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HOUSE OF REPRESENTATIVES

HEARINGS

BEFORE THE COMMITTEE

on

SELECT COMMITTEE ON INTELLIGENCE

COMMITTEE BUSINESS

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COMMITTEE BUSINESS

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Friday, November 14, 1975

House of Representatives,
Select Committee on Intelligence,
Washington, D. C.

The committee met, pursuant to adjournment, at 10:10 a.m. in Room 2118, Rayburn House Office Building, the Honorable Otis G. Pike (Chairman), presiding.

Present: Representatives Pike (Chairman), Dellums, Murphy, Aspin, Milford, Lehman, McClory, Treen, Johnson and Kasten.

Also Present: A. Searle Field, Staff Director; Aaron B. Donner, Counsel; Jack Boos and Peter Hughes, Committee Staff.

Chairman Pike. The committee will come to order.

Yesterday we discussed the fact that as to three separate subpoenas it seemed rather clear there had been non-compliance with those subpoenas. The three subpoenas addressed themselves to (1) recommendations by the State Department for covert actions, recommendations by the State Department to the National Security Council for covert actions. As to that particular subpoena, the issue was raised that executive

1 privilege has -- am I wrong, Mr. Donner; you are shaking your
2 head? Why don't you tell us what is the status of that par-
3 ticular subpoena?

4 Mr. Donner. We have not had executive privilege raised
5 as of this date towards any of them, sir.

6 Mr. Field. There is a letter on its way from the State
7 Department that should explain it.

8 Mr. McClory. If the Chairman will yield to me.

9 Chairman Pike. Certainly, Mr. McClory. Your pipeline
10 is much better than my pipeline.

11 Mr. McClory. My pipeline, which was in operation shortly
12 before I came to this meeting, included conversations by tele-
13 phone with Mr. Philip Buchen, Counsel to the President, as
14 well as with Mr. Jack Marsh, but I would refer primarily to
15 Mr. Phil Buchen who is the President's Counsel.

16 He stated that the doctrine of executive privilege would
17 be raised with regard to the subpoena directed to the State
18 Department with regard to the covert operation recommendations
19 they had made.

20 I asked whether or not in each one of these instances
21 when the State Department recommendation for a covert operation
22 was made, the President of the United States had personally
23 made the decision to approve such a covert operation. He
24 assured me that in each instance the President of the United
25 States had personally made the decision. Not this President,

1 but in most instances a prior President. In all instances
2 a prior President, including prior administrations.

3 I stated then that if the decision with respect to
4 this -- the communication was personally with the President --
5 it seemed to me that that was an instance in which executive
6 privilege might be raised.

7 I further pointed out that I felt the doctrine of
8 executive privilege applied to the office and not to the in-
9 dividual who happens to occupy the office of President at a
10 particular time, so it would be appropriate under my inter-
11 pretation of the law for this President to have the right to
12 invoke executive privilege in behalf of --

13 Chairman Pike. President Washington.

14 Mr. McClory. President Washington, any deceased
15 President, any prior President of the United States.

16 In other words, the Chairman is being facetious, but it
17 applies to the office and not to the individual who occupies
18 the office in my interpretation, so I do think that this
19 raises serious questions --

20 Chairman Pike. Mr. McClory, we have had testimony that
21 the President -- and this was testimony from Mr. Kissinger --
22 that the President, himself, has approved all of the covert
23 operations since Mr. Kissinger has been in the government and,
24 according to his belief, prior to that time.

25 Would your current doctrine then not prohibit Congress

1 from looking at any covert operation because of executive
2 privilege?

3 Mr. McClory. I am talking about the communications with
4 the President, recommendations made to the President with
5 decisions made by the President. It may be it could be expand-
6 ed to include executive privilege beyond that which is being
7 raised in this instance, but, calling your attention to the
8 fact it is being raised here, and the circumstances under which
9 it is being raised, . . . I think it has direct application where
10 the President individually acts.

11 Chairman Pike. Does any other member on the Republican
12 side wish to be heard on this subject?

13 Mr. Treen?

14 Mr. Treen. Is the staff going to give us any briefing
15 on the question here before we take action on a proposed
16 resolution? We haven't a proposal before us now, but I
17 assume one will be made.

18 Chairman Pike. Let me just state that the staff will
19 give us briefings to the extent wished by the members of the
20 committee on all of these issues.

21 I had thought that I heard some views rather contrary
22 to those just expressed by Mr. McClory expressed over on the
23 Republican side yesterday and I thought perhaps they had gotten
24 lost in transmission somewhere.

25 I will state this: In my judgment the concept that the

1 President can deny to Congress under the doctrine of
2 executive privilege recommendations made to prior presidents,
3 ad infinitum, just does destroy -- it expands the doctrine
4 of executive privilege to the point where it diminishes
5 Congress to a hardly visible object.

6 I would find that particular doctrine very hard to
7 accept.

8 I think there is a real area where executive privilege
9 exists, but I think it has been badly overstated this
10 morning.

11 Mr. Treen. The point of my question is to determine
12 whether we will have a briefing on what the precedents might
13 be.

14 Chairman Pike. You are talking about the legal question
15 at this point?

16 Mr. Treen. Yes, sir. That is all to which my inquiry
17 was directed.

18 Chairman Pike. Mr. Donner, can you enlighten us where
19 we are with regard to the legal precedents of denying infor-
20 mation to Congress and how those precedents apply to this
21 situation in your judgment?

22 Mr. Donner. There is only one Supreme Court case that
23 we could cover that directly considered the question of
24 executive privilege and that is U. S. against Nixon, and
25 really the line of cases leading up to it seem to be the only

1 cases directly concerning executive privilege.

2 The area is a gray and ambiguous area. There is no
3 way saying exactly where it begins or ends. There has not
4 been that judicial interpretation of it. However, in the case
5 of U. S. against Nixon, it was a case where a President in
6 office sought to assert the privilege regarding communications
7 received by him while he was in office. The extension of the
8 doctrine . . . apparently, in this instance, would include a
9 deceased President, President Johnson, and it would also
10 apparently include a living ex-President, President Nixon.

