

The original documents are located in Box 27, folder “National Security Council - Nixon/Thieu Letters (2)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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Responses Currently Pending:

Mansfield (6/2) and Sparkman
(5/6) re: Nixon/Thieu letters

Abzug (5/15, PWB interim 6/9)
re: Nixon letters on Concorde

Humphrey (5/29) re: Nixon
letters on Concorde

Moss (5/6, PWB interim 5/16)
re: Nixon tapes on air bags

Guste (5/21, PWB interim 5/31)
re: Nixon tapes on DDT

Primary Responsibility With:

NSC (Janka)

Roth (awaiting reply from Miller)

Roth (awaiting information from
FAA)

Casselman (awaiting reply from
Miller)

Roth (awaiting reply from Miller)



THE WHITE HOUSE

WASHINGTON

June 4, 1975

MEMORANDUM FOR: PHIL BUCHEN
THROUGH: BILL CASSELMAN *BC*
FROM: BARRY ROTH *BR*
SUBJECT: Bipartisan Congressional
Leadership Meeting

It is possible that Senator Mansfield will renew his request for the Nixon-Thieu correspondence at this evening's meeting. If so, you should be aware that Monroe Leigh has been asked by NSC to prepare a position paper for you and NSC with respect to this request.

The White House response to Senator Sparkman's first letter was a lengthy one dealing with executive privilege, but it did not raise any arguments in connection with the litigation involving the Nixon papers. While the factual situation surrounding NSC's possession of copies of this correspondence is complicated, it is still accurate to say that the issue which the committee has raised in seeking this correspondence of the Nixon Administration is one of the central issues of the ongoing litigation. As a result, we are barred from releasing the actual documents except with the consent of Mr. Nixon or his counsel. Bill Casselman has spoken to Ray Larroca today, who advises that his client remains opposed to any such release by this Administration and would probably challenge our plans to do so in court.



THE WHITE HOUSE

WASHINGTON

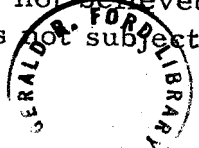
June 3, 1975

MEMORANDUM FOR: PHIL BUCHEN
THROUGH: BILL CASSELMAN *BC*
FROM: BARRY ROTH *BR*
SUBJECT: Requests for Materials of the
Nixon Administration

In response to your request this morning, attached is a compilation of the correspondence our office has generated with respect to requests for copies of "Presidential Materials of the Nixon Administration." Tab A consists of Congressional requests for information; Tab B, of requests pertaining in some way to litigation; Tab C, of Freedom of Information Act (FOIA) requests; and Tab D, of Executive Branch requests (other than the Special Prosecutor).

When requests have been made by Congress for Nixon materials, we have responded that disclosure of these materials requires the consent of Counsel for Mr. Nixon as the result of the District Court's Order. While it is possible for this office to unilaterally deny such requests, we are in a stronger litigating and public relations position if we have on record the refusal of Mr. Nixon or his Counsel. Prior to responding to these requests, we have checked, to the extent practicable, with the appropriate agencies to insure that the requested document cannot be found among items that are outside the scope of the Order.

When FOIA requests have been made for Nixon materials, we have unilaterally denied them when the only available copies are believed to be within the scope of the Order. If we were to find that the requested document could be found at another agency, we would probably refer the requester to that agency, where any exemptions under the Act could also be invoked. Since one issue now before the courts is the availability of these Presidential materials under the FOIA, we have taken a position, concurred in by Justice, that the Order prevents us from disclosing the contents of these materials on the basis of an FOIA request. Finally, we point out that the White House (or the Domestic Council) is not believed to be an agency for the purposes of the FOIA, and therefore is not subject to its provisions for mandatory disclosure.



May 29, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: KEN LAZARUS

SUBJECT: Power of Congressional Committees to
Compel Appearance or Testimony of
Presidential Assistants

This is in response to your request for a discussion of historical precedents and policy on appearances or testimony before congressional committees by Presidential assistants not confirmed by the Senate.

Introductory Note

In his press briefing of April 23, regarding Senator Kennedy's request to have Ambassador Brown testify before a Judiciary Subcommittee, Ron Nessen stated: ". . . traditionally appointees of the President who are not subject to confirmation by the Senate are not called to testify." Actually, a complete reading of the transcript (Tab A) makes clear that Ron was talking about a narrower category of Presidential "assistants" rather than "appointees".

