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~~SECRET~~THE WHITE HOUSE
WASHINGTON

November 20, 1975

MEMORANDUM FOR THE RECORD

FROM: MIKE DUVAL

SUBJECT: EXECUTIVE PRIVILEGE

The documents listed in the attachment were sent to the National Security Council by the State Department as being covered by the November 6th subpoena by the Pike Committee. This is the second set of documents sent over by State for review to determine if the President would claim Executive privilege.

These documents were sent over to the Justice Department, who reviewed them and returned them to the NSC. We were advised that they are the type of documents for which Executive privilege can be asserted. This Justice Department opinion includes the document on Radio-free Europe, even though there's some question as to whether or not it is covered by the subpoena.

In a meeting with Jack Marsh and myself, the President reviewed these documents and stated that he did not want them delivered to the Committee. He asserted that they were covered by Executive privilege.

Attachment

DECLASSIFIED
E.O. 12356, Sec. 3.4.MR 90-13, #1 CIA ltr. 3/26/91
By KSH, NARA, Date 5/13/91~~SECRET~~

~~SECRET~~

DOCUMENTS ATTACHED DESCRIBING THE FOLLOWING AREAS:

- I. Congo: Air Support
- II. Congo: Covert Assistance to Mobutu
- III. Lebanon
- IV. Rwanda
- V. Saudi Arabia - South Yemen
- VI. Cuban Documents Captured in Boliva
- VII. Weapons for Jordan
- VIII. Radio Free Europe and Radio Liberty

William Furtak

(Question Dept. 11/24/75)

~~SECRET~~

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W. J. [unclear]

(Custodian [unclear] 11/24/75)

SECRET

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, 21, JUNE 4, 7, 8, 1962~~

Printed for the use of the Committee on Armed Services



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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 McNAMARA

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-

not to give any testimony or produce any documents which would disclose 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 McNAMARA 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

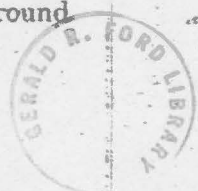
Senator STENNIS. I just want the record to be clear and positive. As I understood it from the following letter, the President puts it on the ground of being contrary to the public interest.

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.



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 jurisdiction 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.



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 operational defense requirements."²²

We begin to enter more controversial ground when we consider the advisory function of the military vis-a-vis the American public.²³ 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."²⁴

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 advice: "Tell the truth, tell the truth to the British people."²⁵

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.

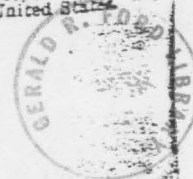
As you know, it has been and will be the consistent policy of this Administration to cooperate fully with the Committees of the Congress with respect to the furnishing of information. But the unbroken precedent of the National Security

²² Congressional Record, 81st Cong., 1st sess., vol. 93, Mar. 30, 1949, p. 3540.

²³ 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.

²⁴ Quoted, *World*, Jan. 31, 1962, p. 23.

²⁵ See p. 6, supra.



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.



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.

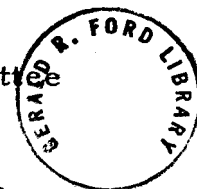
I. Relevant Controversies.

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:



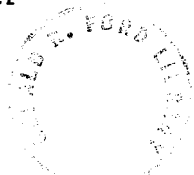
1. President Eisenhower's letter of May 17, 1954, to the Secretary of Defense not to testify with respect to certain top level conversations which occurred during the Army-McCarthy investigations.
[Enclosed]

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."

#



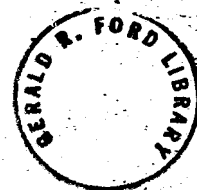
113 ¶ Letter to the Secretary of Defense
Directing Him To Withhold Certain Information
from the Senate Committee on Government
Operations. May 17, 1954

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

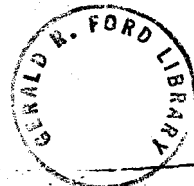
NOTE: Attorney General Brownell's memorandum of March 2, 1954, was released with the President's letter. The memorandum traces the development from Washington's day of the principle that the President may, under certain circumstances, withhold information from the Congress.

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



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1962

80752



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 McNAMARA

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-



must not to give any testimony or produce any documents which would disclose 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 furnish 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.



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 jurisdiction 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.



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."²²

We begin to enter more controversial ground when we consider the advisory function of the military vis-a-vis the American public.²³ Under a directive of the National Security Council in 1953, 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."²⁴

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 advice: "Tell the truth, tell the truth to the British people."²⁵

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

²² Congressional Record, 81st Cong., 1st sess., vol. 93, Mar. 30, 1949, p. 3540.

²³ 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.

²⁴ Quoted, *World*, Jan. 31, 1962, p. 23.

²⁵ See p. 6, *supra*.



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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THE WHITE HOUSE
WASHINGTON

November 21, 1975

(see file)
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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



Monday 11/24/75

10:50 Doug Marvin called to request for Mr. Scalia
copies of the documents that were approved by
the President for executive privilege.

Mr. Wilderotter tells me you would have them.

*Duval told Mr. Buchen
he was sure they were
on the way!*



Buchan
or
Bud

Monday 11/24/75

e approved them)

the President earlier than

one with 10 -- approved

Nov. 6
7 subpoenas

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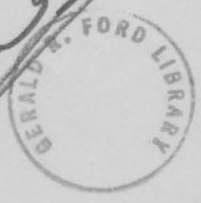
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Gerald R. Ford Library



Monday 11/24/75

9:50 Doug Marvin called to request for Mr. Scalia the documents that were approved by the President for executive privilege.

(taken into the President and he approved them)

Also documents approved by the President earlier than that.

(Two sets -- one with 77 and one with 10 -- approved earlier)

Dean Rusk & Johnson



Monday 11/24/75

9:50 Doug Marvin called to request for Mr. Scalia the documents that were approved by the President for executive privilege.

(taken into the President and he approved them)

Also documents approved by the President earlier than that.

(Two sets -- one with 7?? and one with 10 -- approved earlier)



THE ATTORNEY GENERAL



November 26, 1975

Phil Buchen,

I believe our relationship is such that you will not mind and, perhaps, will welcome my expression of concern--since I am concerned--about the memorandum you sent dated November 21 on congressional demands for certain Executive branch documents.

The memorandum is useful.

I am troubled that it (1) comes close to giving legal advice to the departments--which by statute is the duty of the Attorney General, and (2) in discussing Executive privilege does not make clear that the process requires an endorsement of the Attorney General. I am naturally troubled about this, since there is an expected tendency in the departments to go directly to the White House and for the Counsel to the President to relate to the departments in this way.

So I have a concern.



THE WHITE HOUSE

WASHINGTON

November 26, 1975

Dear Ed:

You can be sure I would not have wanted you to refrain from expressing your concern about the November 21 memo which went out over my signature.

The only reason for the memo was to respond to Don Rumsfeld's concern (when he was still on the President's staff) that Cabinet officers who were not involved and White House Staff had become confused by what had happened all at once to involve Secretaries Kissinger, Morton and Mathews in subpoena difficulties. He thought that the differences between their respective situations were not sufficiently understood.

