The original documents are located in Box 9, folder "Executive Privilege" of the Loen and Leppert Files at the Gerald R. Ford Presidential Library.

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KISSINGER CONTEMPT CITATION

I. Availability of Claim of Executive Privilege

The Supreme Court has clearly stated that the doctrine of Executive Privilege is "constitutionally based." Without it the Executive Branch could no more function as a separate but equal organ of the Government than could the Congress operate if the Executive were entitled to inquire into the staff and committee deliberations.

The issue is whether Executive Privilege was properly and appropriately exercised in the present case. The three classic categories for its assertion, exemplified by numerous instances beginning with President George Washington, are (1) military secrets, (2) foreign affairs secrets, and (3) confidential advice-giving at the highest level of the Executive Branch. The present instance qualifies under all three. The Pike Committee sought to obtain recommendations from the State Department to the National Security Council or one of its subcommittees pertaining to covert actions from 1961 to the present. Some of the memoranda covered by the subpoena were addressed to former Presidents and others to close advisors. They all contain advice and recommendations concerning the course of action which the President should pursue. None of the subpoenaed documents are from the Ford Administration.

There is no historical or legal basis for the principle that an incumbent President can only assert the privilege with respect to his own administration. Such a principle would lead to the absurd result that matters considered so crucial to our military and foreign affairs posture as to be subject to the privilege on January 19 of a post-election year suddenly lose that status on January 20. As early as 1846 a President declined to produce to the Congress information concerning a prior administration; the same action was taken by Presidents Truman and Kennedy.

II. Reasonableness of the Claim of Privilege in the Present Case

President Ford has adopted a forthcoming attitude with respect to the Select Committee's investigation. There is no doubt that more information of a highly classified and highly confidential nature has been

made available to this committee than to any previous committee in the history. Even with respect to the demand at issue here, the Executive Branch sought to accommodate the interests of the committee. Chairman Pike asserted that the material was necessary in order that the committee might test the hypothesis that "operations generated outside of the normal channels have tended to be of higher risk and more questionable legality than those generated by the normal process." While asserting Executive Privilege with respect to the particular documents in question, the Executive Branch did make available to the committee the information necessary for this purpose. The additional information provided by the subpoenaed documents would only consist of revelations of the recommendations of particular individuals, and additional military and foreign affairs secrets, which are not necessary for the purpose asserted by the Committee. To press the Contempt Resolution would not promote the necessary comity between two branches of government and could result in a constitutional confrontation with an administration that has gone to extraordinary lengths in cooperating with the Congressional investigative process.

III. Secretary Kissinger is not in Contempt of Congress

In declining to make the requested documents available, Secretary Kissinger was acting at the direction, of the President. In thus obeying what appears on its face--on the basis of both judicial decisions and historical precedent--to be a lawful instruction, it is inconceivable that Secretary Kissinger could be guilty of contempt.

In the 200 years of our Nation's existence, no cabinet officer has ever been cited for contempt of Congress. It would be a serious mistake, harmful domestically and in our foreign relations, to punish the Secretary of State for complying with a Constitutional Presidential directive.

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THE WHITE HOUSE

WASHINGTON

November 21, 1975

MEMORANDUM FOR

MEMBERS OF THE CABINET
SENIOR WHITE HOUSE STAFF

Attached for your information is a memorandum discussing recent Congressional demands for certain Executive branch documents.

I trust that you will find the document to be informative on a matter of controversy which has been given substantial treatment by the press.

P.W.B.

Philip W. Buchen
Counsel to the President

Attachment

THE WHITE HOUSE

WASHINGTON
November 18, 1975

M E M O R A N D U M

Re: Congressional Demands for Executive Branch Documents

This is to present the development of several controversies which have arisen involving Congressional committee demands for Executive Branch documents directed to Secretaries Kissinger, Morton and Mathews. Also treated are the several bases underlying the Administration's refusal to comply with certain of these requests. Particular emphasis is given to the concept and scope of Executive Privilege.

I. Relevant Controversies.

Three areas of conflict involving demands for Executive Branch documents have arisen between committees of the Congress and representatives of the Ford Administration. The circumstances giving rise to these conflicts may be summarized in the following manner.