On May 2, 1975, Senator John Sparkman sent a letter to the President in order ". . . to keep the record straight." (Tab B) He noted:

* * *

"Among the Presidential appointees not confirmed by the Senate who have testified before congressional committees are Peter Flanigan, Richard Goodwin, Sherman Adams, Robert Cutler, Robert E. Merriam, Gerald D. Morgan, Lawrence F. O'Brien, General E. R. Quesada, Roger L. Stevens, Dr. Stafford L. Warren, and Dr. Jerome Wiesner."

* * *



Historical Precedents

There have been numerous instances in which White House Staff members declined to appear before congressional committees.

1. On two occasions during the administration of President Truman, a subcommittee of the House Committee on Education and Labor issued subpoenas to John R. Steelman, who held the title "Assistant to the President". In both instances he returned the subpoena with a letter stating that "In each instance the President directed me, in view of my duties as his Assistant, not to appear before your subcommittee."
2. In 1951, Donald Dawson, an Administrative Assistant to President Truman, was requested to testify before a Senate Subcommittee investigating the Reconstruction Finance Corporation, one aspect of which concerned Mr. Dawson's alleged misfeasance. Although the President believed that this request constituted a violation of the constitutional principle of the separation of powers, he nevertheless "reluctantly" permitted Mr. Dawson to testify so that he could clear his name.
3. In 1944, Jonathan Daniels, an Administrative Assistant to President Roosevelt, refused to respond to a subcommittee subpoena requiring him to testify concerning his alleged attempts to force the resignation of the Rural Electrification Administrator. He based his refusal on the confidential nature of his relationship to the President. The Subcommittee then recommended that Daniels be cited for contempt. Thereupon Daniels wrote the Subcommittee that although he still believed that he was not subject to subpoena, the President had authorized him to respond to the subcommittee's questions.
4. During the Eisenhower Administration Sherman Adams declined to testify before a committee investigating the Dixon-Yates contract because of his confidential relationship to the President. However, at a later date in the administration he



volunteered to testify concerning his dealings with Bernard Goldfine who was charged with violations of federal criminal statutes.

5. During the hearings on the nomination of Justice Fortas as Chief Justice the Senate Judiciary Committee requested W. DeVier Pierson, then Associate Special Counsel to the President, to appear and testify regarding the participation of Justice Fortas in the drafting of certain legislation. Pierson declined to appear, writing the Committee as follows:

"As Associate Special Counsel to the President since March, 1967, I have been one of the 'immediate staff assistants' provided to the President by law. (3 U.S.C. 105, 106) It has been firmly established, as a matter of principle and precedents, that members of the President's immediate staff shall not appear before a congressional committee to testify with respect to the performance of their duties on behalf of the President. This limitation, which has been recognized by the Congress as well as the Executive, is fundamental to our system of government. I must, therefore, respectfully decline the invitation to testify in the hearings."

6. Similar incidents occurred during the Nixon Administration in connection with attempts of Congressional Committees to obtain the testimony of Dr. Kissinger and Mr. Flanigan. It is my recollection that Kissinger never testified as a Presidential assistant, but that Flanigan did appear during the course of the Kleindienst nomination with the approval of the President and under certain ground rules limiting the scope of the inquiry to his personal role in the ITT-Hartford merger.

It thus appears that at least since the Truman Administration Presidential Assistants have appeared before congressional committees only where the inquiry related to their own private affairs or where they had received Presidential permission. In the Dawson case both conditions were met.



Relevant Doctrine

Although I am not aware of any judicial pronouncements on this issue, two areas of Constitutional doctrine are relevant.

1. Executive Privilege. While an assertion of Executive Privilege with respect to specific testimony or documents on the subject of advice given by a staff member to the President would be entirely proper, the propriety of invoking the privilege to direct the staff member not to appear at all would be questionable.

Requests to the White House to furnish official documents in its custody to a congressional committee clearly can be resisted on the basis of Executive Privilege (notwithstanding Nixon v. Sirica). But the claim of privilege for documents would not appear to be co-extensive with the claim of personal immunity from subpoena. A claim for official documents in the custody of the Executive Branch necessarily involves Executive business, whereas it cannot be said to a certainty in advance that a White House adviser will necessarily be interrogated only on matters pertaining to his official duties.