My assignment was to prepare a factual summary for distribution -- not to provide legal advice or directions for handling similar problems in the future. To the extent the memo seems to reach beyond this limited purpose, it was unintentional.

I am mindful of the need to keep the departments from looking to my office for legal advice, and I shall be more alert to avoid any future implications to the contrary.

May my most helpful and gratifying relationship with you continue as always.

Sincerely,



Philip W. Buchen
Counsel to the President

Honorable Edward H. Levi
The Attorney General
Department of Justice
Washington, D. C. 20530



THE WHITE HOUSE
WASHINGTON

March 12, 1976

*Executive
Privilege*

MEMORANDUM FOR: LES JANKA
FROM: PHIL BUCHEN *P.W.B.*
SUBJECT: Case, Sparkman and
Montgomery letters

I have problems with the tone and style of the proposed letters. More importantly, if we ask the President to invoke executive privilege, we should strictly adhere to all the procedural requirements, including consultation with the Attorney General.

I understand there is a good possibility that this matter can be resolved informally by discussions with the Congressmen involved. If so, I would definitely prefer that course of action.

NATIONAL SECURITY COUNCIL

MEMO FOR: JACK MARSH
MAX FRIEDERSDORF
Phil Buchen

FROM: LES JANKA

SUBJECT: NSC Congressional Clearance
Request # 106

Your concurrence is requested in the attached draft action package for the President along with any appropriate comments you may have. Please indicate your clearance by initialling in the space below.

If we have not heard from your office by noon, March 12, 1976, we will assume you have no objections and will accordingly show your concurrence in the final package for the President.

Cleared: _____

Date: _____

NATIONAL SECURITY COUNCIL

ACTIONSECRET/SENSITIVE/EYES ONLY

March 10, 1976

MEMORANDUM FOR: BRENT SCOWCROFT

FROM: THOMAS J. BARNES *EMB for*
LES JANKA *EMB for*

SUBJECT: Congressional Request for Copies of the
Nixon-Pham Van Dong Exchange of
Correspondence

Senators John Sparkman and Clifford Case have written to the President (Tab D) and Representative Montgomery has written to you (Tab E) on the same topic. They have requested that we provide their committees copies of President Nixon's February 1, 1973 letter to DRV Premier Pham Van Dong (Tab F) on U.S. aid to North Vietnam, as well as Dong's response (Tab H).

Montgomery also requests the clarification of the "shopping list" (Tab G) which the North Vietnamese provided to his committee during their recent visit to Hanoi. He asks whether this document is a Vietnamese working paper or a "final unsigned version" which the Joint Economic Commission developed in Paris.

Sparkman previously wrote the President on April 10, 1975 (Tab I) asking him to provide texts of all understandings, undertakings or similar state-ments which President Nixon, Dr. Kissinger or other U.S. officials made relative to the cease-fire agreement. In denying his request, the President's reply (Tab J) indicated that we had already provided "any documents which could be construed as containing or constituting a government to government undertaking."

We recommend that we not provide either the Nixon or Dong message to the two committees. These are privileged Presidential exchanges with another head of government. As such, we could legitimately reserve them under the doctrine of Presidential confidentiality.

While we do not believe we ought to provide the committees a copy of the Nixon message, we do recommend that you respond by informing them of

SECRET/SENSITIVE/EYES ONLY

DECLASSIFIED

E.O. 12958, Sec. 3.5

NSC Memo, 11/24/98, State Dept. Guidelines
By *W/THM*, NARA, Date *5/5/00*

the substance of it as well as provide a clarification of the shopping list. President Nixon's February 1 message is a legitimate extrapolation of Article 21 of the Paris Agreement within which we agreed to provide reconstruction aid to North Vietnam. This message is not a secret or binding agreement outside of the Paris Agreement. In responding, we recommend that you say that the Nixon message:

- Contained no pledge or promise of aid.
- Contained only a preliminary estimate of the amount of postwar reconstruction we might provide.
- Indicated that this estimate was subject to revision.
- Stipulated that no aid could be provided without adherence to our Constitutional processes. This stipulation meant that Congress would have to authorize and appropriate any reconstruction aid.
- Suggested we establish a Joint Economic Commission to coordinate this reconstruction effort.

The status of the shopping list which the North Vietnamese gave to Montgomery is less clear. The State Department has searched its files, and while able to find similar lists, cannot find one exactly the same as the North Vietnamese paper. We have therefore concluded that the "shopping list" is most likely a Joint Economic Commission (JEC) working paper. In responding to Montgomery, we recommend you identify the paper as such but also inform him of the developments which lead to the suspension of the JEC meetings and of the fact that no final agreement on amounts of aid were signed at Paris. The July 25, 1973 memorandum to Secretary Kissinger from Maurice Williams (Tab K) and the July 23, 1973 JEC NODIS cable (Tab L) confirm this latter point. These documents do indicate that a "working level agreement" was reached on how to implement certain proposals, but this stance falls far short of a signed U.S. commitment.

In providing this information to the Montgomery Committee, we should emphasize that provision of this aid was always predicated on a true cease-fire prevailing in South Vietnam as well as the fact that any aid was subject to Congressional approval. When it became apparent that the North Vietnamese would not honor the Agreement, were continuing the war, and would not account for our MIA's, we no longer actively pursued providing them with this assistance.

At Tab I is a memorandum from you to the President outlining the two committees' requests and asking his permission for you to sign the letters to Sparkman, Case and Montgomery (Tabs A, B, and C) providing them with the information we mentioned above.

Secretary Kissinger is breakfasting with the Montgomery Committee on March 12. We would be surprised if the Committee does not raise this issue with the Secretary at that time. You, therefore, may wish to discuss this matter with him prior to that meeting and prior to forwarding the memorandum to the President.

RECOMMENDATION:

That you discuss this issue with Secretary Kissinger prior to March 12.

APPROVE _____ DISAPPROVE _____

That you sign the memorandum to the President at Tab I.

Jack Marsh and Max Friedersdorf concur.

~~SECRET/SENSITIVE/EYES ONLY~~ACTION

MEMORANDUM FOR: THE PRESIDENT

FROM: BRENT SCOWCROFT

SUBJECT: Congressional Requests for the Nixon-
Pham Van Dong Exchange of Correspondence
on Reconstruction Aid

Senators John Sparkman and Clifford Case have written to you (Tab D) and Representative Sonny Montgomery has written to me (Tab E) requesting that we provide their committees copies of President Nixon's February 1, 1973 letter to North Vietnamese Premier Pham Van Dong (Tab F) as well as Dong's response (Tab H).

Montgomery also requests the clarification of the reconstruction aid "shopping list" (Tab G) which the North Vietnamese provided to his committee during their recent visit to Hanoi. He asks whether this document is a Vietnamese working paper or a "final unsigned version" which the U.S. -North Vietnam Joint Economic Commission developed in Paris.