A. House Select Committee Demand of November 6 (Secretary Kissinger).

On November 6, 1975, seven (7) subpoenas were issued by the House Select Committee on Intelligence, chaired by Representative Otis Pike. On November 7, the subpoenas were served as follows:

1. State Department. Only one (1) subpoena was actually directed to Secretary Kissinger demanding all documents relating to State Department recommendations for covert actions made to the National Security Committee and the Forty Committee (composed of the President's principal personal advisers on matters of military and foreign affairs) from

January 20, 1965 to the present. On November 14, the Legal Adviser of the Department of State advised the Select Committee that Secretary Kissinger had been directed by the President to respectfully decline compliance with the subpoena and to assert the Constitutional doctrine of Executive Privilege as the basis for the refusal. On the same day, the Select Committee adopted a resolution calling on the House of Representatives to cite Secretary Kissinger for contempt in failing to provide the subpoenaed materials.

2. Central Intelligence Agency. One (1) subpoena was served on the Central Intelligence Agency and substantial compliance was effected on November 11 by a letter from Mitchell Rogovin, Special Counsel to the CIA, to the Select Committee. No assertion was made to a right to withhold the materials requested.

3. National Security Council. Five (5) subpoenas were directed to the Assistant to the President for National Security Affairs. These were accepted by a representative of the Office of the Counsel to the President on behalf of Jeanne Davis, Staff Secretary, National Security Council. Under date of November 11, Lieutenant General Scowcroft, Deputy Assistant to the President for National Security Affairs responded to the subpoenas by forwarding the documents available at that time and by agreeing to provide other requested documents as they became available. Thus, the Administration is in substantial compliance with this request, and has not asserted a right to withhold the materials from the committee.

B. House Subcommittee on Oversight and Investigations Demand of July 28 (Secretary Morton).

On July 10, the Chairman of the Subcommittee on Oversight and Investigations of the Committee on

Interstate and Foreign Commerce, Representative John Moss, wrote the Department of Commerce to request copies of all quarterly reports filed by exporters, since 1970, concerning any "request for [Arab] boycott compliance". On July 24, Secretary Morton sent Representative Moss a summary of boycott information reported by exporters, but declined to furnish copies of the reports themselves, invoking the statutory authority contained in Section 7(c) of the Export Administration Act.

On July 28, the Subcommittee issued a formal subpoena to Secretary Morton calling for a turnover of the reports. On September 4, the Attorney General provided Secretary Morton with a formal opinion to the effect that the Secretary need not disclose the reports under the authority conferred by Section 7(c) and this position was asserted by Secretary Morton in an appearance before the Subcommittee on September 22.

On November 12, the Subcommittee approved a resolution calling for full committee action on a contempt citation against Secretary Morton. A finding of contempt, of course, would require floor action by the House of Representatives.

C. House Subcommittee on Oversight and Investigations Demand of November 5 (Secretary Mathews).

On October 23, Chairman Moss of the Subcommittee on Oversight and Investigations requested Secretary Mathews to provide a list of deficiencies which showed up in surveys of hospitals by the Joint Commission on Accreditation of Hospitals. Acting on the advice of counsel, Secretary Mathews refused to comply with the request, asserting a statutory exemption contained in Section 1865(a) of the Social Security Act.

On October 23, the Subcommittee issued a subpoena for the list and this was referred by Secretary Mathews to the Attorney General for his review. On November 12, the Attorney General indicated that he found the language of the Social Security Act's confidentiality provision to be very weak, as opposed to the strong provision contained in the Export Administration Act noted supra. In his opinion, Section 1865(a) of the Social Security Act lent itself to the interpretation that information so furnished is not to be made public but may be conveyed to the Congress on proper request. Accordingly, on November 12 Secretary Mathews made the list available to the Subcommittee, thus ending the controversy.

II. Bases For Denials

The basis for Secretary Morton's refusal to comply with the request of the Moss Subcommittee is statutory law. The basis for the refusal by President Ford to comply with the request made to Secretary Kissinger is grounded in Constitutional doctrine, i.e. Executive Privilege.

A. The Statutory Basis for Denial.

Section 3(5) of the Export Administration Act of 1969, 50 U.S.C. App. 2402(5), provides in pertinent part that:

* * *

> It is the policy of the United States (A) to oppose restrictive trade practices or boycotts . . . imposed by foreign countries against other countries friendly to the United States, and (B) to encourage and request domestic concerns engaged in . . . [exporting] to refuse to take any action, including the furnishing of information or the signing of agreements, which has the effect of furthering . . . [such] restrictive trade practices or boycotts . . . .