2. Separation of Powers. A more persuasive rationale for denying the appearance or testimony of Presidential assistants before congressional committees is the doctrine of separation of powers. An immediate assistant to the President in the normal situation acts as an agent of the President in implementing Presidential functions. If a congressional committee could compel the attendance of a Presidential adviser for the purpose of inquiring into the discharge of functions constitutionally committed to the President, the independence of the Presidency would be impaired for the same reason that such congressional power to compel the attendance of the President himself would impair that independence. As President Truman said in a radio address on the occasion of his refusal to appear pursuant to a request of the House Un-American Activities Committee, if a President or former President could be called and questioned about his official duties, "the office of President would be dominated by the Congress and the Presidency might become a mere appendage of Congress." New York Times, Nov. 17, 1953 at p. 26.

The issue at hand is treated comprehensively in the attached Memorandum on Power of Congressional Committee to Compel Appearance or Testimony of Presidential Assistants -- Constitutional and Statutory Aspects (Tab C) and the Statement



of William H. Rehnquist, Assistant Attorney General, before the Subcommittee on Separation of Powers, Committee on the Judiciary, United States Senate (Tab D).

Recommendation

I would suggest that you not respond to the letter of Senator Sparkman at this time. In this regard, it would be best to leave sleeping dogs lie.



THE WHITE HOUSE

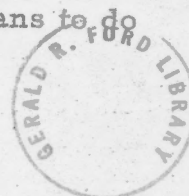
WASHINGTON

June 4, 1975

MEMORANDUM FOR: PHIL BUCHEN
THROUGH: BILL CASSELMAN *BC*
FROM: BARRY ROTH *BR*
SUBJECT: Bipartisan Congressional
Leadership Meeting

It is possible that Senator Mansfield will renew his request for the Nixon-Thieu correspondence at this evening's meeting. If so, you should be aware that Monroe Leigh has been asked by NSC to prepare a position paper for you and NSC with respect to this request.

The White House response to Senator Sparkman's first letter was a lengthy one dealing with executive privilege, but it did not raise any arguments in connection with the litigation involving the Nixon papers. While the factual situation surrounding NSC's possession of copies of this correspondence is complicated, it is still accurate to say that the issue which the committee has raised in seeking this correspondence of the Nixon Administration is one of the central issues of the ongoing litigation. As a result, we are barred from releasing the actual documents except with the consent of Mr. Nixon or his counsel. Bill Casselman has spoken to Ray Larroca today, who advises that his client remains opposed to any such release by this Administration and would probably challenge our plans to do so in court.



THE WHITE HOUSE
WASHINGTON

June 9, 1975

MEMO FOR: GENERAL SCOWCROFT
MIKE DUVAL

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

I have responded to the requests of Congressman Wolff and Congresswoman Abzug for the 1973 exchange of letters between Presidents Nixon and Pompidou and Prime Minister Heath on the Concorde SST (copies attached).

I understand that you are responsible for the substantive handling of this question and am therefore referring both letters to you for response in connection with the Administration's current position on this issue. I concur in the approach that you have discussed that would have State and DOT share prime responsibility on this issue.

Attachments

NSC

Exchange of

Nixon-Thieu

letters

THE WHITE HOUSE

WASHINGTON

June 9, 1975

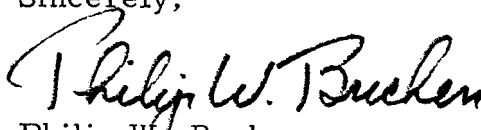
Dear Mrs. Abzug:

On behalf of the President, this is in response to your letter of May 15, 1975, in which you request copies of letters you believe were written by former President Nixon on January 19, 1973, to then-Prime Minister Heath and then-President Pompidou. You indicate that these letters deal with White House support for the Anglo-French Concorde supersonic transport.

The President has not addressed the question of the status to be given such correspondence insofar as his Administration is concerned. However, these letters, if they do exist, are part of the "Presidential materials of the Nixon Administration," presently in the custody of either the White House or the General Services Administration. These materials are subject to the Order of the United States District Court for the District of Columbia, entered October 21, 1974, as amended, in Nixon v. Sampson, et al., Civil Action No. 74-1518. This Order enjoins the disclosure, transfer, or disposal of these materials, and effectively requires that President Nixon or his agent consent to any production or use of such materials for the limited purposes specified in the Order. Accordingly, we have referred your request to Mr. Herbert J. Miller, Jr., Counsel to Mr. Nixon, for his consideration.

We will advise you of the position taken by Mr. Miller. In addition, I have requested that the appropriate officials contact you directly concerning the present views of the Administration on the treatment of the Concorde.