Sparkman previously wrote you on April 10, 1975 (Tab I) asking you to provide texts of all understandings, undertakings or similar statements which President Nixon, Dr. Kissinger, or other U.S. officials made relative to the cease-fire agreement. In denying his request, your reply (Tab J) indicated that we had already provided "any documents which could be construed as containing or constituting a government to government undertaking.

I recommend that we not provide either the Nixon or Dong letters to the two committees. We should not release privileged Presidential messages exchanged with other heads of government. To be as forthcoming as possible to the committees, I do recommend that you authorize me to inform them of the substance of the Nixon letter as well as to provide the Montgomery Committee with a clarification of the "shopping list."

DECLASSIFIED

E.O. 12958, Sec. 3.5

~~SECRET/SENSITIVE/EYES ONLY~~NSC Memo, 11/24/98, State Dept. Guidelines
By W.H.M., NARA, Date 5/5/00

The Nixon letter contained only a preliminary estimate of the amount of postwar reconstruction we would provide and not a pledge or final agreement. This estimate came to a little over \$600 million a year for five years. The letter stipulated that this estimate was subject to revision and that we could not provide aid without adherence to our Constitutional processes, meaning that Congress would have to authorize and appropriate any reconstruction aid.

I do not believe there is any necessity for you to respond. If you approve, I plan to reply by stating that the Nixon message:

-- Contained no pledge or promise of aid.

-- Contained only a preliminary estimate of the amount of postwar reconstruction we might provide.

-- Indicated that this estimate was subject to revision.

-- Stipulated that we could not provide aid without adherence to our Constitutional processes, which meant that Congress would have to authorize and appropriate any reconstruction aid.

-- Suggested that we establish a Joint Economic Commission to coordinate this reconstruction effort.

The status of the shopping list which the North Vietnamese gave to Montgomery is less clear. A search of the State Department files indicates that it probably is a Joint Economic Commission (JEC) working paper. In telling Montgomery that we consider it to be a working paper, I recommend we also inform him of the developments which led to the suspension of the JEC meetings and of the fact that no final agreement on amounts of aid was signed at Paris. The July 25, 1973 memorandum to Secretary Kissinger from Maurice Williams (Tab K) and the July 23, 1973 JEC NODIS cable (Tab L) confirm this latter point. These documents do indicate that a "working level agreement" was reached on how we would implement certain proposals, but this stance falls far short of a formal U.S. Government commitment or agreement.

If you approve, I will send the letters at Tabs A, B, and C providing the committees with the information mentioned above. Secretary Kissinger agrees with this proposal.

RECOMMENDATION:

That you approve my sending the letters at Tabs A, B, and C.

APPROVE _____

DISAPPROVE _____

Jack Marsh and Max Friedersdorf concur.

THE WHITE HOUSE

WASHINGTON

Dear Senator Sparkman:

The President has asked me to reply to your February 6 letter requesting we furnish your committee the exchange of correspondence between President Nixon and any North Vietnamese officials on the matter of foreign assistance. In that letter you made reference to the committee's April 10, 1975 request that the Administration provide it with texts of all "understandings, undertakings, or similar statements by President Nixon, Dr. Kissinger, or other U. S. officials relative to the cease-fire agreement."

While it is the Administration's policy to fully cooperate with your committee, regrettably we cannot provide you a copy of the Nixon message because it is a privileged exchange with a head of government. Nevertheless, in order to be as forthcoming as possible, I have provided below a summary of the message which I trust will be helpful to you and your committee.

The President has asked me to reiterate that we have already provided to the Congress any documents which could be construed as containing or constituting a government to government commitment. President Nixon's February 1 message to Pham Van Dong did not contain any promises or pledges of aid. It was merely an extrapolation of our agreement recorded in Article 21 of the Paris Accords to participate in the reconstruction of North Vietnam. The purpose of his letter was to let the North Vietnamese know our preliminary financial estimates of the composition of our reconstruction program, to propose the establishment of a Joint Economic Commission to coordinate this reconstruction effort, and to convey our understanding that each party would implement the recommendations of the Joint Economic Commission in accordance with its own Constitutional processes. This latter reference, of course, was to indicate that the Executive Branch alone could not make any unilateral guarantees or pledges of financial assistance to North Vietnam, and to indicate that any aid

would first have to receive Congressional authorization and appropriation. In that message, President Nixon did not specifically pledge or promise any particular amount of money. Rather he only indicated the range in which we were thinking of providing postwar aid. He specifically added that this estimate was subject to revision and detailed discussion between our two governments.

Regarding North Vietnamese responses to the Nixon message, we do not consider ourselves free to provide copies of such communications to you or to inform you of their contents because they are privileged diplomatic communications.

I trust the above information is helpful to the work of your committee. If I can be of further assistance to you, I hope you will feel free to contact me.

Sincerely,

Brent Scowcroft

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

THE WHITE HOUSE
WASHINGTON

on North Vietnamese
responses because
of their nature
as exchanges
between

Dear Senator Case:

The President has asked me to reply to your February 6 letter requesting we furnish your committee the exchange of correspondence between President Nixon and any North Vietnamese officials on the matter of foreign assistance. In that letter you made reference to the committee's April 10, 1975 request that the Administration provide it with texts of all "understandings, undertakings, or similar statements by President Nixon, Dr. Kissinger, or other U.S. officials relative to the cease-fire agreement."

While it is the Administration's policy to fully cooperate with your committee, regrettably we cannot provide you a copy of the Nixon message ~~because it is a privileged exchange with a head~~ of government. Nevertheless, in order to be as forthcoming as possible, I have provided below a summary of the message which I trust will be helpful to you and your committee.

The President has asked me to reiterate that we have already provided to the Congress any documents which could be construed as containing or constituting a government to government commitment. President Nixon's February 1 message to Pham Van Dong did not contain any promises or pledges of aid. It was merely an extrapolation of ~~our~~ ^{the} agreement recorded in Article 21 of the Paris Accords to participate in the reconstruction of North Vietnam. The purpose of his letter was to let the North Vietnamese know our preliminary financial estimates of the composition of our reconstruction program, to propose the establishment of a Joint Economic Commission to coordinate this reconstruction effort, and to convey our understanding that each party would implement the recommendations of the Joint Economic Commission in accordance with its own Constitutional processes. This latter reference, of course, was to indicate that the Executive Branch alone could not make any unilateral guarantees or pledges of financial assistance to North Vietnam, and to indicate that any aid

previously

would first have to receive Congressional authorization and appropriation. In that message, President Nixon did not specifically pledge or promise any particular amount of money. Rather he only indicated the range in which we were thinking of providing postwar aid. He specifically added that this estimate was subject to revision and detailed discussion between our two governments.

Regarding North Vietnamese responses to the Nixon message, we do not consider ourselves free to provide copies of such communications to you or to inform you of their contents because they are privileged diplomatic communications.

I trust the above information is helpful to the work of your committee. If I can be of further assistance to you, I hope you will feel free to contact me.