* * *

Section 4(b) calls for issuance of rules and regulations to implement Section 3(5) and states that the rules and regulations are to "require that all domestic concerns receiving requests for the furnishing of information or the signing of agreements . . . [of the type specified in Section 3(5)(B)] must report that fact to the Secretary of Commerce . . . ."

The Act's confidentiality provision, Section 7(c), 50 U.S.C. App. 2406(c), reads as follows:

* * *

> No department . . . or official exercising any functions under this Act shall publish or disclose information obtained hereunder which is deemed confidential . . . , unless the head of such department . . . determines that the withholding thereof is contrary to the national interest.

* * *

The regulation of the Department of Commerce implementing Section 3(5) expressly states that the information contained in reports filed by exporters "is subject to the provisions of Section 7(c) of the . . . Act regarding confidentiality . . . ." 15 CFR §369.2(b). Moreover, the basic reporting form (Form DIB-621) states that: "Information furnished herewith is deemed confidential and will not be published or disclosed except as specified in Section 7(c) of the . . . [Act]."

Statutory restrictions upon executive agency disclosure of information are presumptively binding even with respect to requests or demands of congressional committees. That this assumption accords with general legislative intent is demonstrated by the inclusion, in a number of statutes concerning confidentiality of information, of explicit exceptions for

congressional requests. When, as in Section 7(c), such an exception is not provided, it is presumably not intended. In the present case, this standard interpretation finds additional support in the legislative history of the statute, in an apparently consistent administrative construction, and in Congress' reenactment of the provision with knowledge of that construction.

No constitutionally-based privilege has been asserted.

B. Executive Privilege as a Basis for Denial.

Beginning with President Washington, Presidents have claimed and exercised the responsibility of withholding from Congress information the disclosure of which they consider to be contrary to the public interest. This responsibility is frequently called "Executive privilege." Information of this type usually comes within the categories of military or diplomatic state secrets, investigatory reports, and internal governmental advice. The Supreme Court has held in United States v. Nixon, 418 U.S. 683, 708 (1974), that the Executive privilege is "fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution." It also distinguished the presumptive privilege accorded all confidential communications from sensitive national security matters involved here, which are entitled to the highest degree of confidentiality under the Constitution. It, therefore, does not require any statutory basis and cannot be controlled by Congress.

Recent examples of Presidential directions to Cabinet members not to release certain information to Congress are:

1. President Eisenhower's letter of May 17, 1954, to the Secretary of Defense not to testify with respect to certain top level conversations which occurred during the Army-McCarthy investigations. [Enclosed]

2. President Kennedy's letters to the Secretaries of Defense and State, dated February 8 and 9, 1962, respectively, instructing them not to disclose the names of individuals who had reviewed certain draft speeches prepared by military officers. The issue of Executive Privilege was also treated in President Kennedy's letter to Senator Stennis dated June 23, 1962. These arose during an investigation by the Senate Armed Services Committee into "Military Cold War Education and Speech Review Policies." [Enclosed]

Congressional (as distinct from judicial) demands for material may fall into two categories. The first would be a normal committee request, demand, or subpoena for material as discussed above, which may be rejected on the basis of Executive Privilege where it is deemed by the President that the production of such material would be detrimental to the functioning of the Executive Branch. This, at least, has been the consistent practice by practically every administration and acceded to by Congress. This should be contrasted with a demand for material pursuant to an impeachment inquiry, which some presidents have acknowledged would require production of any and all executive material. See e.g., Washington's Statement, 5 Annals of Congress 710-12 (1796).

III. Procedures for Asserting Executive Privilege.

In early years, the Executive Branch practice with respect to assertion of Executive Privilege as against Congressional

requests was not well defined. As noted above, during the McCarthy investigations, President Eisenhower, by letter to the Secretary of Defense, in effect prohibited all employees of the Defense Department from testifying concerning conversations or communications embodying advice on official matters. This situation eventually produced such a strong Congressional reaction that on February 8, 1962, President Kennedy wrote to Congressman Moss stating that it would be the policy of his Administration that "Executive privilege can be invoked only by the President and will not be used without specific Presidential approval." Mr. Moss sought and received a similar commitment from President Johnson. (President's letter of April 2, 1965.)

President Nixon continued the Kennedy-Johnson policy but formalized it procedurally by a memorandum dated March 24, 1969, addressed to all Executive Branch officials. The memorandum notes that the privilege will be invoked "only in the most compelling circumstances and after a rigorous inquiry into the actual need for its exercise."