Sincerely,



Philip W. Buchen
Counsel to the President



The Honorable Bella S. Abzug
House of Representatives
Washington, D.C. 20515

June 9, 1975

Dear Mrs. Absug:

On behalf of the President, this is in response to your letter of May 15, 1975, in which you request copies of letters you believe were written by former President Nixon on January 19, 1973, to then-Prime Minister Heath and then-President Pompidou. You indicate that these letters deal with White House support for the Anglo-French Concorde supersonic transport.

The President has not addressed the question of the status to be given such correspondence insofar as his Administration is concerned. However, these letters, if they do exist, are part of the "Presidential materials of the Nixon Administration," presently in the custody of either the White House or the General Services Administration. These materials are subject to the Order of the United States District Court for the District of Columbia, entered October 21, 1974, as amended, in Nixon v. Sampson, et al., Civil Action No. 74-1518. This Order enjoins the disclosure, transfer, or disposal of these materials, and effectively requires that President Nixon or his agent consent to any production or use of such materials for the limited purposes specified in the Order. Accordingly, we have referred your request to Mr. Herbert J. Miller, Jr., Counsel to Mr. Nixon, for his consideration.

We will advise you of the position taken by Mr. Miller. In addition, I have requested that the appropriate officials contact you directly concerning the present views of the Administration on the treatment of the Concorde.

Sincerely,

Phillip W. Buchen
Counsel to the President

The Honorable Bella S. Absug
House of Representatives
Washington, D.C. 20515

bcc: Vern Loen
General Scowcroft
Mike Duval
Herbert J. Miller, Jr.

PWB:BNR:st



May 30, 1975

Dear Mrs. Abzug:

This will acknowledge receipt and thank you for your recent letter to the President concerning the reported exchange of letters between former President Nixon and British and French leaders about the supersonic transport.

Please be assured that your letter was passed along to the President and the appropriate members of the staff.

With kind regards,

Sincerely,

Vernon C. Loen
Deputy Assistant
to the President

The Honorable Bella S. Abzug
House of Representatives
Washington, D.C. 20515



bcc: w/incoming to Philip Buchen for DIRECT REPLY - please
provide this office with copy.
bcc: w/incoming to General Scowcroft - FYI
bcc: w/incoming to John Marsh - FYI

VCL:EF:VO:vo

BELLA S. ABZUG
20TH DISTRICT, NEW YORK

COMMITTEES:
GOVERNMENT OPERATIONS
PUBLIC WORKS

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

May 15, 1975

5-122
WASHINGTON OFFICE:
1506 LONGWORTH OFFICE BUILDING
WASHINGTON, D.C. 20515

DISTRICT OFFICES:
252-7TH AVENUE
NEW YORK, N.Y. 10001
723 WEST 181ST STREET
NEW YORK, N.Y. 10033
720 COLUMBUS AVENUE
NEW YORK, N.Y. 10025

The Honorable Gerald R. Ford
President of the United States
The White House
Washington, D. C.

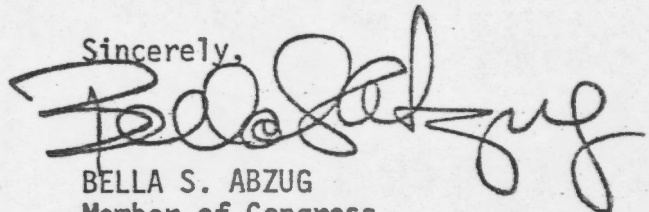
Dear Mr. President:

As a member of the House Public Works and Transportation Subcommittee, and a Representative from New York City, I have a vital interest in the decision regarding the introduction of the supersonic transport into regular service. I am opposed to permitting these aircraft into regular service, and hope that the decision by the FAA is based upon unbiased considerations.

It is my understanding, however, that on January 19, 1973, former President Nixon wrote to the British and French Prime Ministers indicating that he would do all he could to insure that the Anglo-French Concorde supersonic transport be treated "equitably in the United States." I am concerned that the Administration has therefore already made its decision on the SST, and that the results of the formal proceedings and tests which have been undertaken as part of the decision-making process will not be the determining factor in deciding the issue.

I therefore request that your office make available to me a copy of this letter. I also wish to know whether the position stated in the letter regarding the treatment of the Concorde continues to be that of the Administration.