Sincerely,

Brent Scowcroft

The Honorable Clifford P. Case
United States Senate
Washington, D. C. 20510

41 (For your information, this preliminary assessment was in the range of \$3.25 billion of grant aid over a five year period. With respect to other forms of aid, the preliminary assessment fell in the range of \$1.0 to \$1.5 billion, depending on the food and commodity needs of North Vietnam.

THE WHITE HOUSE

WASHINGTON

Dear Representative Montgomery:

Thank you very much for your letter of February 16 requesting copies of the February 1, 1973 message from President Nixon to North Vietnamese Premier Pham Van Dong and Dong's reply as well as clarification of the "shopping list" which the North Vietnamese provided you during your recent visit to Hanoi.

While it is the Administration's firm intention to fully cooperate with your committee in its important work, regrettably we cannot provide you a copy of the Nixon message because it is a privileged exchange with a head of government. Nevertheless, in order to be as forthcoming as possible, I would like to provide you with a summary of that message as well as a clarification of the list of economic assistance items.

President Nixon's February 1 message to Pham Van Dong did not contain any pledges or promises of aid. Rather it was a discussion of our agreement recorded in Article 21 of the Paris Accords to participate in the reconstruction of North Vietnam. The purpose of the letter was to let the North Vietnamese know our preliminary estimates of the financial composition of a reconstruction program, to propose the establishment of a Joint Economic Commission to coordinate this reconstruction effort, and to convey to them our understanding that the recommendations which the Joint Economic Commission would make would be implemented by each party in accordance with its constitutional provisions. This latter reference, of course, was to indicate that the Executive Branch alone could not make any unilateral guarantees or pledges of financial assistance, and that any aid would have to first receive Congressional authorization and appropriation.

In that message, President Nixon did not agree to provide any specific amount of money. He indicated only the range in which

we were thinking of providing postwar reconstruction aid, and he added that this estimate was subject to revision and detailed discussion between our two governments.

Regarding the shopping list the North Vietnamese provided you, it appears that it is a working paper of the United States-North Vietnamese Joint Economic Commission which held its first meeting in Paris on March 15, 1973. Between that date and July 25, 1973, when the Commission was suspended, the two parties negotiated in detail over the types of aid that North Vietnam needed and which we might provide. Technical experts from both sides developed a year by year draft program including detailed lists for yearly procurement as well as amounts of other types of equipment and materials which North Vietnam would need. A search of the State Department files indicates that this "shopping list" is probably one of these working level documents although no exact copy could be found.

The Executive Branch never formally ratified this list or any other document from the Joint Economic Commission, nor did we ever present any such documents to the Congress. It was apparent by June 1973 that the North Vietnamese adopted a policy of pursuing war and not peace. Since President Nixon's letter had outlined certain principles indicating our reconstruction aid would "contribute to insuring a stable and lasting peace in Indochina," we did not believe we should proceed further with our aid proposal.

Regarding North Vietnam's response to the Nixon message, we are not free to provide copies of such communications to you or to inform you of their contents because they are privileged diplomatic communications.

I trust that this information is helpful to you and your committee in its continued efforts to obtain as full an accounting as possible for all our men still missing in Southeast Asia. If I can be of further assistance, I hope you will feel free to contact me.

Sincerely,

Brent Scowcroft

The Honorable G. V. Montgomery
House of Representatives
Washington, D.C. 20515

SPIELFELD, MONT.
URCH, IDAHO
YMRINGTON, MO.
E PELL, R.I.
MC GEE, WYO.
IC GOVERN, S. DAK.
HUMPHREY, MINN.
IK, IOWA
BIDEN, JR., DEL.

CLIFFORD P. CASE, N.J.
JACOB K. JAVITS, N.Y.
HUGH SCOTT, PA.
JAMES B. PEARSON, KANS.
CHARLES H. PEACOCK, ILL.
ROBERT P. GRIFFIN, MICH.

United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, D.C. 20510

February 6, 1976

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

Dear Mr. President:

The Department of State has confirmed recent press reports that in conjunction with the 1973 Vietnam Cease-fire Agreement, President Nixon corresponded with a North Vietnamese official concerning future United States aid.

As you know, on April 10, 1975, following allegations that President Nixon had made secret commitments to South Vietnam, the Committee requested that you provide it with the texts of all "understandings, undertakings or similar statements made by President Nixon, Dr. Kissinger, or other U. S. officials relative to the cease-fire agreement or subsequent conferences concerning that agreement." In rejecting the Committee's request in a letter dated April 25 you stated, in part: "Any documents which could be construed as containing or constituting a government-to-government undertaking have been provided to the Congress."

The information which has been revealed in the press concerning former President Nixon's correspondence with North Vietnam about foreign aid again raises questions about the extent to which secret assurances may have been made by the United States in connection with that agreement and whether there has been full compliance with the letter and spirit of the Case Act. In view of the Committee's responsibilities for legislative oversight of both general foreign policy and foreign assistance matters, particularly as they relate to foreign commitments, the Committee would appreciate being furnished with the exchange of correspondence between President Nixon and any North Vietnamese officials on this matter and any other pertinent documents relative to United States negotiations with North Vietnam about foreign assistance.

The President
The White House

In view of the importance of this issue to future United States relations with the nations of Indochina, we hope that you will cooperate with the Committee in its attempt to develop the facts about what transpired during this critical period.

With best wishes, we are

Sincerely,

A handwritten signature in cursive script, reading "Clifford P. Case".

Clifford P. Case
Ranking Member

A handwritten signature in cursive script, reading "John Sparkman".
John Sparkman
Chairman

HENRY B. GONZALEZ, TEX.
JOHN JOSEPH MOAKLEY, MASS.
PATRICIA SCHROEDER, COLO.
RICHARD L. OTTINGER, N.Y.
TOM HARKIN, IOWA
JIM LLOYD, CALIF.

PAUL N. MCCLOSKEY, JR., CALIF.
BENJAMIN A. GILMAN, N.Y.
TENNYSON GUYER, OHIO

J. ANGUS MAC DONALD
STAFF DIRECTOR
(202) 225-5745

U.S. House of Representatives

SELECT COMMITTEE ON MISSING PERSONS IN SOUTHEAST ASIA

Room 3334, House Office Building Annex 2

Washington, D.C. 20515

NINETY-FOURTH CONGRESS

G. V. MONTGOMERY, MISS., CHAIRMAN

February 16, 1976

Lt. Gen. Brent Scowcroft, USAF(Ret.)
Assistant to the President
Old Executive Office Building
Washington, D. C. 20506

Dear General Scowcroft:

During the trip to Hanoi in late December by members of the House Select Committee on Missing Persons, Vietnamese officials apprised us of two documents they considered pertinent to our discussions about MIA's.

The first was a letter dated February 1, 1973, from President Nixon to DRV Premier Pham Van Dong. In this letter, President Nixon purportedly agreed to 3.25 billion dollars in reconstruction aid to North Vietnam. Naturally we thought it inadvisable to trust the Vietnamese account without seeing the document, and upon returning to the United States, I telephoned former President Richard Nixon about this letter. To the best of his recollection, the contents referred to a preliminary study and contained the proper caveats.