11 That does rather create the rather anomolous situation that
12 if you can assert the privilege for President Nixon, it would
13 seem that by inference President Nixon then, if he wanted
14 to, just hypothetically, to reveal information to this
15 committee or give documents in his possession, would seem to be
16 precluded from doing so by a President in office, which I
17 find personally a difficult doctrine.

18 I could find no judicial interpretation which would
19 seem to even discuss this question, let alone support it or
20 deny it.

21 The assertion of the doctrine apparently, from our
22 hurried research of the assertion of this doctrine, seems to
23 be a novel proposition in all of its parameters.

24 Mr. Treen. The Nixon case said the doctrine was not a
25 universal doctrine; that it did not extend to all communications.

1 That if there was evidence of criminal activity that that
2 would have to be examined, I think, in camera, and executive
3 privilege could not be used to shield that sort of information.
4 Is that the sum and substance of the Supreme Court decision?

5 Mr. Donner. Yes. The court addressed itself apparently
6 just to the limited area where there was evidence in a pending
7 criminal action.

8 Mr. Treen. Did the Court recognize that such a thing as
9 executive privilege in that decision, in its dicta --

10 Mr. Donner. There is strong inference in the dicta in
11 that case there was an area which the Court did not define
12 where -- again by inference, in dictum, that there would be
13 an area where executive privilege could properly be asserted.

14 Again, they were addressing themselves -- even if you
15 extend the dictum to its broadest extension, to a President
16 in office, with regard to communications to him while he was in
17 office.

18 Mr. Treen. One other question then: In that case, did
19 the Supreme Court reason that in suggesting that there is an
20 area of executive privilege that it was bottomed on the
21 proposition that presidents should be able to receive advice
22 from their top aides in a perfectly confidential and candid
23 manner? Isn't that the rationale of executive privilege?

24 Mr. Donner. That is an aspect, yes, sir, and that was
25 the suggestion of it in the dictum in that case, sir.

1 Mr. Treen. I haven't decided how I am going to go on
2 this issue. Most of these instances we are talking about today
3 occurred in Democratic administrations, but it seems if that
4 is the rationale of the Supreme Court decision, that we should
5 preserve a channel of communication between a President and
6 his top advisers, that that could be destroyed if it is not
7 extended to future presidents because these advisers -- their
8 incentive to be candid would be destroyed to a certain extent
9 if they felt "After the next election or this President dies
10 or something, all of my candor is going to be exposed completely."

11 The whole area troubles me.

12 Mr. Donner. There are two points I would like to make on
13 that.

14 (1) The material requested as a subject of this subpoena
15 would be received not for release or publication, but would be
16 received as classified information. In other words, the
17 publicity aspect of it is somewhat diminished.

18 Mr. Treen. I hope you are right on your first point, sir.

19 Mr. McClory. Will the gentleman yield?

20 Mr. Donner. The second point is apparently -- and this is
21 again by interpretation rather than hard case law, it would not
22 seem the Congress could decide the question of executive
23 privilege on its own. It would seem that is a judicial matter
24 and whether the privilege is validly exercised or not would be
25 a question for the Judiciary, not the Legislative or Executive

1 branch.

2 Mr. McClory. Will the gentleman yield for a further
3 question?

4 The doctrine of executive privilege has not been raised
5 with regard to any of the other material that we have received.
6 We have received a vast amount of material without having
7 that doctrine raised before.

8 Mr. Donner. To be technical, sir, we do not have the
9 assertion of executive privilege even of this moment.

10 Chairman Pike. That troubles me, Mr. McClory. The
11 fact that three days after the subpoena was due, we have
12 nothing. You have had phone calls; Mr. Donner and Mr. Field
13 have had phone calls. The President has not asserted executive
14 privilege. You have the assertion that he is going to assert
15 executive privilege, but he hasn't done it.

16 Mr. McClory. I am relying on a conversation with the
17 President's Counsel that the President is asserting executive
18 privilege with regard to those matters, and I am communicating
19 that to the committee here this morning. I have no reason not
20 to believe that.

21 Let me say further that we are certainly in a position
22 here to recognize what is the law and if we recognize that the
23 law does authorize the President to assert executive privilege
24 in this instance, we have a right not to try to enforce a sub-
25 poena if that is the decision we choose to make. We don't

1 have to claim our inability or our ignorance of what the
2 law is and say we have to submit this to a tribunal. I would
3 prefer not to present this particular instance to a tribunal.

4 Mr. Hayes. May I ask Mr. Donner or Mr. Field, either
5 one, this question: In the November 11th letter from General
6 Scowcroft, the assertion is made in the first paragraph that
7 all of the subpoenas have been complied with. This is simply
8 a flat statement.

9 "We hereby submit the documents described." He goes
10 on in the rest of the body of the letter with a careful
11 explanation of how he has complied with the subpoenas.

12 Have you had an opportunity since our last meeting, and
13 an assertion that the subpoenas weren't complied with, to be
14 in conversation with General Scowcroft or any of his staff
15 about what they mean by "compliance" and what we mean by
16 "compliance?"

17 Mr. Field. Mr. Hayes, I have personally talked with
18 General Scowcroft since then. We have spent a great deal of
19 time going back and forth on this. I would defer a bit to the
20 Chairman as to how you want to take up these subpoenas --

21 Chairman Pike. Essentially you are talking about the
22 different subpoenas, is that right?

23 Mr. Field. That is right. The subpoena we address now
24 goes to the Secretary of State and he is talking about National
25 Security Council subpoenas.

1 These assertions of executive privilege don't cover
2 any of the matter that would have been covered by Scowcroft.

3 Mr. Field. That is right.

4 Mr. Johnson. I thought we discussed yesterday the
5 parameters of the claim -- if in fact they do claim
6 executive privilege -- to which it will apply and it doesn't
7 concern the matter of classification, but does relate only to
8 prior Secretaries of State recommendations to the 40 Committee
9 or to the National Security Council, or to the President.

10 In some instances it goes to the President. In some
11 instances it goes to the State Department.

12 Chairman Pike. Mr. Johnson, I believe there are involved
13 in the eight situations in which they said there were recom-
14 mendations not only from prior Secretaries of State, but also
15 from the present Secretary of State.

