Foreign Assistance Act, it is timely for a reexamination of the current arrangement. This review is designed to assist Agency management evaluate whether or not the arrangement should be continued in the population area. If continuation is appropriate in light of the Agency's review, the arrangement may be extended to other functional program areas as well.

A study team has been formed to review both the pre-1972 and current organizational arrangements for the conduct of the Agency's population/family planning activities. The team will identify and make recommendations regarding any potential alternative arrangements for carrying out the Agency's population function and, in particular, for relating it more fully to Agency health and nutrition activities. These recommendations will provide the basis for A.I.D. senior management consideration of any further reorganization of the A.I.D. program.

POPULATION CONTROL AND GENETIC ENGINEERING

Senator INOUYE. Some months ago there was a great deal in the press concerning the Bucharest conference on population. I gather the general tenor of the gathering was population control, was a plot on the part of the developed nations to force the less developed nations into genocide.

Is this still the prevailing view among the less developed countries?

Mr. MURPHY. I would not call it a prevailing view, Mr. Chairman, by any means. But again I have to say it certainly is the view in certain areas. I don't know if you saw the announcements of the



ATTACHMENT D



Subj: ADM

JOHN L. MCCLELLAN, ARK., CHAIRMAN

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J. BENNETT JOHNSTON, LA.
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TED STEVENS, ALASKA
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RICHARD S. SCHWEIKER, PA.
HENRY BELLMON, OKLA.

JAMES R. CALLOWAY
CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, D.C. 20510

July 24, 1975

ACTION:
INFO:

vj Due 8/1/75
AA/SER for Parker sig
AA/LEG
Murphy log (o)
McGraw log (o)
ES log (o)
ES/RAS log (o)

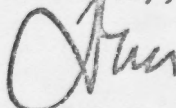
The Honorable Daniel Parker
Administrator
Agency for International Development
Department of State
Washington, D. C. 20523

Dear Mr. Parker:

In our recent hearings we had occasion to discuss whether the Agency for International Development should be organized along functional or geographic lines. We discussed specifically whether the population program should be dismantled and returned to the geographic bureaus, as some believe, or whether other functional programs, such as food and nutrition, would be better administered on a worldwide basis. As you know, the Committee has generally supported organization along functional lines.

Information supplied supplemental to the hearings indicates that a current evaluation of these organizational matters is presently under way. I would like to be kept fully advised as to the status of this matter, particularly in the event any consideration is given to returning the worldwide population program to the geographic bureaus.

Sincerely,



DANIEL K. INOUE
Chairman, Subcommittee
on Foreign Operations

JUL 25 11 46 AM '75
EXECUTIVE SECRETARIAT

THE WHITE HOUSE
WASHINGTON
August 19, 1975

*Called Dan Parker
8/22. He will
be sending memo
to me.*

MEMORANDUM FOR: PHIL BUCHEN
THRU: MAX FRIEDERSDORF *RKW*
FROM: PATRICK O'DONNELL *POD*
SUBJECT: Computer tape request by
Senate Appropriations Subcommittee
on Foreign Operations

By the attached letter Senator Daniel Inouye, Chairman of the Foreign Operations Subcommittee, has formally requested computer master tapes on the AID Funds Control System and their Project Analysis and Information System.

The folks at AID are quite concerned that this unusual request might set a dangerous precedent which has far greater ramifications than the particular tapes here involved.

This is a matter in which your shop might want to become involved. I pass it along for whatever action you deem appropriate.

Thanks.



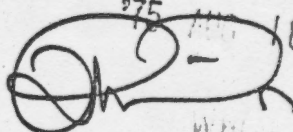
TRANSMITTED BY:
(Date & Time Stamp)

DEPARTMENT OF STATE
Operations Center

LDX MESSAGE RECEIPT

S/S #

RECEIVED BY:
(Date & Time Stamp)

275 APR 18 PM 5.16


WHITE HOUSE
SITUATION ROOM

LDX MESSAGE NO. 409, CLASSIFICATION UNCLASSIFIED, NO. PAGES 1

DESCRIPTION OF MSG Letter from Sen. Inouye to Hon. Dan Parker

FROM: Pat. O'Donnell, Officer, AID, AA/LEG, 28264, Rm 2895
Office Symbol Extension Room Number

LDX TO: DELIVER TO: EXTENSION: ROOM NUMBER:

White House Mr. Pat. O'Donnell, 456-2757, 107 East Wing

FOR: CLEARANCE ☐ INFORMATION ☐ PER REQUEST ☒ COMMENT ☐

REMARKS: _____

VALIDATED FOR TRANSMISSION BY: San Mallon
Executive Secretariat Officer



Subj: LEG - 2, LEG - 6

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United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, D.C. 20510

AUG 7 11 36 AM '75
EXECUTIVE SECRETARIAT

JAMES R. CALLOWAY
CHIEF COUNSEL AND STAFF DIRECTOR

August 4, 1975

vj Due 8/14/75

ACTION: SER/DM for Murphy sig
INFO: AA/SER, AA/LEG, AA/PPC
LEG/LPCS, Parker/Murphy logs

The Honorable Daniel Parker
Administrator
Agency for International Development
Department of State
Washington, D. C. 20523

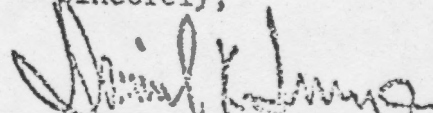
Dear Mr. Parker:

In May 1975, the Senate Appropriations Committee requested and obtained descriptive material covering several of AID's data processing systems through your Office of Legislative Affairs.

The staff of the Subcommittee on Foreign Operations has reviewed this material and has identified two data files which are of particular interest to the Subcommittee in its review of AID operations. These files are the Availability Master File of the Funds Control System, and the master file for the Project Analysis and Information System.

The Subcommittee on Foreign Operations would like to obtain these files in machine processable form, that is, magnetic computer tape, so that the staff might perform a variety of special analyses upon the data. It would be appreciated if these files could be made available as soon as possible so that the analyses might begin without delay.

Sincerely,


DANIEL K. INOUE
Chairman, Subcommittee
on Foreign Operations



THE WHITE HOUSE

WASHINGTON

August 22, 1975

MEMORANDUM FOR: PHIL BUCHEN

THRU: MAX FRIEDERSDORF *RKW*

FROM: PATRICK O'DONNELL *POD*

SUBJECT: Computer tape request by
Senate Appropriations Subcommittee
on Foreign Operations

The attached memorandum and letter were prepared at AID
(see my earlier memorandum of August 19, 1975).

The letter is being held while Dan Parker prepares an issue
paper of broader interest for your consideration.

Thanks.



AUG 20 1975

ACTION MEMORANDUM FOR THE ADMINISTRATOR

THRU: ES

FROM: *Walter E. Warren*
Walter E. Warren, Acting General Counsel

Problem: To respond to a request from the Subcommittee on Foreign Operations of the Senate Committee on Appropriations for two AID computer tapes.

Discussion: In an August 13, 1975 Information Memorandum, we advised you of the outcome of a meeting held with representatives of the Office of Management and Budget to discuss Senator Inouye's request for two AID computer tapes. Subsequent to that memorandum we have consulted with the Office of the Legal Counsel, Department of Justice, and with the Legal Adviser's Office of the Department of State in regard to whether these tapes should be made available to the Subcommittee on Foreign Operations. State/L, and the Justice Department's Office of Legal Counsel concur with the earlier advice we had received from OMB that we should provide the Subcommittee with the tapes in question. Possible grounds for objecting to the Subcommittee's request, including classified information contained in any tapes or internal working documents relating to tentative planning data such as country field submissions, are not contained in the instant request.

Accordingly, we have prepared the attached letter from you to Senator Inouye, in which we state that we will be happy to provide the Subcommittee with the information requested. We point out, however, that one of the tapes is not expected to be completed until January 1976, and before the Subcommittee performs any analyses with the other tape, it is important that Subcommittee technical staff meet with AID representatives to discuss the fiscal codes and program formats contained in the tapes. We also note that we expect the Subcommittee will agree to verify the results of any analyses it performs with AID prior to appropriations hearings. It should be noted

*Do this
prior to
submitting
tapes?*

U.S. DEPARTMENT OF JUSTICE
LIBRARY

that the computer tape alone is of little value without the computer programs. At this stage, however, since the Subcommittee has only requested the tape itself, we have not offered the programs.

Recommendation: That you sign the attached letter to Senator Inouye.