The second document was a "shopping list" of North Vietnamese reconstruction needs (see enclosures). The Vietnamese presented this document when we requested such a list from them, as we were encouraged to do by President Ford. They connected this list to the Joint Economic Commission discussions which American and Vietnamese delegations held in summer of 1973.

The Select Committee would appear seriously negligent if our investigation failed to consider these documents.

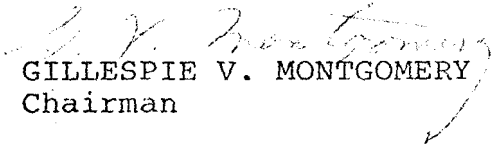
Select Committee on Missing Persons in Southeast Asia

Page Two
General Scowcroft
February 16, 1976

I was advised that copies of these documents are in the files of the National Security Council. On behalf of the Select Committee, I request a copy of the letter President Nixon wrote to Premier Pham Van Dong on or about February 1, 1973, and Pham Van Dong's response to this letter. I also request a clarification of the "shopping list" given us by the Vietnamese. Is this document a Vietnamese working paper or a final unsigned version developed by the JEC?

I would appreciate your forwarding the two letters to me at your earliest convenience.

Sincerely,


GILLESPIE V. MONTGOMERY
Chairman

GVM:msd

Enclosures

Jan. 30

Message from the President of the United States to the Prime Minister
of the Democratic Republic of Vietnam

February 1,
January 30, 1973

The President wishes to inform the Democratic Republic of Vietnam of the principles which will govern United States participation in the postwar reconstruction of North Vietnam. As indicated in Article 21 of The Agreement on Ending the War and Restoring Peace in Vietnam signed in Paris on January 27, 1973, the United States undertakes this participation in accordance with its traditional policies. These principles are as follows:

- 1) The Government of the United States of America will contribute to postwar reconstruction in North Vietnam without any political conditions.
- 2) Preliminary United States studies indicate that the appropriate programs for the United States contribution to postwar reconstruction will fall in the range of \$3.25 billion of grant aid over five years. Other forms of aid will be agreed upon between the two parties. This estimate is subject to revision and to detailed discussion between the Government of the United States and the Government of the Democratic Republic of Vietnam.
- 3) The United States will propose to the Democratic Republic of Vietnam the establishment of a United States-North Vietnamese Joint Economic Commission within 30 days from the date of this message.

DECLASSIFIED

Authority POC USC (VerTassel), USC letter to State 7/22/79

By KBH NLF Date 9/17/92

attch's

4) The function of this Commission will be to develop programs for the United States contribution to reconstruction of North Vietnam.

This United States contribution will be based upon such factors as:

(a) The needs of North Vietnam arising from the dislocation of war;

(b) The requirements for postwar reconstruction in the agricultural and industrial sectors of North Vietnam's economy.

5) The Joint Economic Commission will have an equal number of representatives from each side. It will agree upon a mechanism to administer the program which will constitute the United States contribution to the reconstruction of North Vietnam. The Commission will attempt to complete this agreement within 60 days after its establishment.

6) The two members of the Commission will function on the principle of respect for each other's sovereignty, non-interference in each other's internal affairs, equality and mutual benefit. The offices of the Commission will be located at a place to be agreed upon by the United States and the Democratic Republic of Vietnam.

7) The United States considers that the implementation of the foregoing principles will promote economic, trade and other relations between the United States of America and the Democratic Republic of Vietnam and will contribute to insuring a stable and lasting peace in Indochina. These

principles accord with the spirit of Chapter VIII of The Agreement on Ending the War and Restoring Peace in Vietnam which was signed in Paris on January 27, 1973.

Understanding Regarding Economic
Reconstruction Program

It is understood that the recommendations of the Joint
Economic Commission mentioned in the President's note to the
Prime Minister will be implemented by each member in
accordance with its own constitutional provisions.

Note Regarding Other Forms of Aid

In regard to other forms of aid, United States studies indicate that the appropriate programs could fall in the range of 1 to 1.5 billion dollars depending on food and other commodity needs of the Democratic Republic of Vietnam.

LIST OF COMMODITIES IN THE PROGRAM
FOR THE USE OF THE UNITED STATES CONTRIBUTION
UNDER NON-REPAYABLE FORM FOR THE FIVE YEAR PERIOD
1973-1978

A. Food, Food Processing and Agriculture

- Food processing plants for livestock. Five, output per unit - 10 tons per day.
- Nitrogenous fertilizer plant, output 1,000 tons NH_3 per day.
- Crawler tractors : 100 HP, 3,000 ea.; 75 HP, 5,000 ea.
- Wheel tractors : 50 HP, 5,000 ea.; 20 HP, 2,000 ea.
- Bulldozers : 140 HP, 1,000 ea.; 75 HP, 800 ea.
- Scrapers, 100 HP, 200 ea.
- Excavators, 0.3 - 0.65 cubic meter, 500 ea.
- Implements for tractors :
 - Clearing rackets for 100 HP crawler tractors, 500 ea.
 - Rock buckets for 100 HP crawler tractors, 500 ea.
 - Stacker buckets for 75 HP crawler tractors, 800 ea.
 - Rippers for 100 HP crawler tractors, 800 ea.
 - Gravel buckets for 50 HP wheel tractors, 500 ea.
 - Ploughs, harrows, cultivators, and canal diggers for tractors.
- Repair plants for tractors, fifteen (15).
- Mobile repair vans, 100 ea.
- Equipment for irrigation construction teams, 10 teams.
- Suction dredgers, 250 cubic meters per hour, 20 ea.
- Equipment for three agricultural colleges and six agricultural research institutes.

- Fertilizer : Urea, 750,000 metric tons ; potash, 250,000 metric tons.
- Tinplate, 50,000 metric tons.
- Metal wrapping paper plant, annual capacity 3,000 metric tons.
- Fishing vessels, totaling 100,000 HP.
- Refrigerator ships, five of approximately 2,500 tons.
- Yarn, polyamid for fishnets, 5,000 metric tons.

B. Shelter and Building Construction

- Prefabricated housing, including sanitary porcelain, 700,000 square meters.
- Prefabricated warehouses, 800,000 square meters.
- Corrugated galvanized steel sheets, 50,000 metric tons.
- Timber, 1,000,000 cubic meters.
- Plywood, 100,000 cubic meters.
- Steel - building, shaped and plate, 1,500,000 metric tons.
- Prefabricated housing plants, Four with annual output 1,000 apartments each.
- Plumbing fixtures and accessories plant, annual output 5,000 metric tons.
- Sanitary porcelain wares plant, annual output 5,000 metric tons.
- Cement plants, two with annual output per plant 1.2 million metric tons.
- Sheet glass plant, annual output 10 million square meters.
- Chipboard plants, five, annual output per plant 20,000 cubic meters, including glue manufacturing facilities.
- Synthetic paint plant, annual output 10,000 metric tons.