Sincerely,



BELLA S. ABZUG
Member of Congress

BSA:csc



THE WHITE HOUSE

WASHINGTON

May 26, 1975

Dear Mr. Wolff:

On behalf of the President, this is in response to your letter of May 15, 1975, in which you request on the basis of the Freedom of Information Act, 5 U.S.C. 552, copies of letters you believe to have been written by former President Nixon on January 19, 1973, to then-Prime Minister Heath and then-President Pompidou. You indicate that these letters deal with White House support for the Anglo-French Concorde supersonic air transport project.

These letters, if they do exist, would be part of the "Presidential materials of the Nixon Administration," which are presently in the custody of either the White House or the General Services Administration. These materials are subject to the Order of the United States District Court for the District of Columbia, entered October 21, 1974, as amended, in Nixon v. Sampson, et. al., Civil Action No. 74-1518. This Order enjoins any disclosure, transfer, or disposal of the above-referenced materials except under certain limited circumstances not present here. One issue in litigation is the availability of the papers of a former President under the Freedom of Information Act. In addition, I feel obliged to point out that the White House is not believed to be an agency for the purpose of the Freedom of Information Act, and is, therefore, not subject to its provisions for mandatory disclosure.

Accordingly, for the reasons referred to above, your request is respectfully denied.

Sincerely,

Philip W. Buchan

Philip W. Buchan
Counsel to the President

The Honorable Lester L. Wolff
House of Representatives
Washington, D. C. 20515



May 19, 1975

Dear Mr. Wolff:

This will acknowledge receipt of your May 15 letter to the President requesting information concerning exchanges between the governments of France and Britain and our government concerning the Concordes, with particular reference to correspondence of former President Nixon.

You may be assured that your letter will be presented for consideration at the earliest opportunity. I am certain you will hear further as soon as possible.

With kind regards,

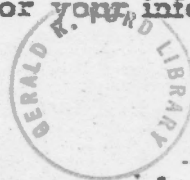
Sincerely,

Vernon C. Loeb
Deputy Assistant
to the President

The Honorable Lester L. Wolff
House of Representatives
Washington, D. C. 20515

~~Acc:~~ w/incoming to Philip Buchen for DIRECT REPLY.
bcc: w/incoming to General Scowcroft - for your information.

VCL:EF:VO:vo



MEMBER:
COMMITTEE ON
INTERNATIONAL RELATIONS

CHAIRMAN:
SUBCOMMITTEE FUTURE FOREIGN
POLICY RESEARCH AND DEVELOPMENT

MEMBER:
SUBCOMMITTEE
INTERNATIONAL OPERATIONS

COMMITTEE ON
VETERANS' AFFAIRS

SUBCOMMITTEES:
HOSPITALS
EDUCATION AND TRAINING

Congress of the United States

House of Representatives

Washington, D.C. 20515

OFFICES:

2463 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C.
202-225-5956

135A MAIN STREET
PORT WASHINGTON, NEW YORK 11050
515-767-4343

214-07 42ND AVENUE
BAYSIDE, NEW YORK 11361
212-423-1050

1ST VICE CHAIRMAN N.Y. STATE
DEMOCRATIC DELEGATION

MEMBER:
BOARD OF VISITORS
U.S. MERCHANT MARINE ACADEMY

May 15, 1975

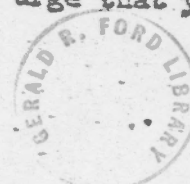
Dear Mr. President:

It has come to my attention that former President Nixon may have written then-Prime Minister Heath, and then-President Pompidou, on Jan. 19, 1973, indicating White House support for the Anglo-French Concorde supersonic aircraft project. It is my further understanding that during his recent visit, Prime Minister Wilson discussed the Concorde project with you at some length.

In view of these reports, I am at this time formally requesting under the provisions of the Freedom of Information Act, 5 U.S.C. 552, as amended by P.L. 93-502, that the Jan. 19, 1973 letters from former President Nixon, as mentioned above, be released for study by those presently engaged in legal and legislative activity bearing on the Concorde. I am the sponsor of legislation, H.R. 4933, specifically dealing with the entire question of supersonic aircraft for commercial purposes, and will require all relevant information in order to present factual testimony at the appropriate time.

Along these lines, I would be grateful to receive any information available on what assurances are presently being given British and French authorities concerning the Concorde and in behalf of our government. It is my understanding that the Federal Aviation Administration has yet to make a formal decision on the Concorde, and in view of the upcoming House hearings, it is essential that we be informed of our government's position and dealings with foreign governments on this vital matter.