16 Mr. Johnson. I didn't understand that. I thought they
17 were all from prior Secretaries of State.

18 I further thought some of them went to the President
19 directly, some of them went to the National Security Council
20 and/or the 40 Committee first.

21 Chairman Pike. Without having access to them, we really
22 don't know where they went.

23 What we subpoenaed was their recommendations, I think,
24 to the National Security Council. We did not subpoena any
25 recommendations to the President.

1 Mr. Johnson. The doctrine of executive privilege applies
2 because the National Security Council is an arm of the
3 President and the President is the Chairman of the National
4 Security Council.

5 We further established that the doctrine of executive
6 privilege was not claimed by those presidents to which the
7 documents were directed, didn't we? President Johnson and
8 President Kennedy, if they are the Presidents involved, did
9 not observe the doctrine with regard to --

10 Chairman Pike. I think we may have President Kennedy,
11 we may have President Johnson, we may have President Nixon,
12 but the only person who allegedly is going to assert the
13 privilege is President Ford. In fairness to the others, I
14 don't think anybody ever tried to get these documents.

15 Mr. Johnson. As a matter of fact, they were left in
16 government files and were not removed when these gentlemen
17 left office.

18 Chairman Pike. That is correct.

19 Mr. Johnson. They also were not private memoranda from
20 the Secretaries involved or the President involved, but were
21 State Department documents and not just a little handwritten
22 note from one individual to another.

23 Chairman Pike. Once again, not having seen them, we
24 can't really say.

25 Mr. Field. It was our understanding -- perhaps the letter

1 will clarify it, but three of them were direct communications
2 to a President and five were not. I also believe the com-
3 munications to President Nixon, which apparently are included
4 in this, could not have been communications to him personally
5 because all of his personal communications and records are
6 now under court order, so we could not obtain them anyway and
7 that has not been asserted in this case, and , in fact, they
8 could not have culled them from those files because those files
9 are under lock and key.

10 I think it is somewhat safe to say at least the Nixon
11 communications are not personal communications.

12 Mr. Johnson. I stated yesterday, and I don't feel the
13 need to reiterate my position on that, I feel that would be
14 the worst possible extension of the doctrine of executive
15 privilege. It would be very narrowly defined. I don't even
16 recognize that they have the right to waive it. I don't want
17 to acknowledge that this is something they could assert, but
18 choose not to. I don't think we ought to even acknowledge that
19 this is a possibility that a President can control everything
20 that has happened in the government files and government
21 documents; that the President has absolute control over this
22 since the time of the inception of the Republic.

23 Mr. Kasten. Is there a motion before the committee?

24 Chairman Pike. There is no motion before the committee,
25 but simply a discussion and an attempt to inform the committee

1 as to where we are and what are our alternatives.

2 Mr. Kasten. In the interests of moving along, it seems
3 the question of executive privilege is only being raised for
4 the one group of documents which involves the Secretary of
5 State, the President, the 40 Committee, the 303 Committee and
6 what-have-you. It seems the issue is much clearer on the
7 information we have been unable to receive from the 40 Com-
8 mittee, and also the information with regard to the SALT
9 talks. Possibly we could proceed with those.

10 Chairman Pike. I can only say as you get into them
11 further ways will be found to fuzz up all of the issues and
12 the issue as to the SALT talks has already been fuzzed up to
13 some extent and when we get into that I will fill in on that
14 particular one.

15 Mr. McClory. I don't think we should downgrade what we
16 are doing by suggesting that things are being fuzzed up. I
17 think legitimate arguments are being made here and I think for
18 the committee to retain the full respect which I think the
19 committee should have, we should recognize we are acting
20 responsibly, deliberately and legitimately and that these
21 are responsible arguments that are being made on both sides.

22 I certainly want to assure you that my arguments are.
23 If I make arguments with regard to other issues, it is because
24 I still want to carry out the objectives of this committee to
25 get the maximum of information for the committee.

1 It is not for any frivolous or any irresponsible reason
2 that I would express an opinion differing from that of the
3 majority of the members.

4 Chairman Pike. Mr. Aspin.

5 Mr. Aspin. Mr. Chairman, we are talking now about the
6 one issue of the subpoena to the Secretary of State. Perhaps
7 if you could tell us why we need this information, what are we
8 looking for in this document?

9 Chairman Pike. The question has come up throughout our
10 hearings as to the operations of the Central Intelligence
11 Agency generally, whether they were -- to use a phrase fre-
12 quently bandied about -- a "rogue elephant," whether they went
13 off and did things on their own, or whether they were in fact
14 told to do things.

15 It has been our experience in those issues that we have
16 gone into in some depth that in no instance did they go off
17 and do things on their own. On the contrary, they were from
18 time to time ordered to do things which they did not particularly
19 want to do and, in fact, upon occasion actively opposed.

20 The question then becomes -- and Mr. Field stated this
21 yesterday -- are those operations which are generated within
22 the CIA, and in the normal course of business, normally more
23 responsible? Do they normally get our nation into less
24 difficulties than those which somebody outside of the intel-
25 ligence operation department tells them to do?

1 So what we are trying to establish here is the nature
2 of the operations that they were told to do or that were
3 generated in some other manner.

4 Most of the operations, I expect, are generated in the
5 normal course of business through normal CIA and DCI channels.

6 Here we find a category of operations generated by the
7 State Department. I think if the State Department is recom-
8 mending operations by the Central Intelligence Agency, it is
9 part of our responsibility to see what kind of operations they
10 are telling them to do or asking them to do.

11 Mr. Aspin. On this one, we have received absolutely zero,
12 is that correct?

13 Mr. Field. That is right.

14 Mr. Aspin. Nothing has happened since yesterday on this
15 one?

16 Mr. Field. That is correct.

17 Mr. Aspin. Could the Chairman tell us what are our
18 alternatives regarding this subpoena?

19 Chairman Pike. I won't give you alternatives, but I will
20 tell you how I am going to vote.

21 The alternatives range from doing nothing to seeking to
22 cite the Secretary of State in this instance for contempt of
23 Congress. I am going to vote in favor of citing the Secretary
24 of State in contempt of Congress.