- Leatherette plant, annual output 5 million square meters.
- Working tools, \$10 million.

C. Clothing : Yarns, Cloth and Leather

- Rayon and stable fibers, 10,000 metric tons.
- Polyamid yarn, 1,000 metric tons.
- Cloth, 100 million meters.
- Textile mill, annual output 30,000 tons of yarn and 100 million meters of cloth.
- Knitwear factory, annual output 3,000 metric tons.
- Leather, 2 million square feet.
- Canvas, 5 million meters.

D. General Reconstruction

- An amount of approximately fifteen percent of the United States total contribution (attributed to local costs incurred by the Democratic Republic of Viet-Nam in the use of United States contributed commodities and equipment for reconstruction) will be used by the DRVN for the procurement of goods and services from third countries.

E. Energy

- Thermal power station, 1,200 MW capacity complete with sub-stations and 400 km of transmission line.
- High tension electrical equipment plant, annual output 3,000 metric tons.
- Oil storage, 150,000 cubic meters.
- Drills, two with capacity to drill over 5,000 meters deep.

- Cable, copper, high tension, 10,000 metric tons.

F. Port Reconstruction and Water Transport

- Floating dock, repair, of over 10,000 ton capacity.
- Port, floating, capacity 1 million metric tons per year.
- Port, floating, capacity 2 million metric tons per year.
- Crane, floating, capacity 300 metric tons.
- Cranes, port, 15 ea. with capacity 10 to 15 metric tons.
- Equipment, port construction teams, 6 teams.
- Dredgers, suction, 4 ea., capacity 2,500 cubic meters per hour.
- Dredgers, suction, 10 ea., capacity 500 cubic meters per hour.
- Piles, steel - steel tube, 50,000 metric tons.
- Barges, capacity 600 metric tons, total capacity 150,000 metric tons.
- Tugs, 100 ea., 360 HP type.
- Vessels, ocean-going, total capacity 400,000 metric tons.

G. Road and Rail Transportation

Roads

- Excavators, 15 ea., capacity 4 cubic meters upwards.
- Trucks, 100 ea., capacity 25 tons.
- Trucks, dump, 5,000 ea., 5-6 ton capacity.
- Trucks, 250 ea., 10-15 ton capacity.
- Trucks, refrigerator, 100 ea., 5-10 ton capacity.
- Equipment, roadbuilding teams, 30 teams.
- Flange girders, bridge, 60-160 meters long, 20,000 metric tons.

Rail

- Locomotives, diesel, 50 ea., 2,000-3,000 HP.
- Freight cars, 1,000 ea.
- Freight cars, specialized - refrigerator, 50 ea.
 cement carriers, 20 ea.
 multi-axle, 10 ea.
- Equipment, railroad construction teams, 5 teams.
- Equipment, tunnel construction teams, 2 teams.
- Cranes, truck, 500 ea., 6-15-25 ton capacity.
- Rail, complete with steel sleepers, 70,000 metric tons.
- Girders, bridge, 1,500 meters, including girders of over 160
meters long each and other steel bridge parts.
- Pile hammers, diesel, 20 ea., 6-15 ton ram weight.

H. Industrial Commodities and Equipment

- Chemicals, industrial, \$50 million.
- Rubber, synthetic, 50,000 metric tons.
- Caustic soda, 50,000 metric tons.
- Steel, machine, 60,000 metric tons.
- Steel, alloy, 30,000 metric tons.
- Copper, 10,000 metric tons.
- Aluminum, 60,000 metric tons.
- Cable, telephone, 1,000 km.
- Paper, 50,000 metric tons.
- Pharmaceutical raw materials, \$10 million.
- Machines, apparatus or equipment, including electrical manufacturing equipment for industry, research and experimental use, \$100 million.
- Steel mill, annual output 1 million tons.
- Coal, coking, 1.5 million metric tons.
- Tire cord and fabric, 5 million meters.

I. Feasibility and Engineering Studies and Purchase of Industrial Process Licenses and Know-how.

FIRST YEAR PROGRAM FOR RECONSTRUCTION
AND HEALING THE WOUNDS OF WAR

Shelter and Maintenance of living conditions

- Prefabricated housing, including sanitary porcelain, 150,000-200,000 square meters.
- Prefabricated ware houses, 500,000 square meters.
- Corrugated galvanized steel sheets, 20,000 metric tons.
- Timber, 400,000 cubic meters
- Plywood, 50,000 cubic meters.
- Steel-building, shaped and plate, 200,000 metric tons.
- Rayon and stable fibers, 2,000 metric tons.
- Cloth, 40 million meters.
- Pharmaceutical raw materials, \$2 million.
- Working tools, \$3 million.

Agriculture

- Crawler tractors : 100 HP, 500 ea.; 75 HP, 500 ea.
- Wheel tractors : 50 HP, 500 ea.; 20 HP, 500 ea.
- Bulldozers : 140 HP, 250-500 ea.; 75 HP, 200 ea.
- Scrapers, 100 HP, 100 ea.
- Excavators, 0.3 - 0.65 cubic meter, 100 ea.
- Implements for tractors :
 - Clearing rackets for 100 HP crawler tractors, 100
 - Rock buckets for 100 HP crawler tractors, 100 ea.
 - Stacker buckets for 75 HP crawler tractors, 100 ea.
 - Rippers for 100 HP crawler tractors, 100 ea.
 - Gravel buckets for 50 HP wheel tractors, 100 ea.
 - Ploughs, harrows, cultivators, and canal diggers for tractors.
- Repair plants for tractors, three (3).
- Mobile repair vans, 50 ea.
- Equipment for irrigation construction teams, 3 teams

- Suction dredgers, 250 cubic meters per hour, 10 ea.
- Fertilizer : Urea, 200,000 metric tons, potash, 100,000 metric tons.
- Tinplate, 10,000 metric tons.
- Yarn, Polyamid for fishnets, 1,000 metric tons.
- Fishing vessels, 20,000 HP.

General reconstruction

Infrastructure

- Port, floating, capacity 2 million metric tons per year.
- Crane, floating, capacity 300 metric tons.
- Cranes, port, 2 ea. with capacity 10 to 15 metric tons.
- Equipment, port construction teams, 2 teams.
- Dredgers, suction, 2 ea., capacity 2,500 cubic meters per hour.
- Dredgers, suction, 5 ea., capacity 500 cubic meters per hour.
- Piles, steel--steel tube, 20,000 metric tons.
- Barges, capacity 600 metric tons, total capacity 50,000-100,000 metric tons.
- Tugs, 25-50 ea., 360 HP type.
- Excavators, 5 ea., capacity over 4 cubic meters.
- Trucks, 20 ea., capacity 25 tons.
- Trucks, dump, 500 ea., 5-6 ton capacity.
- Trucks, 50 ea., 10-15 ton capacity.
- Trucks, refrigerator, 50 ea., 5-10 ton capacity.
- Equipment, roadbuilding teams, 10 teams.
- Flange girders, bridge, 10,000 metric tons.
- Locomotives, diesel, 10 ea., 2,000-3,000 HP.
- Freight cars, 250-500 ea.
- Equipment, railroad construction teams, 2 teams.
- Cranes, truck, 100 ea., 6-15-25 ton capacity.
- Rail, complete with steel sleepers, 10,000 metric tons.
- Pile hammers, diesel, 10 ea., 6-15 ton ram weight.