I will close with the note that contrary to the official position of the FAA, as stated in January of this year, the Concorde SST as presently designed is not roughly similar to American aircraft now in service. According to FAA figures, the Concorde exceeds by 40 and 20 percent the 707 and 747 respectively on take-off, and exceeds by more than 100 percent the sideline noise of all American jets. It is only on approach that Concorde is better than, or similar to, American aircraft. Further, the recent National Academy of Sciences report on the harmful effects of all high-flying aircraft to the upper atmosphere, specifically the ozone layer -- with the accompanying implication of a grave skin cancer threat to the citizens of the United States and the world -- prompts me to urge that you

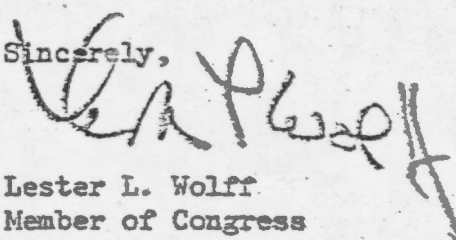


President of the United States
May 15, 1975
Page 2

make your own, independent, assessment of the advisability of allowing in a foreign aircraft which fails to meet the environmental and other legal standards being required of American aircraft. The dangers to the health and welfare of our own people have been made abundantly clear since 1971, when you, as a Member of this House, participated in the debate on an American SST. I take the liberty today of assuring you, Mr. President, that no evidence has been produced since then which would counter the wisdom of Congress in rejecting an American SST as then designed.

Finally, let me assure you that no one would welcome a clean, safe and economical SST more than I, Mr. President, and I wish that our French and British friends had produced such an aircraft. I am not unmindful of the financial and moral investment our allies have in Concorde, nor do I denigrate your sincere interest in not complicating the already seriously threatened economic posture of Britain and France. But the facts against the Concorde as presently designed are clear, and overwhelming, and I again urge you to take a new look at whatever commitments may exist in behalf of our government on the Concorde SST.

Sincerely,


Lester L. Wolff
Member of Congress

The Honorable Gerald R. Ford
President of the United States
The White House
Washington, D.C.

LLW:cn





DEPARTMENT OF STATE

THE LEGAL ADVISER

WASHINGTON

Reading.
ok

June 25, 1975

MEMORANDUM FOR: MR. BUCHEN

From: Monroe Leigh *W.L.*

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

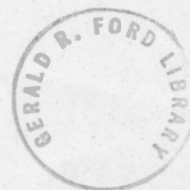
My changes consist in eliminating the last sentence of the third paragraph of Les' draft and introducing at that point one additional paragraph. All the rest is the same. A copy of my draft is attached at Tab A. A copy of Les' draft is attached at Tab B. A copy of the Nixon speech of January 23 is attached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

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

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

Attachments:

As stated.



Dear John:

I have given careful thought to your letter of May 1 asking me to reconsider the Committee's request for the texts of diplomatic exchanges with South Vietnam concerning any United States commitments or undertaking relative to the 1973 Paris Peace Agreement.

The fact that two of these exchanges have been made public without authorization, and the fact that President Nixon and President Thieu are out of office, do not affect my obligation as a matter of principle to protect the confidentiality of exchanges between heads of government. The effectiveness of American diplomacy depends in many ways on our reliability in observing and preserving this essential principle for all our diplomatic communications with other countries.

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



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

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

Sincerely,



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THE WHITE HOUSE

WASHINGTON

June 27, 1975

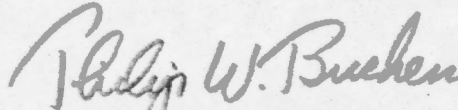
Dear Senator Abourezk:

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

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

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

Sincerely,



Philip W. Buchen
Counsel to the President

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



THE WHITE HOUSE
WASHINGTON

July 1, 1975

MEMORANDUM FOR:

THE PRESIDENT

FROM:

PHILIP BUCHEN *P.W.B.*

SUBJECT:

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

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

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

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

Attachments



July 1, 1975

Dear John:

I have given careful thought to your letter of May 1 and Mike Mansfield's of June 2, asking me to reconsider the Committee's request for the texts of diplomatic exchanges with South Vietnam concerning any United States commitments or undertaking relative to the 1973 Paris Peace Agreement.

The fact that two of these exchanges have been made public without authorization, and the fact that President Nixon and President Thieu are out of office, do not affect my obligation as a matter of principle to protect the confidentiality of exchanges between heads of government. The effectiveness of American diplomacy depends in many ways on our reliability in observing and preserving this essential principle for all our diplomatic communications with other countries.