25 The one route we could go is to go back to the House for

1 a resolution of necessity, but what has happened to that route
2 is that the time has kept running on us and I think by the
3 time we went through that procedure, two separate trips to the
4 House of Representatives -- let us assume the House agreed on
5 a resolution of necessity. We would then have to have some
6 time frame within which they could comply with the House's
7 assertion of the necessity for this information. If they
8 then failed to comply, it would take some time to go the con-
9 tempt route and I frankly think our charter would have expired
10 before the issue was ever resolved. So I think that that at
11 this point would be a meaningless exercise.

12 Mr. Lehman.

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1 Mr. Lehman. I recall the quotation that those who
2 do not learn from history are bound to make the same mistakes.
3 I think this is one way that this country can learn from
4 history.

5 I do not find in these subpoenas the same possible
6 question of invasion of a person's privacy that we had in the
7 previous subpoenas.

8 We have had not only Dr. Kissinger as a kind of
9 imperious Secretary of State, we have had others such as
10 Secretary of State Dulles and Secretary of State Acheson
11 who seemed to be larger than life and dominated the
12 Administration and I am very concerned if we get a good
13 professional -- my indication is it is a good professional
14 body, such as the CIA, that we must give them some kind of a
15 buffer between the kind of orders, the kind of compulsive
16 direction they can sometimes get from the Administration that
17 they serve under, and this is the kind of knowledge that I
18 think is imperative that this committee seek at this time,
19 out of the history of the actions of this Administration or
20 the previous Administration, to prevent these kinds of things
21 from happening in the future, to construct the safeguards
22 that our intelligence community needs in order to perform the
23 duty which it was originally committed to perform.

24 I would be willing to support this subpoena at this
25 time and let the chips fall where they may.

1 Chairman Pike. Mr. Dellums --

2 Mr. Dellums. Mr. Chairman, I would like to move the
3 following resolution:

4 Resolved, That the Speaker of the House of Representatives
5 certify the report of the Select Committee on Intelligence
6 of the House of Representatives as to the contumacious
7 conduct of Henry A. Kissinger, as Secretary of State, in
8 failing and refusing to produce certain pertinent materials
9 in compliance with a subpoena duces tecum of said Select
10 Committee served upon Henry A. Kissinger, as Secretary of
11 State, and as ordered by the Select Committee, together with
12 all the facts in connection therewith, under the seal of the
13 House of Representatives, to the United States Attorney for
14 the District of Columbia, to the end that Henry A. Kissinger,
15 as Secretary of State, may be proceeded against in the manner
16 and form provided by law.

17 Chairman Pike. Mr. Dellums, you are entitled to five
18 minutes in support of your motion if you choose to use it.

19 Mr. Dellums. Thank you, Mr. Chairman.

20 Mr. Chairman, we have been at this point once before.
21 The majority of the committee by their vote several days ago
22 did not decide to challenge the Secretary of State with
23 respect to certain information on the ground that the scope
24 of the particular item before us was very narrowly defined.

25 I think that the matter before us is obvious. I think

1 it is important. I think it establishes the principle of
2 the need for Congress to have access to information and I
3 think if this committee is to go forward with its important
4 work, that we desperately need to take a stand at this point
5 and I offer this resolution as an effort on the part of this
6 committee to take a stand with regard to certain information
7 which will allow it to go forward with its investigation.

8 Mr. McClory. Mr. Chairman, I will oppose the resolution
9 on the grounds previously mentioned, but I would also like to
10 call the attention of the committee to the prior resolution
11 they acted upon at one stage against the Director of the CIA,
12 Mr. Colby.

13 It was based upon legal research of our counsel. It did
14 include the requirement that we assert a necessity for the
15 information. I think that our own counsel have advised us
16 that that is a prerequisite to any kind of a proceeding to
17 enforce a subpoena and if the committee wants to act in
18 accordance with what I view is the procedure which is required
19 to be followed for the purpose of truly enforcing the
20 subpoena, I think the resolution of necessity is a prerequisite
21 to any further action and, of course, it would have to be
22 supported by action on the floor of the House.

23 I don't think it is a good idea for the committee to
24 bypass any of the necessary preliminary steps in trying to
25 get hastily at the business of trying to get the Secretary of

1 State to be held in contempt of the Congress.

2 Chairman Pike. Mr. McClory, I would like to say first,
3 I presume when you offered the subpoena that you deemed it to
4 be necessary to this committee. I think that the committee by
5 voting for the subpoena made the determination that they
6 believed it to be necessary for this committee and I don't
7 think there is any other requirement -- any other procedural
8 requirement -- than that this committee feels that it is
9 necessary in order to take it to the floor of the House. The
10 House may not support us. We always recognize that but I
11 don't think it is necessary to go through any intermediate
12 steps.

13 Mr. McClory. Mr. Chairman, may I say that when the
14 subpoena was offered originally I was unaware of the fact that
15 the President was going to assert executive privilege or that
16 it did involve personal action on the part of the President.
17 In view of that assertion, I question that we have the right to
18 proceed. If there is a right to proceed, I think it does
19 require this additional finding, at this time, on the part of
20 the committee.

21 Mr. Treen. Who has possession at this time of the
22 documents we seek?

23 Mr. Field. The documents were sent from the State
24 Department to the White House. They were sent to the Justice
25 Department and I believe they are now back at the White House.

1 Mr. Treen. Wait a minute. They were sent from the
2 State Department to the White House and then back to Justice?

3 Mr. Field. And then back to the White House.

4 Mr. Treen. The documents are in possession of the White
5 House and not the Secretary of State at this time?

6 Mr. Field. I believe that is correct.

7 Mr. Treen. How does that affect our enforcement
8 procedure?

9 Mr. Field. That is copies of the documents, obviously.

10 Mr. Treen. Where are the originals?

11 Mr. Field. The originals would be with the Secretary of
12 State.

13 Mr. Treen. They are still there with him?

14 Mr. Field. That is correct.

15 Mr. Donner. I would like to comment in addition,
16 Mr. Treen, I don't believe under any basis of law there is any
17 way that you can get rid of the papers and avoid the
18 responsibility to respond to a subpoena.