President Ford publicly addressed the concept of Executive Privilege in his televised appearance before the House Subcommittee on Criminal Justice on October 17, 1974. He expressed his view that " . . . the right of Executive Privilege is to be exercised with caution and restraint" but also said: "I feel a responsibility, as you do, that each separate branch of our Government must preserve a degree of confidentiality for its internal communications."

#

113 ¶ Letter to the Secretary of Defense Directing Him To Withhold Certain Information from the Senate Committee on Government Operations. *May* 17, 1954

Dear Mr. Secretary:

It has long been recognized that to assist the Congress in achieving its legislative purposes every Executive Department or Agency must, upon the request of a Congressional Committee, expeditiously furnish information relating to any matter within the jurisdiction of the Committee, with certain historical exceptions—some of which are pointed out in the attached memorandum from the Attorney General. This Administration has been and will continue to be diligent in following this principle. However, it is essential to the successful working of our system that the persons entrusted with power in any one of the three great branches of Government shall not encroach upon the authority confided to the others. The ultimate responsibility for the conduct of the Executive Branch rests with the President.

Within this Constitutional framework each branch should cooperate fully with each other for the common good. However, throughout our history the President has withheld information whenever he found that what was sought was confidential or its disclosure would be incompatible with the public interest or jeopardize the safety of the Nation.

Because it is essential to efficient and effective administration that employees of the Executive Branch be in a position to be completely candid in advising with each other on official matters, and because it is not in

the public interest that any of their conversations or communications, or any documents or reproductions, concerning such advice be disclosed, you will instruct employees of your Department that in all of their appearances before the Subcommittee of the Senate Committee on Government Operations regarding the inquiry now before it they are not to testify to any such conversations or communications or to produce any such documents or reproductions. This principle must be maintained regardless of who would be benefited by such disclosures.

I direct this action so as to maintain the proper separation of powers between the Executive and Legislative Branches of the Government in accordance with my responsibilities and duties under the Constitution. This separation is vital to preclude the exercise of arbitrary power by any branch of the Government.

By this action I am not in any way restricting the testimony of such witnesses as to what occurred regarding any matters where the communication was directly between any of the principals in the controversy within the Executive Branch on the one hand and a member of the Subcommittee or its staff on the other.

Sincerely,

DWIGHT D. EISENHOWER

NOTE: Attorney General Brownell's memorandum of March 2, 1954, was released with the President's letter. The memorandum traces the development from Washington's day of the principle that the President may, under certain circumstances, withhold information from the Congress.

Taking the doctrine of separation of powers as his text, the Attorney General stated that it is essential to the successful working of the American system that the persons entrusted with power in any one of the three branches should not be permitted to encroach upon the powers confided to the others.

The memorandum continues: "For over 150 years . . . our Presidents have established, by precedent, that they and members of their Cabinet and other heads of executive departments have an undoubted privilege and discretion to keep confidential, in the public interest, papers and information which require secrecy. American history abounds in countless illustrations of the refusal, on occasion, by the President and heads of departments to furnish papers to Congress, or its committees, for reasons of public policy. The messages of our past Presidents reveal that almost every one of them found it necessary to inform Congress of his constitutional duty to execute the office of President, and, in furtherance of that duty, to withhold information and papers for the public good."

As for the courts, they have "uniformly held that the President and the heads of departments have an uncontrolled discretion to withhold . . . . information and papers in the public interest; they will not interfere with the exercise of that discretion, and that Congress has not the power, as one of the three great branches of the Government, to subject the Executive Branch to its will any more than the Executive Branch may impose its unrestrained will upon the Congress."

Among the precedents cited in the Attorney General's memorandum are the following:

President Washington, in 1796, was presented with a House Resolution requesting him to furnish copies of correspondence and other papers relating to the Jay Treaty with Great Britain as a condition to the appropriation of funds to implement the treaty. In refusing, President Washington replied "I trust that no part of my conduct has ever indicated a disposition to withhold any information which the Constitution has enjoined upon the President as a duty to give, or which could be required of him by either House of Congress as a right; and with truth I affirm that it has been, as it will continue to be while I have the honor to preside in the Government, my constant endeavor to harmonize with the other branches thereof so far as the trust delegated to me by the people of the United States and my sense of the obligation it imposes to 'preserve, protect, and defend the Constitution' will permit."