As I indicated in my letter of April 25, the Administration never regarded or cited these documents as constituting a contractual agreement binding upon the Congress. The exchanges reflected unilateral statements of policy and intention that were also stated publicly by President Nixon and members of his Administration.

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



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

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

Sincerely,

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

GRF:PWB:jem

cc: Senator Mansfield



MART SYMINGTON, MO.
CLAUDIAE PELL, R.I.
GAIL W. MC GEE, WYO.
ALONZO MC GOVERN, S. DAK.
JIMMIE H. HUMPHREY, MINN.
EDNA CLARK, IOWA
JOSEPH H. BLOOM, JR., DEL.

JAMES D. PEARSON, KANS.
CHARLES H. PERCY, ILL.
ROBERT P. GRIFFIN, MICH.
HOWARD H. BAKER, JR., TENN.

United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, D.C. 20510

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

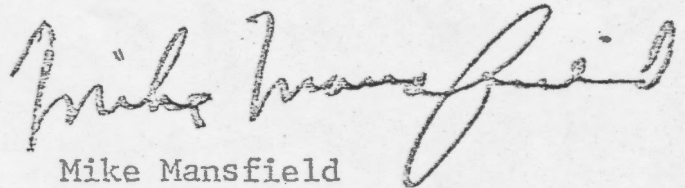
June 2, 1975

Dear Mr. President:

ME
As you know, on two occasions the Committee on Foreign Relations has requested copies of all pertinent documents which concern any commitments to or understandings with South Vietnam relative to the 1973 Paris Cease-fire Agreement.

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

Sincerely yours,



Mike Mansfield
Acting Chairman

The President
The White House





DEPARTMENT OF STATE
THE LEGAL ADVISER
WASHINGTON

July 18, 1975

MEMORANDUM FOR MR. BUCHEN

Attached is a memorandum prepared by Jim Michel of this office on the Legislative History of 22 U.S.C. 2680(b).

It seems to me that his conclusions are consistent with those which you had already reached when you and I last discussed this provision of law some weeks ago.

Monroe Leigh

Monroe Leigh

Attachment:

As stated.





DEPARTMENT OF STATE

Washington, D.C. 20520

July 15, 1975

MEMORANDUM

TO : L - Mr. Monroe Leigh

FROM : L/PM - James H. Michel *JHM*

SUBJECT: Legislative History
of 22 U.S.C. 2680(b)

At your request, I have examined the legislative history of 22 U.S.C. 2680(b) which provides as follows:

The Department of State shall keep the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives fully and currently informed with respect to all activities and responsibilities within the jurisdiction of these committees. Any Federal department, agency, or independent establishment shall furnish any information requested by either such committee relating to any such activity or responsibility.

The above-quoted provision originated in S. 1894 (92d Cong., 1st Sess.), introduced by Senator Fulbright (117 Cong. Rec. 15797, May 19, 1971). This bill was not acted upon by the Foreign Relations Committee, to which it was referred. However, the committee included this provision in S. 2820, the foreign assistance bill reported on November 8, 1971.

The committee report (S.Rept. No. 92-432) indicates at page 17 a dissatisfaction with Executive Branch responses to Congressional inquiries, but does not suggest an intent to impose any affirmative duty upon the Department to provide specific information not requested by the committees.



The Senate debate on S. 2820, and its companion bill, S. 2819, contains similar complaints by Senator Fulbright about Executive Branch delays and inadequacies in responding to Congressional requests for information. In particular, the complaint was an alleged lack of responsiveness on the subject of Administration intentions relative to Cambodia by both the Secretary of State, in testimony before the Foreign Relations Committee, and by the Department of Defense and the Administration generally in refusing to release to the committee its five-year military aid plans for Cambodia. This issue was the subject of a decision by President Nixon to invoke Executive privilege. However, the debate does not indicate that this particular provision was intended to require anything more specific than an overall improvement in Executive Branch responsiveness to the informational needs of Congress. See 117 Cong.Rec. 40167-40170, 40174.

The House-Senate conference report (S.Rept. No. 92-590) eliminated a feature of the original Senate proposal which would have required the Department of State to report to Congress on the activities of other government agencies operating overseas, but provides no clarification of legislative intent.

Since the enactment of 22 U.S.C. 2680(b), I am unaware of any Congressional requests for reports under this statute in addition to those already furnished under other, more specific legislation or on a voluntary basis. Similarly, I am unaware of any initiative by the Department to provide additional reports on the basis of the statute.