19 Mr. Kasten. Mr. Chairman, I would like to offer a
20 motion in the nature of a substitute.

21 Chairman Pike. The gentleman will state his motion.

22 Mr. Kasten. The resolution, Resolved, that the House
23 of Representatives considers the work of the Select Committee
24 on Intelligence to be necessary to the investigation which
25 the House is resolved to make concerning intelligence

1 operations and considers noncompliance with the subpoenas,
2 issued either before or after the adoption of this resolution
3 by the Select Committee on Intelligence, to be a grave matter
4 requiring appropriate enforcement.

5 That Henry A. Kissinger, Secretary of State, is directed
6 to provide forthwith to the Select Committee on Intelligence
7 of the House of Representatives the items specified in the
8 schedule attached to and made part of the subpoena issued to
9 Henry A. Kissinger, Secretary of State, under authority of
10 the House of Representatives and dated November 6, 1975.

11 Chairman Pike. The gentleman is recognized for five
12 minutes in support of his amendment.

13 Mr. Kasten. Thank you, Mr. Chairman.

14 I think it is important especially in this particular
15 case where we are dealing with -- it is not hearsay but at
16 least insufficient information as to exactly what the position
17 of the executive branch is going to be on this question.
18 We have heard a letter is on the way. None of us have it
19 before us.

20 I think it is particularly important that we follow
21 the correct procedure. The correct procedure is not contempt
22 of the Congress. The correct procedure is a resolution of
23 necessity.

24 I think, also, Mr. Chairman and members of the committee,
25 that we in our effort to get the material that I think all of

1 us agree we should have, have a better chance of succeeding
2 on the floor of the House, that we have a better chance of
3 eliciting the support of all of the Members, Republican and
4 Democrat, in the House, through the resolution of necessity
5 rather than through a contempt of Congress resolution.

6 I think that this is a proper procedure at this point.
7 I think this is a resolution that we can win. I think
8 this is a resolution that addresses itself to the questions
9 and the problems that we have and I would hope that we would
10 adopt this resolution as a substitute for the contempt
11 resolution which I think is not the proper mechanism to deal
12 with the problems with which the committee is faced at the
13 present time.

14 Mr. McClory. Does your resolution contain the word
15 contumacious? I notice the word contunacious conduct in the
16 other resolution and it seems to me that is merely an offensive
17 description, certainly unnecessary in any resolution upon
18 which the committee might act.

19 Does your resolution contain that expression?

20 Mr. Kasten. This resolution does not contain that
21 expression.

22 Chairman Pike. The Chair will recognize the Chair for
23 five minutes in opposition to the substitute.

24 I think that I would have gone along with this procedure
25 three months ago because I would tend to agree with the

1 gentleman that we would probably have a better chance of
2 passing this one on the floor of the House because it is a
3 more gentle route than the other one, on the floor of the
4 House, because it is a stronger route.

5 I will simply say that I could not support it at this
6 time, because, while we could probably pass it on the floor
7 of the House, to do so would, as I indicated earlier, be
8 essentially a meaningless gesture. We would pass it on the
9 floor of the House and still not get the documents because
10 we would run out of time before anything was ever done.

11 I for one am weary of the whole business of waiting
12 and delaying and waiting and delaying to get information to
13 which this Congress is entitled.

14 As to the word contumacious, it is a word of art which
15 means "contempt" and that is what we are talking about. It
16 happens to be the particular word which was in the last
17 contempt citation which came to the floor of Congress and it
18 is the word which is used if you are going to have a contempt-
19 of-Congress citation.

20 I would agree that it is a strong and abrasive word
21 but I don't think that you can proceed with a powder puff
22 when you are dealing with contempt. That is what we are
23 dealing with and in my judgment, the time has simply run out
24 on the route which the gentleman is prepared to go.

25 I will be happy to recognize anybody else.

1 Mr. Johnson.

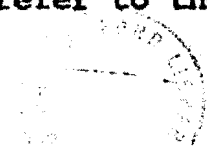
2 Mr. Johnson. Mr. Chairman, I want to have the
3 different alternatives clear. If either resolution is adopted,
4 there will have to be action taken by the full House of
5 Representatives.

6 Chairman Pike. There will have to be first action taken
7 by the Rules Committee, and in fairness to the Members, I
8 would like to make it very clear that this, itself, is not a
9 foregone conclusion. The Rules Committee as you know is
10 officially closed down for the year and it is going to take
11 some action on my part and some support from the committee to
12 get the Rules Committee to act. Then it will take an action
13 by the full House.

14 Mr. Johnson. If the Kasten resolution was adopted on
15 the floor of the House which says the Secretary is directed to
16 provide to the Select Committee the items specified in the
17 schedule, and then the documents were not forthcoming, then
18 we would have to go back through the contempt route.

19 Chairman Pike. We would have to go back through the
20 contempt citation procedure, through the Rules Committee
21 procedure and through the full House action and that is why
22 we would just run out of time.

23 Mr. Johnson. With respect to the word contumacious,
24 is it correct that the doctrine of legal contempt and the
25 word contumacious connected therewith, doesn't refer to the



1 act of despising someone or looking down on them, it is a legal
2 doctrine of being in contempt of a lawful order?

3 Chairman Pike. That is what I tried to indicate. It
4 is a word of art which means contempt of Congress. Legal
5 contempt. Not necessarily actual contempt.

6 Mr. Johnson. Now, I would like to direct a question to
7 counsel: I am concerned that in the event this does come up
8 under the Dellums resolution and the House does take action,
9 it would go to the United States Attorney for enforcement of
10 the contempt citation. What defenses might be available other
11 than the doctrine of executive privilege? In other words, is
12 it clear we have followed all of the legal requirements? We
13 have directed the subpoena, it is clearly identifiable, what
14 we are after, we have directed it to the proper person, and
15 there won't be any means for the court to avoid the issue as a
16 result of our not having done our legal homework in a proper
17 fashion?

18 Mr. Donner. I will always, Mr. Johnson, give credit to
19 some clever lawyer someplace who might construct some
20 argument, but as far as the preliminary procedural aspects
21 of this committee go, to first of all authorize issuance of
22 the subpoena -- the subpoena itself is a fairly -- in my
23 opinion -- identifiable document specifically directed to a
24 party who has not denied custody of these documents, and not
25 indicated he did not have the documents to give to this

1 committee.