Clearance:

SER, C.Mann _____

LEG, D.Neill _____

SER/DM, M.Brown _____

SER/FM, T.Blacka _____

GC/LPC:KKammerer:jh:8/19/75



DEPARTMENT OF STATE
AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D. C. 20523

OFFICE OF
THE ADMINISTRATOR

Honorable Daniel Inouye
Chairman, Subcommittee on
Foreign Operations
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your August 4, 1975 request for two magnetic computer tapes entitled "Availability Master Files of the Funds Control System" and "Master File for Project Analysis and Information System".

We will be happy to provide the Subcommittee on Foreign Operations of the Senate Committee on Appropriations with the information you have requested. However, as we advised Dr. Wheeler of the Appropriations Committee Staff some time ago, the Availability Master Files of the Funds Control System is still in the development process, and we do not expect it to be completed until January 1976.

I have asked my staff to make the magnetic computer tape for the Project Analysis and Information System available to the Subcommittee staff as soon as possible. Inasmuch as you indicate in your letter that the Subcommittee is interested in obtaining the above-mentioned tapes to permit Subcommittee staff to perform a variety of special analyses upon the data, I would like to suggest that representatives of AID's Office of Data Management meet with the Subcommittee staff to assure that the Subcommittee staff is familiar with the content and purpose of this tape. I recommend this procedure to assure that misleading or erroneous conclusions are not deduced from the variety of special analyses you mentioned in your letter as a result of possible misunderstanding in regard to AID's internal use of this tape.



This is particularly important in regard to possible misinterpretations of the codes used in the tape. I would think it would be essential for technically qualified members of your staff to meet with members of our Data Management Staff and Office of Controller to review format and fiscal codes used in the tape. In this regard, I would like to suggest that Subcommittee staff contact Mr. Maury D. Brown, Director, Office of Data Management, AID, (telephone 632-7962) at their convenience to arrange delivery of the Project Analysis and Information System computer tape, and to discuss the program formats and fiscal codes contained therein.

In addition to the above, I would like to mention a further consideration in regard to use of these tapes by the Subcommittee. As you undoubtedly recognize, providing these computer tapes to the Subcommittee on Foreign Operations raises obvious questions in regard to future hearings on foreign assistance appropriations. As a matter of fairness, I hope that the Subcommittee agrees that any analyses performed by Subcommittee staff with AID prepared computer tapes will be verified with competent AID personnel prior to being made the subject of hearing testimony. It would clearly be unfair to question Agency witnesses regarding computer analyses prepared by Subcommittee staff when AID has no way to verify that the information contained in the tapes has been properly programmed by Subcommittee staff.

With these considerations in mind, we are happy to comply with your request in the hope that the information provided will be of assistance to the Subcommittee in reviewing AID operations.

Sincerely yours,

John E. Murphy
Acting Administrator



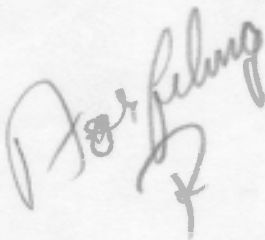
THE WHITE HOUSE
WASHINGTON

April 8, 1976

Mr. Schmults,

Would you want to comment
in Mr. Buchen's behalf?

shirley

A handwritten signature in dark ink, appearing to read "Shirley". The signature is stylized with loops and a long horizontal stroke at the end.A handwritten mark in dark ink, consisting of several overlapping loops and a long horizontal stroke, possibly representing initials or a signature.

THE WHITE HOUSE

WASHINGTON

April 7, 1976

MEMORANDUM TO:

BRENT SCOWCROFT

✓ PHIL BUCHEN

JIM LYNN

JIM CANNON

MAX FRIEDERSDORF

FROM:

JACK MARSH

Attached letter from Rep. Bob Wilson indicates his support for a signing statement in connection with the 200 mile bill.

I would appreciate hearing your views on Wilson's letter. In any event, both NSC and OMB should have the benefit of any input from the other co-recipients of this memo.

April 7, 1976

Dear Bob:

Many thanks for your letter of April 5, and your suggestions with regard to the content of any signing statement used in connection with the 200 mile bill.

I have already seen to it that copies of your letter have been called to the attention of the appropriate people here at the White House.

I can assure you that every consideration will be given to the recommendations contained in your letter.