In view of the foregoing, it would appear that 22 U.S.C. 2680(b) may be regarded not as an additional requirement, but as a reinforcement of the Department's responsibilities under other laws which have been or may be enacted to assist the concerned committees in carrying out their responsibilities. Of course, neither this legislation nor any other Act of Congress, can diminish the President's constitutional authority to withhold information in appropriate circumstances.

L/PM:JHMichel/JMIwry:edk
ext. 20557



THE WHITE HOUSE
WASHINGTON

July 30, 1975

*Former
President
Nixon
(briefings)*

Dear Senator Beall:

This is in further response to your letter of June 17 inquiring on behalf of Mrs. Helen Travaglini why former President Nixon continues to receive White House briefing reports.

Traditionally, former Presidents have received briefing reports after leaving office. This practice, as it existed between former President Johnson and then President Nixon, was formalized and made applicable to all succeeding Presidents by Executive Order 11456, issued February 14, 1969.

I trust that this will be of assistance in responding to Mrs. Travaglini's request.

Your inquiry is appreciated.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

Honorable J. Glenn Beall, Jr.
United States Senate
Washington, D. C. 20510

bcc: Jim Connor
Max Friedersdorf
Bill Kendall





DEPARTMENT OF STATE

Washington, D.C. 20520

LIMITED OFFICIAL USE

MEMORANDUM

August 6, 1975

TO: NSC - General Scowcroft
Major McFarlane
Mr. Janka
EA - Mr. Habib
S - Mr. Bremer

FROM: L - Monroe Leigh *ML*

SUBJECT: Treatment of Nixon-Thieu Letters

As each of you knows, the Congress has shown strong interest in securing copies of the so-called Nixon-Thieu correspondence containing alleged "commitments" to the Government of South Vietnam. Initially the congressional criticism focussed on the fact that this correspondence was being kept secret from Congress. The later criticism, however, has focussed on the contention that since this correspondence embodied "commitments," it should have been supplied to Congress under the provisions of the Case Act, which requires that "international agreements other than treaties" be reported either to the Congress or, in the case of classified international agreements, to the Senate Foreign Relations Committee and the House International Relations Committee.

As you know, Secretary Kissinger, testifying before the Senate Foreign Relations Committee shortly after unauthorized disclosure of two of the Nixon letters in the New York Times, took the position that these letters were not international agreements but statements of personal intention on the part of President Nixon. Somewhat later, on May 13 when I testified before the Abourezk Subcommittee of Senate Judiciary, I was questioned about the Nixon-Thieu

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correspondence and took the same position. At about the same time, Professor Louis Henkin of Columbia University Law School, testifying before the Abourezk Subcommittee, characterized the two letters which had been released as statements of political intention rather than international agreements. Neither my answer nor Henkin's has satisfied Senator Abourezk and his colleagues, and there have been numerous senatorial letters requesting copies of the correspondence or demanding that they be submitted to Congress under the Case Act.

As Phil Buchen has pointed out, the CSCE agreement which the President signed in Helsinki on July 31 is an example, and a highly publicized one, of an international accord which does not have binding legal effect and which consists entirely of declarations of political intents. In fact, the final act at Helsinki includes a provision, which in effect states that the Helsinki Accords are not eligible for registration as an international agreement under Article 102 of the United Nations Charter.

The point is that it is not unusual in international intercourse for nations to adopt statements of political intention which do not rise to the level of international agreements.

It may be useful, therefore, in responding to future demands for the Nixon-Thieu correspondence not only to state that they constitute no more than statements of political intention, but also to point out that the Helsinki Accords resulting from the CSCE belong to the same category of diplomatic instrument.

cc: White House - Mr. Buchen ←



THE WHITE HOUSE

WASHINGTON

August 11, 1975

*Nixon-Thieu
papers*

Dear Mr. Sloan:

In response to your request to Mrs. Agnes Waldron, enclosed are transcripts from three Ron Nessen press briefings concerning the exchange of correspondence between then President Nixon and then Premier Thieu.

A copy of these materials has also been provided to the Department of Justice.

Sincerely,

Bang Roth for

Philip W. Buchen
Counsel to the President

Mr. David Sloan
Arnold & Porter
1229-19th Street, N.W.
Washington, D.C.

cc: Irwin Goldbloom
 (Attn: Dave Anderson)