2 The raising of the question of executive privilege --
3 to answer your question and develop it a little bit further,
4 under the procedure it would go to the U.S. Attorney. There
5 is a special statute, Title II, Section 192, which authorizes
6 the U.S. Attorney to bring proceedings for contempt of
7 Congress, or failure to obey congressional subpoenas. At
8 which point the U.S. Attorney would present it to a grand
9 jury.

10 Now, at a time procedurally, whether it would be by
11 motion or by, in effect, raised as a defense to an action,
12 what defense would be raised, at that time executive privilege
13 could be raised as a defense and presumptively as I say,
14 giving credit to some imaginative attorney, I am sure they
15 would avail themselves of all the standard defenses to a
16 subpoena.

17 Mr. Johnson. Given the event the original documents
18 were not in the hands of the Secretary but were someplace else
19 and you only had copies, would that be a defense to the
20 subpoena?

21 Mr. Donner. No, sir. It may be urged by someone but I
22 could address myself and say that would be a rather
23 surreptitious or facetious reply to a genuine request and
24 if someone has possession of them, the subpoena charges them
25 with the duty to deliver it.

1 Mr. Johnson. Mr. Chairman, under these circumstances I
2 intend to vote against the Kasten resolution and for the
3 Dellums resolution.

4 Mr. Treen. I would like to speak to the pending motion,
5 Mr. Chairman.

6 In my view, this might have something to do with
7 Mr. Johnson's question about the legal basis and soundness
8 of our procedure, here.

9 It goes to the fundamental question of whether the
10 information we seek in this subpoena is information that is
11 legitimately within the mandate or the authority of this
12 committee. I voted "present" on the subpoena because I
13 wasn't certain exactly what we were trying to get at.

14 The Chairman a moment ago said that it is important
15 for us to determine if the CIA was acting on its own. I
16 agree with that 100 percent. The question we come down to
17 now, it seems to me, is whether or not this committee should
18 see the recommendations of Secretaries of State from, I
19 think, 1965, forward. That to me doesn't seem to have
20 anything to do with our intelligence gathering, the cost of
21 it, the effectiveness of it, the analysis of our intelligence
22 that is gathered by the intelligence community.

23 It seems to me what we are now trying to get at is
24 purely and simply the recommendations of whoever was Secretary
25 of State during these 10 years, to the present or to other

1 persons. This is a fundamental problem that I have, that I
2 had with the subpoena, that I now have with this procedure.

3 I would suggest that the legal argument could be made
4 and I expect it will be made that the recommendations
5 of the Secretary of State have nothing to do with our mandate
6 as set forth in the House resolution creating us, H.R. 591.

7 I think this is an important issue and I am delighted
8 to have it thrashed out but I will again not be able to vote
9 in favor of the pending resolution or the substitute because
10 I think it goes beyond our mandate.

11 Chairman Pike. The question is on the substitute offered
12 by Mr. Kasten and the Clerk will call the roll.

13 The Clerk. Mr. Giaimo.

14 Chairman Pike. Mr. Giaimo votes no by proxy.

15 The Clerk. Mr. Stanton.

16 Chairman Pike. Mr. Stanton votes no by proxy.

17 The Clerk. Mr. Dellums.

18 Mr. Dellums. No.

19 The Clerk. Mr. Murphy.

20 Chairman Pike. Mr. Murphy votes no by proxy.

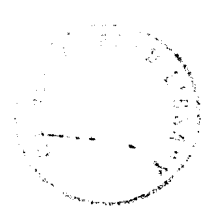
21 The Clerk. -Mr. Aspin.

22 Mr. Aspin. No.

23 The Clerk. Mr. Hayes.

24 Chairman Pike. Mr. Hayes votes no by proxy.

25 The Clerk. Mr. Lehman.



1 Mr. Lehman. No.

2 The Clerk. Mr. McClory.

3 Mr. McClory. Aye.

4 The Clerk. Mr. Treen.

5 Mr. Treen. Present.

6 The Clerk. Mr. Kasten.

7 Mr. Kasten. Aye.

8 The Clerk. Mr. Johnson.

9 Mr. Johnson. No.

10 The Clerk. Mr. Pike.

11 Chairman Pike. No.

12 By a vote of two ayes, nine nays and one present, the
13 substitute is not agreed to.

14 The question is on the resolution offered by Mr. Dellums
15 and the Clerk will call the roll.

16 The Clerk. Mr. Giaino.

17 Chairman Pike. Mr. Giaino votes aye by proxy.

18 The Clerk. Mr. Stanton.

19 Chairman Pike. Mr. Stanton votes aye by proxy.

20 The Clerk. Mr. Dellums.

21 Mr. Dellums. Aye.

22 The Clerk. Mr. Murphy.

23 Chairman Pike. Mr. Murphy votes aye by proxy.

24 The Clerk. Mr. Aspin.

25 Mr. Aspin. Aye.

1 The Clerk. Mr. Hayes.

2 Chairman Pike. Mr. Hayes votes aye by proxy.

3 The Clerk. Mr. Lehman.

4 Mr. Lehman. Aye.

5 The Clerk. Mr. McClory.

6 Mr. McClory. No.

7 The Clerk. Mr. Treen.

8 Mr. Treen. No.

9 The Clerk. Mr. Kasten.

10 Mr. Kasten. Aye.

11 The Clerk. Mr. Johnson.

12 Mr. Johnson. Aye.

13 The Clerk. Mr. Pike.

14 Chairman Pike. Aye.

15 By a vote of 10 ayes and two nays the resolution is
16 agreed to.

17 Mr. Field, would you discuss the next subpoena as to
18 which there is noncompliance and before you go into the merits
19 of the subpoena, would you address yourself to the question of
20 the issue of who is the proper person to whom the resolution
21 would be addressed in that there has been a change of
22 personnel as to the Special Assistant to the President for
23 National Security Affairs.
24
25



1 Mr. Field. Thank you very much, Mr. Chairman.

2 The subpoena would be Subpoena No. 1, which we issued
3 the other day. It is directed to the Assistant to the
4 President for National Security Affairs, Dr. Henry A. Kissinger.
5 We have been checking literally hour by hour to make sure
6 that General Scowcroft has not been sworn in yet. He has
7 not been. Pending further word it is properly directed to Dr.
8 Kissinger. This subpoena called for all documents reflecting
9 approvals of covert action projects by the 40 Committee since
10 1965 or its predecessor committees. I would draw the
11 committee's attention to the section in your briefing books
12 on the 40 Committee subpoena. It contains a copy of the
13 subpoena. It contains next a copy of your letter, Mr.
14 Chairman, to the President on October 20, which preceded the
15 issuing of the subpoena.