- Drills, one with capacity to drill to 5,000 meters.
- Machines, apparatus or equipment, including electrical manufacturing equipment for industry, research and experimental use, \$20 million.
- Cargo vessels, 50,000 tons.

Raw materials

- Chemicals, industrial, \$10 million
- Rubber, synthetic, 15,000 metric tons.
- Caustic soda, 10,000 metric tons.
- Steel, machine, 10,000 metric tons.
- Steel, alloy, 5,000 metric tons.
- Copper, 2,500 metric tons.
- Aluminum, 20,000 metric tons.
- Cable, telephone, 500km.
- Paper, 10,000 metric tons.
- Canvas, 3 million meters.
- Cable, copper, high tension, 3,000 metric tons.
- Coal, coking, 50,000 metric tons.
- Tire cord and fabric, 1 million meters.

Feasibility and Engineering Studies, \$10 million

General Reconstruction

- An amount of approximately fifteen percent of the United States total contribution (attributed to local costs incurred by the Democratic Republic of Viet-Nam in the use of United States contributed commodities and equipment for reconstruction) will be used by the DRVN for the procurement of goods and services from third countries.

MIKE MANSFIELD, MONT.
FRANK CHURCH, IDAHO
STUART SYMINGTON, MO.
CLAIBORNE PELL, R.I.
GALE W. MC GEE, WYO.
GEORGE MC GOVERN, S. DAK.
HUBERT H. HUMPHREY, MINN.
DICK CLARK, IOWA
JOSEPH R. BIDEN, JR., DEL.

CLIFFORD P. CASE, N.J.
JACOB K. JAVITS, N.Y.
HUGH SCOTT, PA.
JAMES B. 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. KUHL, CHIEF CLERK

April 10, 1975

Dear Mr. President:

As you know, there is much public interest about whether there are any secret understandings by the United States relative to the 1973 Vietnam Cease-fire Agreement.

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In explaining the agreement at a press conference on January 24, 1973, Dr. Kissinger said: "There are no secret understandings." However, on Wednesday the White House issued a statement saying that there were "confidential exchanges between the Nixon Administration and President Thieu" at the time of the Paris agreement relative to both how the United States would react to a major violation of the agreement and about future economic and military assistance.

On a number of occasions members of the Committee on Foreign Relations have questioned Executive Branch witnesses about the agreement and related matters. For example, Secretary of State Rogers told the Committee on February 21, 1973, that the agreement would not "impose any further obligations on the United States." On May 8, Secretary of Defense Richardson, when questioned about whether there were any commitments "if the cease-fire accord in Vietnam should collapse," replied: "No."

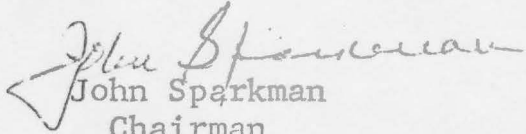
In order to insure that there is no misunderstanding about any U. S. undertakings relative to the agreement, I believe that all of the pertinent documents should be made available to the Committee on Foreign Relations which has the responsibility for legislative oversight in matters relating to international agreements. I would appreciate your furnishing the Committee with the text of all understandings, undertakings or similar

statements made by President Nixon, Dr. Kissinger, or other U. S. officials relative to the cease-fire agreement or subsequent conferences concerning that agreement.

Thank you in advance for your cooperation on this important matter.

With best wishes, I am

Sincerely,


John Sparkman
Chairman

The President
The White House

THE WHITE HOUSE

WASHINGTON

April 25, 1975

Dear Mr. Chairman

Thank you for your letter of April 10. I welcome your desire to clear up any misunderstanding about "secret undertakings" by the United States relative to the 1973 Vietnam accords.

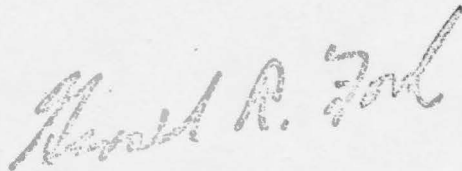
In light of current events in Indochina, it is worth recalling that it was the openly stated policy of the United States Government to maintain the necessary conditions for the viability of the Agreement. President Nixon and members of his Administration stated publicly and repeatedly that the United States intended to continue its aid relationship with the Republic of Vietnam and react vigorously to massive violations. I have reviewed the record of the private diplomatic communications, which naturally contained statements reflecting the same policy. Since the same policy and intentions contained in these exchanges were declared publicly, there was no secret from the Congress or the American people.

Furthermore, neither this Administration nor the previous one has ever invoked any private assurances or commitments as arguments for Congressional action. Requests for security assistance and opposition to the 1973 prohibition of the use of military force were always argued on the merits of policy. This was done in the belief that it was in our national interest to maintain the conditions essential to observance of the Vietnam Agreement. Our policy was determined by this view of our interests, not by "secret agreements" or assurances given in any secret document. Obviously, our ability to maintain this policy was subject to our own Constitutional process.

Any documents which could be construed as containing or constituting a government-to-government undertaking have been provided to the Congress.

I do not believe, therefore, that there is any basis for misunderstanding about American obligations or actions relative to the Paris Agreement; nor is this question relevant to the important policy questions we face now concerning our aid to Vietnam and, indeed, our foreign policy in the future. Inasmuch as confidentiality is an essential aspect of diplomatic intercourse, the diplomatic exchanges between the United States and the Republic of Vietnam should remain confidential within the Executive Branch. I believe our urgent task now is to face the future and leave the divisive debates over Vietnam behind us.

Sincerely,

A handwritten signature in dark ink, reading "Richard A. Ford". The signature is written in a cursive, slightly slanted style.