President Theodore Roosevelt, in 1909, when faced with a Senate Resolution directing his Attorney General to furnish documents relating to proceedings against the U.S. Steel Corporation, took possession of the papers. He then informed Senator Clark of the Judiciary Committee that the only way the Senate could get them was through impeachment. The President explained that some of the facts were given to the Government under the seal of secrecy and could not be divulged. He added "and I will see to it that the word of this Government to the individual is kept sacred."

"During the administration of President Franklin D. Roosevelt," the Attorney General's memorandum states, "there were many instances in which the President and his Executive heads refused to make available certain information to Congress the disclosure of which was deemed to be confidential or contrary to the public interest." Five such cases are cited, including one in which "communications between the President and the heads of departments were held to be confidential and privileged and not subject to inquiry by a committee of one of the Houses of Congress."

MILITARY COLD WAR EDUCATION AND SPEECH REVIEW POLICIES

HEARINGS

BEFORE THE

SPECIAL PREPAREDNESS SUBCOMMITTEE

OF THE

COMMITTEE ON ARMED SERVICES

UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

PART 6

~~MAY 16, 24; JUNE 4, 7, 8, 1962~~

Printed for the use of the Committee on Armed Services

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80752 WASHINGTON : 1962

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The Chair has ordered the witness to answer the question.

Senator STENNIS. Yes, I think, Senator Thurmond, that that is technically correct, but, at the same time, the Secretary of Defense is here and this question of executive privilege has been talked about back and forth.

I assume the Secretary has something to bear directly upon that in this question, so I recognize the Secretary to make a statement.

Secretary MCNAMARA. Thank you, Mr. Chairman.

Would you like me to swear under oath?

Senator STENNIS. You are already under oath. I beg your pardon, you have not been here.

Secretary MCNAMARA. No, sir: I have not.

Senator STENNIS. All right; thank you very much for reminding me.

Will you please stand, Secretary McNamara. Do you solemnly swear that your testimony before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Secretary MCNAMARA. I do, sir.

Senator STENNIS. Have a seat.

Secretary MCNAMARA. Mr. Chairman——

Senator STENNIS. I assume this is with reference to executive privilege, is it not?

KENNEDY LETTER TO M'NAMARA

Secretary MCNAMARA. It is, sir.

I would like to read a letter to me from the President. This is dated February 8.

DEAR MR. SECRETARY: You have brought to my attention the fact that the Senate Special Preparedness Investigating Subcommittee intends to ask witnesses from your Department to give testimony identifying the names of individuals who made or recommended changes in specific speeches.

As you know, it has been and will be the consistent policy of this administration to cooperate fully with the committees of the Congress with respect to the furnishing of information. In accordance with this policy, you have made available to the subcommittee 1,500 speeches with marginal notes, hundreds of other documents, and the names of the 14 individual speech reviewers, 11 of whom are military officers. You have also made available the fullest possible background information about each of these men, whose record of service and devotion to country is unquestioned in every case, and you have permitted the committee's staff to interview all witnesses requested and to conduct such interviews outside the presence of any departmental representative. Finally, you have identified the departmental source of each suggested change and offered to furnish in writing an explanation of each such change and the policy or guideline under which it was made.

Your statement that these changes are your responsibility, that they were made under your policies and guidelines and those of this administration, and that you would be willing to explain them in detail is both fitting and accurate, and offers to the subcommittee all the information properly needed for the purposes of its current inquiry. It is equally clear that it would not be possible for you to maintain an orderly Department and receive the candid advice and loyal respect of your subordinates if they, instead of you and your senior associates, are to be individually answerable to the Congress, as well as to you, for their internal acts and advice.

For these reasons, and in accordance with the precedents on separation of powers established by my predecessors from the first to the last, I have concluded that it would be contrary to the public interest to make available any information which would enable the subcommittee to identify and hold accountable any individual with respect to any particular speech that he has reviewed. I, therefore, direct you and all personnel under the jurisdiction of your Depart-

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ment not to give any testimony or produce any documents which would disclose such information, and I am issuing parallel instructions to the Secretary of State. The principle which is at stake here cannot be automatically applied to every request for information. Each case must be judged on its own merits. But I do not intend to permit subordinate officials of our career services to bear the brunt of congressional inquiry into policies which are the responsibilities of their superiors.

Sincerely yours,

JOHN F. KENNEDY.