With warmest personal regards, I remain,

Sincerely,

John O. Marsh, Jr.
Counsellor to the President

The Honorable Bob Wilson
House of Representatives
Washington, D. C.
JOM:RAR:cb

BOB WILSON
41ST DISTRICT OF CALIFORNIA
(SAN DIEGO COUNTY)

EDWARD F. TERRAR, JR.
ADMINISTRATIVE ASSISTANT

APR 5 1976

RANKING MINORITY MEMBER
ARMED SERVICES COMMITTEE
SELECT COMMITTEE ON AGING

Congress of the United States
House of Representatives
2307 Rayburn Building
Washington, D.C. 20515

SAN DIEGO OFFICE:
SUITE E283
123 CAMINO DE LA REINA
SAN DIEGO, CALIFORNIA 92108
TEL.: 714-299-2444

April 5, 1976

Dear Jack:

As you know, I have been a strong opponent to the so-called 200-mile bill, which I gather the President will be signing within the next day or so. In conjunction therewith, I am sincerely hopeful that the President will cover two areas.

First, the continued right of free passage by naval and shipping interests. The bill, as you know, does not impinge on such rights.

Secondly, in addition to conserving and managing fishing resources found off the coasts of the United States, this bill strongly reaffirms our commitment to promote and protect the continuing welfare and contribution of our U. S. Tuna Fleet and other distant water U. S. fishermen.

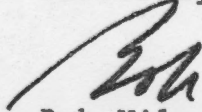
The bill and Conference Report restate our historic position that International fisheries agreements should be the bases of the proper management and conservation of highly migratory species, such as tuna. We are looking forward to the opportunity of working with our friends in strengthening present International fisheries agreements such as the Tuna Conservation Commissions in the Pacific and the Atlantic, as well as negotiating additional International agreements which will ensure the management and conservation of the world's valuable tuna resources.

Honorable John O. Marsh, Jr.
Page Two

From the viewpoint of my constituency and my opposition to the measure, it is essential that these two points be covered in the statement issued in conjunction with the signing of the bill.

Your cooperation is appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Bob Wilson', with a stylized, sweeping initial 'B'.

Bob Wilson
Member of Congress

Honorable John O. Marsh, Jr.
Counselor to the President
The White House
Washington, D. C. 20500

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 01325

Collection/Series/Folder ID	:	001900207
Reason for Withdrawal	:	NS,National security restriction
Type of Material	:	MEM,Memo(s)
Creator's Name	:	Jack Marsh
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Description	:	re nuclear materials
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~~SECRET~~ MATERIAL ATTACHED

Office of the Attorney General
Washington, D. C. 20530

4/22/76

MEMORANDUM FOR THE PRESIDENT

The purpose of this memorandum is to set forth my views on two issues -- (1) whether the jurisdiction of the Joint Atomic Energy Committee is exclusive and (2) whether the statute of limitations has run on any possible criminal offenses arising out of the discrepancy in nuclear materials at the Nuclear Materials and Equipment Company (NUMEC) -- and to attach a brief memorandum summarizing the FBI's role in this matter.

I. Jurisdiction of the Joint Atomic Energy Committee.

Section 202 of the Atomic Energy Act, 24 U.S.C. 2252, which defines the authority of the Atomic Energy Commission, provides in pertinent part:

"* * * All bills, resolutions, and other matters in the Senate or the House of Representatives relating primarily to the Commission or to the development, use, or control of atomic energy shall be referred to the Joint Committee."1/

Nothing in this text indicates that this referral is exclusive, and that other Committees may not consider those matters if they also come within their jurisdiction.

During the debate of the Atomic Energy Act of 1954 on the floor of the House there was a colloquy in which Congressman Yates expressed the view that with respect to legislative proposals the jurisdiction of the Joint Committee is exclusive. 100 Cong. Rec. 11667-11668. In our view, however, this statement is insufficient to give to the text of the statute a significant feature which it does not in fact contain, particularly in light of the subsequent legislative practice.

1/ This section is derived from section 15 of the Atomic Energy Act of 1946.

~~SECRET~~ MATERIAL ATTACHED

The House and Senate rules do not contain any provision which would give the Joint Committee on Atomic Energy exclusive jurisdiction. The Senate Rules merely reprint without comment the provisions of the Atomic Energy Act relating to the Joint Committee. 42 U.S.C. 2251-2257; see Senate Manual paras. 565-571. The House Rules give only a short digest of those statutory provisions. Manual and Rules of the House of Representatives, § 983a. Moreover, at least one House committee is specifically accorded jurisdiction over a matter which comes within the Joint Committee's authority as well. The House Committee on Interior and Insular Affairs is given special oversight functions "with respect to all programs affecting . . . nonmilitary nuclear energy and research and development, including the disposal of nuclear waste." Manual and Rules of the House of Representatives, § 679, 693.