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

DEPARTMENT OF STATE

AGENCY FOR INTERNATIONAL DEVELOPMENT

WASHINGTON

OFFICE OF
THE ADMINISTRATOR

✓
July 25, 1973

→ Pearson - FXI
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MEMORANDUM FOR THE HONORABLE HENRY A. KISSINGER
The White House

SUBJECT: Status and Future Prospects for JEC Negotiations

1. Finance Minister Chau and his delegation depart Paris July 26 well pleased with their accomplishments in the JEC. In their view, they gained our "agreement" to a concrete program for implementation of the U.S. contribution, including: (a) detailed lists (on which they place great emphasis) for five year, first year and third country procurement of "complete equipment (steel mill), separate equipment, materials, goods, etc;" (b) a sizeable amount for purchases in other industrial countries and (c) underpinning for a five year contribution through "agreement" on its division into annual parts. The report of their achievements, which they were writing as I left, will have something for every DRVN ministry and state organization in North Vietnam. For the record, Chau complained about our introduction of political issues into JEC economic deliberations -- an unusual position for a Marxist -- but it was the mildest of complaints.
2. We now have an "agreed" first year proposal -- stopping just short of joint verification of the text -- which, if you choose, could be sent to the Congress without further JEC consultations or work. For the DRVN the next step is signature by the two governments.
3. The Five Year "Agreed Conclusions" are not agreed on the key point of the preciseness of the language dealing with the five year level. Since February 1, the DRV leaders have convinced themselves that they have a firm five year "commitment" figure. Hence, further discussion

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DECLASSIFIED

E.O. 12958, Sec. 3.5

State Dept. Guidelines

By W/HM, NARA, Date 5/5/00

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leading to formal signature on a five year agreement, of necessity, will weaken their conviction and with it our political leverage. This leads me to recommend a change in the form of the previously suggested five year "agreement," in Option Two below.

4. In summary, the detailed work of the JEC is done. It only remains to consider how to record and to use best this bargaining lever. I see two options:

OPTION ONE:

When DRVN performs on a Laos settlement, you would agree to JEC meeting in Paris to initial first and five year "agreed conclusions." When pressed we would agree to sign the "agreed conclusions" during a later visit to Hanoi. We would not send request to Congress until there is settlement in Cambodia.

Pro: This has been your strategy which has advantage of phasing our steps to their two step performance. A further JEC meeting in Paris is more non-committal on the prospects for reconstruction assistance than a meeting in Hanoi.

Con: Going back to Paris to initial essentially agreed texts will not give the DRVN much sense of progress and inducement for further good works. Also, we are bound to encounter a major wrangle over the language of the five year level.

OPTION TWO:

When DRVN performs on Laos, you would propose that I meet in Hanoi to sign the first year proposal and to confirm the five year "agreement." I would initial a brief note which would confirm the President's February 1 message, agree that the amounts made available would be divided into five annual parts, that some 15 percent of each annual part would be for third country purchases, and also agree to the proposed five year commodity list. This would be a revision of the Five Year paper which I discussed in Paris to specifically reference the President's February 1st message as the basic text on the five year level. It is hard to improve the language of that message from our standpoint.

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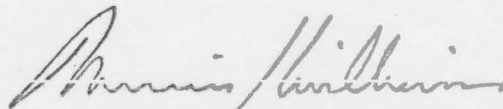
-3-

Pro: Going to Hanoi and signing the first year "agreed conclusions" would give Hanoi a sense of progress and of our sincere wish to go forward. This revision of the form of the previously proposed five year agreement would confirm the President's message and add details on the annual level of purchases from other countries which are important to Hanoi, without changing the language of our obligation. Hopefully, we could avoid a major wrangle on the degree of firmness of a five year "commitment."

Con: Going to Hanoi and signing the first year agreement will excite Congressional concern and the need for consultation. Also, it will trigger the 60-day clock for Congressional notification.

5. I recommend Option Two. If you need further information on the above, please call on me.

6. Warm regards.



Maurice J. Williams
Chief U.S. Delegate
Joint Economic Commission

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~~CONFIDENTIAL~~

Department of State

TELEGRAM

O P 231922Z JUL 73 ZFF-4
 FM USDEL JEC PARIS
 TO RUEHC/SECSTATE WASHDC IMMEDIATE 116
 INFO RUEHCR/AMEMBASSY SAIGON PRIORITY 1739
 BT

CONTROL: 6 2 9 6Q
 RECD: 23 JUL'73 4:04

~~CONFIDENTIAL~~ USDEL JEC PARIS 20143

NODIS

E.O. 11652: GDS
 TAGS: EAID, VN, US
 SUBJECT: US-DRV JOINT ECONOMIC COMMISSION: TALKS RECESSED

REF: USDEL JEC PARIS 19877

1. IN A PRIVATE MEETING JULY 23 CHAU AND WILLIAMS AGREED UPON RECESSING THE TALKS AND THE TEXT OF A JOINT PRESS RELEASE (SEPTEL).
2. IT WAS CLEARLY UNDERSTOOD THAT NO CONCLUSIONS HAD BEEN ADOPTED AS JEC FINDINGS OR OTHERWISE FORMALIZED IN ANY WAY. CHAU INDICATED THAT THE DRV RESERVED ITS POSITION ON FIRST-YEAR PROGRAM LEVEL. (AT ONE POINT IN THEIR MEETING CHAU ATTEMPTED TO TRANSMIT A "DRV RECORD OF JEC PROCEEDINGS" BUT WILLIAMS FIRMLY DECLINED, ON GROUNDS OUR RECORDS WERE ADEQUATE.)
3. THIS DECISION TO RECESS CAME WITHOUT OCCASIONING RECRIMINATIONS FROM THE OTHER SIDE. CHAU DID SAY THAT HE HOPED WE WOULD NOT AGAIN INTRODUCE "EXTRANEUS POLITICAL CONSIDERATIONS" AT SUBSEQUENT JEC SESSIONS. WILLIAMS REMINDED CHAU THAT ARTICLE 21 OF THE AGREEMENT COULD NOT BE IMPLEMENTED IN ISOLATION FROM OTHER PROVISIONS. IN ANY CASE, DRV INSISTED UPON TIMING (I.E., PRECISELY SCHEDULING PROGRAM INCEPTION) HAD OBLIGED US TO POINT OUT THE NECESSITY FOR PRIOR TANGIBLE PROGRESS ON A LAOS SETTLEMENT.
4. IN SHORT, WILLIAMS AND CHAU PARTED COMPANY ON THE BASIS OF CORDIAL PERSONAL RELATIONS, EACH EXPRESSING THE HOPE THAT IT WOULD BE POSSIBLE FOR THE JEC TO RECONVENE SOON.

WILLIAMS

~~CONFIDENTIAL~~

with 5/5/00

THE WHITE HOUSE

WASHINGTON

June 11, 1976

MEMORANDUM FOR: ROBERT H. BORK
SOLICITOR GENERAL

FROM: PHILIP BUCHEN *P.*

SUBJECT: Dellums v. Powell, D.D.C.;
appeal of Richard M. Nixon

Following receipt of your memorandum of June 3rd and submission to the President, the President has approved your recommendation not to appear as amicus curiae in the Court of Appeals to argue the issue of executive privilege.

I would appreciate your having someone from your office call Jack Miller to indicate that you are not filing a brief, giving him such explanation as you think appropriate.



THE WHITE HOUSE
WASHINGTON

June 10, 1976

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR:

PHILIP BUCHEN

FROM:

JIM CONNOR JEC

SUBJECT:

Dellums v. Powell, D.D.C.
Appeal of Richard M. Nixon

The President reviewed your memorandum of June 8 concerning the above case and approved the recommendation made by the Solicitor General and supported by yourself:

"Do not appear as amicus curiae in the court of appeals to argue the issue of executive privilege."

Please follow-up with appropriate action.

cc: Dick Cheney