WITNESS INSTRUCTED BY M'NAMARA NOT TO ANSWER QUESTION

Mr. Chairman, acting in accordance with that instruction, I have instructed Mr. Lawrence not to answer the question, thereby invoking executive privilege.

WITNESS DECLINES TO ANSWER QUESTION

Senator STENNIS. Mr. Lawrence, of course, you have heard what the Secretary has said here. Is that your position now?

Mr. LAWRENCE. Yes, sir; it is.

Senator STENNIS. You decline to answer the question for the reasons assigned by the Secretary?

Mr. LAWRENCE. That is right, sir.

CHAIRMAN CLEARS WITNESS AND ASSOCIATES

Senator STENNIS. I just want the record to be clear and positive. As I understood it from the following letter, the President puts it on the ground of being contrary to the public interest.

All right, let me say an additional word here about Mr. Lawrence, if I may, and in reference to the other gentlemen. This executive privilege presented by the Secretary and also adopted by Mr. Lawrence presents a new question. Before I leave this situation, I want to say that there is no tarnish of any kind on Mr. Lawrence or any of his 13 associates. All of them, according to my information, including all that collected by the staff members and all that I have ever heard, are intelligent, dedicated, hard-working, patriotic, loyal Americans, and I firmly believe that they are, each of these gentlemen. Some of them are members of the services, and some of them are in civilian life.

STATEMENT BY SENATOR JOHN STENNIS IN RULING ON PLEA OF EXECUTIVE PRIVILEGE, FEBRUARY 8, 1962

Senator STENNIS. Members of the subcommittee, in view of the express plea here of executive privilege, I think it clearly the duty of the Chair now to rule upon the plea. Not only is my duty clear, but it is clear that I should rule on it now.

It is a question that I have long anticipated in connection with these hearings. It is a matter which became evident to me many weeks ago and caused me to make a special study of it. I have therefore, examined what I believe to be all of the authorities on the subject. I have also consulted with others who have had Senatorial experience in this field. I have a brief statement to make here as background for the ruling I shall make.

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In the arsenal of our cold war weapons there is no place for boasting or bellicosity, and name calling is rarely useful. As Secretary of State Rusk has said:

> The issues called the cold war are real and cannot be merely wished away. They must be faced and met. But how we meet them makes a difference. They will not be scolded away by invective nor frightened away by bluster. They must be met with determination, confidence, and sophistication.
>
> Our discussion, public, or private, should be marked by civility; our manners should conform to our dignity and power and to our good repute throughout the world. But our purposes and policy must be clearly expressed to avoid miscalculation or an underestimation of our determination to defend the cause of freedom.

The solemn nature of the times calls for the United States to develop maximum strength but to utilize that strength with wisdom and restraint.

Or, in other words, as President Theodore Roosevelt aptly said at an earlier time, we should "speak softly but carry a big stick."

This, I submit, Mr. Chairman, is the only appropriate posture for the leading nation in the world.

I should like, if I may, to hand up to the committee copies of the President's letter to the Secretary of State.

KENNEDY LETTER TO RUSK ON EXECUTIVE PRIVILEGE

Senator STENNIS. All right, Mr. Reporter, at this point in the record you may insert the letter from President Kennedy dated February 9, 1962.

(The letter referred to is as follows:)

THE WHITE HOUSE,
Washington, February 9, 1962.

The Honorable the SECRETARY OF STATE,
Washington, D.C.

DEAR MR. SECRETARY: I am attaching a copy of my letter to Secretary McNamara of February 8 in which I have directed him, and all personnel under the jurisdiction of the Department of Defense, not to give any testimony or produce any documents which would enable the Senate's Special Preparedness Investigating Subcommittee to identify and hold accountable any individual with respect to any particular speech that he has reviewed.

That letter states that I am issuing parallel instructions to the Secretary of State. I therefore direct you, and all personnel under the jurisidiction of your Department, not to give any such testimony or produce any such documents.

As I noted in my letter to Secretary McNamara, the principle of Executive privilege cannot be automatically applied to every request for information. Each case must be judged on its own merits. But the principle as applied to these facts governs the personnel of your Department equally with that of the Department of Defense. In neither case do I intend to permit subordinate officials of the career services to bear the brunt of congressional inquiry into policies which are the responsibilities of their superiors.

Sincerely,

JOHN F. KENNEDY

Enclosure.