16 It then contains what I feel is a representative sample
17 of the materials that have been provided to the committee
18 as of that date. If the committee will bear with me a minute,
19 I would like to review some specific documents in this
20 which I think address themselves to the question of compliance.

21 The documents that you have before you are in reverse
22 chronological order. They begin with 74 and move back to
23 1965, if we would like to begin back at 1965.

24 The first document is in February of 1965. As you can
25 see, there is quite a large section of that document

1 which is deleted. I feel this is somewhat representative
2 of the kind of deletions that we have had in these documents.
3 In particular, you will notice that Items 1 and 2 on that
4 document are completely missing. Items 1 and 2 from all
5 indications of other documents would in fact be covert action
6 projects or programs.

7 I would move along to 11 June, 1965. That is ten or
8 fifteen documents in. The only item that appears in that
9 document is Item 5. I think it is representative of situations
10 where apparently large sections of the documents have been
11 taken out, in other words, Items 1 through 4 may well have
12 gone more than one page.

13 We will see other better examples of this, I think, as we
14 go along. The next page would be on 28 June 1965, which I
15 believe is the very next page.

16 I think this is the best example of the kind of deletions.
17 The items skip from Item 1 to Item 4. Items 2 and 3 are
18 clearly cut and pasted out of the document. It then skips
19 from 4 to 7. In other words, here is a document that could
20 conceivably be two or three or four pages long. It gives
21 you the feeling that you have gotten a reasonable amount of
22 information but in fact all somebody has done is snipped
23 out little sections and pasted them together and compacted
24 them and made it look like it is a complete document.

25 I would move then to 23 January 1970.

1 Chairman Pike. Mr. Field, I do not think it is
2 necessary for you to go through all the documents.

3 Mr. Field. Each of these does address a different
4 type of aspect.

5 Chairman Pike. I want to say at this point that this
6 is what I meant earlier, Mr. Kasten, when I said that these
7 issues are never all that clear-cut. There are always
8 relative degrees of fuzz. We have here something which
9 they will allege is compliance with our subpoena. But I
10 think that as any of us look at what they have given us, we
11 will simply make a pretty easy judgment that what they
12 have given us is so heavily censored and deleted as to be
13 meaningless for our purposes. It really cannot be deemed
14 in compliance with our subpoenas.

15 Mr. Kasten. Mr. Chairman, I am in complete, one hundred
16 percent agreement with you on that statement. My difference
17 is that of what the correct remedy is.

18 Chairman Pike. I understand.

19 Mr. Kasten. There is no question in my mind.

20 Chairman Pike. I was not trying to indicate that there
21 was anything evil in motivation. But I am just saying that
22 the issues are never that crisp and clear, and there are
23 not going to be any black and white issues. There are always
24 going to be relative degrees of confusion.

25 Mr. Aspin.

1 Mr. Aspin. Mr. Chairman, again, I think, if you could
2 perhaps tell us briefly for the record what it is we
3 are trying to get here and what is the point we are trying
4 to establish or look into with this.

5 Chairman Pika. Well, here we are seeking to look at
6 the genesis of all of the covert operations and to
7 look more than that at the degree of oversight and the degree
8 of control and the degree of responsibility by which these
9 operations get launched.

10 You and I, and Mr. Dallums, and Mr. Treen, as members
11 of the Armed Services Committee, for years heard the magic
12 word, "The 40 Committee." It has seemed to us as we get
13 deeper and deeper into this that the 40 Committee really has
14 not been all that prevalent in the decision-making process
15 in the oversight process. The 40 Committee is always
16 held forth as being that body which exercises judicial
17 restraint, perhaps, in authorizing these various operations.
18 It has seemed to me and I think most of the members of this
19 committee that the activities of the 40 Committee have been
20 relatively negligible in authorizing these operations.

21 We are trying to get the information to see whether
22 anybody ever really argues about these things, to see whether
23 anybody votes no on these things, to see whether the 40
24 Committee is a reality or a rubber stamp.

25 Mr. Aspin. We had some information as of yesterday on this,

1 I mean partial, and did some more come in since our
2 meeting yesterday on this subpoena?

3 Mr. Field. Mr. Aspin, I think the last document I was
4 referring to gave us an example of what came in since
5 yesterday. They added the words in the column "The Meeting"
6 and "CIA," meaning it was a meeting and not telephonic vote,
7 and that it was a CIA proposal.

8 That is already in the memo we have that is heavily
9 deleted. It did not add any information. Someone made some
10 handwritten notes in the columns. They only did it for
11 a few years. That is all we have had in addition.

12 Mr. Aspin. So basically they have sent just a few
13 pieces of paper and lots of deletions? Is that the situation?

14 Mr. Field. What you have in front of you is all that was
15 sent. All they did yesterday is add a few handwritten comments
16 which repeated what you have. They did not add any
17 information.

18 Chairman Pike. Mr. Aspin, I do think you have raised
19 a question which we ought to face up to right now as to
20 the weakness of our own position. That is that no matter what
21 we do in the contempt rule they can always purge themselves
22 of contempt by providing substantial compliance. What I suspect
23 we are going to get is the dribble treatment.

24 We are going to get a piece of paper next week and
25 another piece of paper the week after that and they will



1 say now we are in substantial compliance. I think this
2 exercise will probably go on until the day we reach the
3 House Floor, and it will go on after we reach the House Floor.


4 Mr. Aspin. There is a further problem in that I don't
5 think we know all the documents we are talking about.
6 So I don't think we know at any given point at what
7 percentage of compliance they are. Do we have a very good
8 idea in this case and in the other case, the SALT case,
9 do we have a pretty good idea of what there is, the totality
10 of what we are after?