A study covering the practice of the first fifteen years of the Joint Committee indicates that it repeatedly had to share jurisdiction with other committees on matters involving the development, use or control of atomic energy.^{2/} For example, in the case of nuclear powered merchant vessels, the Joint Committee had to share jurisdiction with the Senate Committee on Commerce, and the House Committee on Merchant Marine.^{3/} Recently, the Subcommittee on Energy and Power of the House Committee on Interstate and Foreign Commerce considered instances of alleged misuse of radioactive materials, a subject which unquestionably comes within the jurisdiction of the Joint Committee on Atomic Energy.

We conclude that it cannot plausibly be asserted that the jurisdiction of the Joint Committee is exclusive.

There are, however, other features distinguishing the Joint Committee from other committees of Congress, so that the executive branch could justify an unwillingness to furnish sensitive information to committees other than the Joint Committee. Under 42 U.S.C. 2256, the Joint Committee "may classify information originating within the Committee in accordance with standards used generally by the executive branch

^{2/} See Green and Rosenthal, The Joint Committee on Atomic Energy: A Study in Fusion of Governmental Power (1961), pp. 262-274.

^{3/} Id. pp. 270-271

for classifying Restricted Data or defense information." The effect of such classification is at the very least to enable the Act's provision on the protection of Restricted Data to become applicable -- and possibly to enable the invocation of other criminal statutes as well.

Under 42 U.S.C. 2255 the Joint Committee is authorized to permit its members, employees and consultants to carry firearms while in the discharge of their official duties; and under 42 U.S.C. 2257 it is authorized to direct such security safeguards as it deems appropriate. We are advised that by virtue of these provisions the Joint Committee has an extremely secure recordkeeping system.

These special features would obviously justify Presidential willingness to provide information to this Committee which might be withheld from others.

II. Possible Violation of Criminal Statutes.

The Federal Bureau of Investigation conducted one criminal investigation which related to NUMEC. That investigation involved a possible violation of the Foreign Agents Registration Act by the president of NUMEC for acts occurring in 1956-66. The Criminal Division advised the Bureau in September, 1966 that these acts did not constitute a violation of the Act and the investigation was closed. The five-year statute of limitations which applies to this Act has since expired.

The FBI did not conduct an investigation into the alleged discrepancy in nuclear materials at NUMEC because it was advised by the AEC that any loss likely was attributable to inadequate accounting procedures and that there was no evidence or suspicion of a violation of law. Since no investigation was undertaken, the Department of Justice cannot state that there is no evidence which would support a criminal charge. The facts available with respect to this matter indicate that the following criminal statutes may be involved:

42 U.S.C. 2077 - Unauthorized dealings in special nuclear material

42 U.S.C. 2273 - Violation of Atomic Energy Act generally, or of agency regulations

42 U.S.C. 2275 - Receipt of Restricted Data

42 U.S.C. 2276 - Tampering with Restricted Data

42 U.S.C. 2277 - Disclosure of Restricted Data

18 U.S.C. 832-834 - Transportation of dangerous articles

18 U.S.C. 793-794 - Espionage: gathering or transmittal of defense information

18 U.S.C. 3 - Accessory after the fact

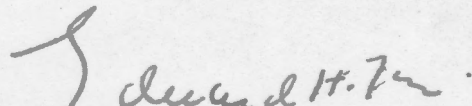
18 U.S.C. 4 - Misprision of felony

18 U.S.C. 371 - Conspiracy to commit offense

The Statute of Limitations for the above-enumerated offenses is five years (18 U.S.C. 3282) except for violation of 42 U.S.C. 2274-76, for which it is ten years (42 U.S.C. 2278). Furthermore, if concealment of the substantive offense is continuing, the statute of limitations would not bar a prosecution under 18 U.S.C. 3 (accessory after the fact), 4 (misprision of felony) and 371 (conspiracy).

Because the statute of limitations may not have run with respect to any offenses that may be involved and because of the responsibility to consider whether any dismissal or other disciplinary proceedings may be appropriate with respect to any persons presently employed as federal officials who may have participated in or concealed any offense, I believe it necessary to conduct an investigation. Section 2271 of the Atomic Energy Act provides that "the Federal Bureau of Investigation of the Department of Justice shall investigate all alleged or suspected criminal violations" of the Act.

A brief summary of the FBI's file on this matter is attached.


Attorney General

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 01324

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