Senator STENNIS. Mr. Secretary, we certainly want to thank you for a very clear and positive statement and, without delaying this matter any further, because we were late convening this morning due to the pressure of other meetings, I am going to ask counsel if he will proceed now with his questions, if you are ready.

Mr. BALL. Thank you, sir.

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It is to these men, who have risen to the top in the Nation's Armed Forces after a generation of experience and effort in military life, to whom we must look and to whom the President must look, for the most authoritative advice on our national defense requirements." [72]

We begin to enter more controversial ground when we consider the advisory function of the military vis-a-vis the American public.[73] Under a directive of the National Security Council in 1955, military people were encouraged to undertake this advisory function, primarily through seminar-type discussions on the cold war. These seminars led to criticism from some quarters that the military had no proper role in such public advisory activities and the further raising of the chimera of military control over the civil authority.

Shelves of books could be written and learned arguments adduced both against and in support of the military role in advising the American people about the many facets of the cold war. But the essence of the matter is whether or not we wish fully to inform the public. James Madison wrote in the Federalist Papers that "the genius of republican liberty seems to demand on one side, not only that all power should be derived from the people, but that those intrusted with it should be kept in dependence on the people." No one has yet discovered how this genius—our noblest achievement in Government—can function except through an informed public.

Senator Strom Thurmond has said with reference to the public information or advisory role of the military that there are "facts that the American people must have, regardless of where the chips may fall. Censorship and suppression shield behind a smokescreen of civilian control policies on which the American people have too few facts. If these policies cannot stand the spotlight of public attention and discussion, then they should be rejected." [74]

How portentous is the presentation of the facts of the cold war to the American public in the 1960's may be seen by comparison with the sleepwalkers of the Munich era in Great Britain. How much might not have England—and the world—been spared had the appeasers heeded Churchill's advise: "Tell the truth, tell the truth to the British people." [75]

SECOND ADDENDUM TO RECORD

KENNEDY LETTER TO STENNIS ON NATIONAL POLICY PAPERS

Subsequent to the final hearing, Chairman Stennis transmitted to President Kennedy the request by Senator Thurmond that the subcommittee be furnished with copies of certain National Security Council papers and the policy paper prepared by Mr. Rostow. Senator Thurmond's request for these documents appears on pages 2951 through 2957 of the printed transcript. The President replied to this request by a letter dated June 23, 1962. In order that the record might be complete, and by direction of the chairman, President Kennedy's letter is printed below.

THE WHITE HOUSE,
Washington, June 23, 1962.

Hon. JOHN STENNIS,
Chairman, Special Preparedness Subcommittee,
U.S. Senate.

DEAR SENATOR STENNIS: I have your letter enclosing excerpts from the record of the Special Preparedness Subcommittee hearing during which Senator Thurmond requested you to ask me to furnish copies of National Security Council papers to the Subcommittee.

As you know, it has been and will be the consistent policy of this Administration to cooperate fully with the Committees of the Congress with respect to the furnishing of information. But the unbroken precedent of the National Security

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[72] Congressional Record, 81st Cong., 1st sess., vol. 95, Mar. 30, 1949, p. 3340.
[73] Of course, classified information cannot be disclosed to the public except in such instances in which the President would decide it to be in the interest of the United States.
[74] Quoted, World, Jan. 31, 1962, p. 23.
[75] See p. 6, supra.

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Council is that its working papers and policy documents cannot be furnished to the Congress.

As President Eisenhower put it in a letter dated January 22, 1958, to Senator Lyndon Johnson: "Never have the documents of this Council been furnished to the Congress."

As I recently informed Congressman Moss, this Administration has gone to great lengths to achieve full cooperation with the Congress in making available to it all appropriate documents. In the case of National Security Council documents, however, I believe the established precedent is wise. I am therefore obliged to decline the request for Council papers.

It seems to me that explanations of policy put forward in the usual way to Committees of Congress by representatives of the State Department are fully adequate to the need expressed by Senator Thurmond during your hearing.

Sincerely,

JOHN F. KENNEDY.

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FILE

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

December 3, 1975

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

Dear Mr. Secretary:

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

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

Sincerely,

John E. Moss

JOHN E. MOSS
Chairman
Oversight and
Investigations Subcommittee

JEM:mlw

Enclosures

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

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

December 3, 1975

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

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

Dear Messrs. Chairmen:

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

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

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

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

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

Sincerely,

TIMOTHY E. WIRTH, M.C.

H. JOHN HEINZ III, M.C.

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