11 Mr. Field. Mr. Aspin, in this case we have an excellent
12 idea. What we are after is exactly what you have in front
13 of you, these documents. There has never been any disagreement
14 on that.

15 Mr. Aspin. The SALT thing is more vague, but as far
16 as this is concerned, this is clear.

17 Mr. Field. We want these documents in their entirety.
18 That is very simple.

19 Mr. Johnson. This is one time I emphatically disagree
20 with the Chairman when he said this could be a fuzzy, gray
21 area. I defy anybody to go down there and look at these
22 things and say there is even attempted compliance or a partial
23 compliance. To me this is a matter of pure black and
24 white because unless you can say delivering blank pieces
25 of paper constitutes some form of fuzzifying up the issues
I ask you to go through here roughly. Here are some examples;



1 "The CIA paper on covert support was approved blank."

2 Chairman Pike. You can't read that. That is stamped
3 secret.

4 Mr. Johnson. I'm sorry if I disclosed a grave
5 national secret. But I ask you to go through this as I did.
6 Maybe I have just disclosed something I could be prosecuted
7 for, but that is the character of all this stuff stamped
8 "Secret, Eyes Only," and there is not any way you can make
9 heads or tails out of anything we have had as a lot of
10 background information.

11 You cannot identify any of it. It is nonsense.

12 Mr. Aspin. The gentleman is absolutely correct. There
13 is no way in which you can say there is substantial compliance
14 with what we have. In the first case, the case of the
15 resolution we just voted, there was not even an attempt
16 at compliance. In this case there is some feeble attempt
17 and I guess in the SALT case there is some information.
18 But the question is the question that the Chairman asked:
19 When is there substantial compliance and what is substantial
20 compliance. I think that is the point we are kind of operating
21 against. I think there is widespread agreement of all
22 Members of this committee that there is not compliance at this
23 point, clearly.

24 Chairman Pike. Mr. Dellums.

25 Mr. Dellums. Mr. Chairman, I would like to offer



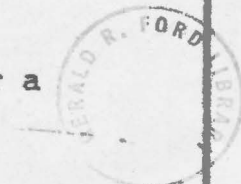
1 the following resolution: Resolved, That the Speaker of the
2 House of Representatives certify the report of the Select
3 Committee on Intelligence of the House of Representatives
4 as to the contumacious conduct of Henry A. Kissinger,
5 as Assistant to the President for National Security Affairs,
6 in failing and refusing to produce certain materials in
7 compliance with a subpoena duces tecum of said Select Committee,
8 described in said subpoena as all 40 Committee and predecessor
9 committee records of decisions taken since January 20, 1965, re-
10 flecting approvals of covert action projects, which subpoena was
11 served upon the Assistant to the President for National Security
12 Affairs, who was then and there Henry A. Kissinger, and as
13 ordered by the Select Committee, together with all the facts
14 in connection therewith, under the seal of the House of
15 Representatives, to the United States Attorney for the District
16 of Columbia, to the end that the said Henry A. Kissinger, as
17 Assistant to the President for National Security Affairs,
18 may be proceeded against in the manner and form provided by
19 law."

20 Chairman Pike. Mr. Dellums, you are entitled to five
21 minutes. I think we all understand the issue.

22 Mr. Dellums. I yield back the balance of my time.

23 Chairman Pike. Mr. Kasten, did you wish to offer
24 a substitute?

25 Mr. Kasten. Mr. Chairman, I would like to offer a



1 motion in the nature of a substitute. "Resolved, That the
2 House of Representatives considers the work of the Select
3 Committee on Intelligence to be necessary to the investigation
4 which the House is resolved to make concerning intelligence
5 operations and considers noncompliance with the subpoenas,
6 issued either before or after the adoption of this
7 resolution by the Select Committee on Intelligence, to be a
8 grave matter requiring appropriate enforcement.

9 Section 2. That Henry A. Kissinger, Secretary of
10 State, is directed to provide forthwith to the Select
11 Committee on Intelligence of the House of Representatives the
12 items specified in the schedule attached to and made part
13 of the subpoena issued to Henry A. Kissinger, Secretary
14 of State, under authority of the House of Representatives
15 and dated November 6, 1975, to wit, all 40 Committee and
16 predecessors committee records of decisions taken since
17 January 20, 1965, reflecting approvals of covert action
18 projects."

19 Mr. Chairman, the reasons for this motion are similar to
20 the reasons that I gave for my substitute previously.
21 I yield back the balance of my time.

22 Chairman Pike. Mr. McClory.

23 Mr. McClory. Mr. Chairman, I want to express myself
24 in this way: I think the information we are seeking is
25 vital and necessary to the work of this committee. I don't



1 think we need to have every secret bit of information
2 involved in these but to have the material so meaningless
3 because of deletions hampers the work of the committee.
4 I still would feel that we can get additional information.
5 I'm going to support Mr. Kasten's substitute in the hope
6 that that will have the effect of producing the additional
7 information.

8 It is the information we require, not the precise document,
9 not every last detail, but we have to know how this intelligence
10 community operates, whether it is operating according to a
11 pattern, whether it is operating in a slipshod way or
12 in an ad hoc way.

13 We cannot come up with a responsible recommendation
14 unless we have the information.

15 Mr. Kasten. Would you yield?

16 Mr. McClory. I will be happy to yield.

17 Mr. Kasten. I just want to disagree with the gentleman
18 from Illinois. In no way do I intend for my resolution to
19 ask for or request any lesser degree of compliance or of
20 information or of cooperation. It is my strong feeling that
21 we should have the information that we are asking for, that we
22 should have compliance with the subpoenas that we have
23 issued. My objection is not that they can give us
24 less information. My objection is only that I feel that
25 the contempt citation or the contempt resolution is inappropriate

1 at this time. But in no way do I feel that we should
2 have less information available to our committee for the
3 important work of our committee.

4 Mr. McClory. Let me say that I'm sure the gentleman
5 does not suggest that we should identify sources or that we
6 should get into the business of techniques that may be
7 employed or involve any exchanges with other countries or
8 with diplomatic exchanges or things of that nature.

9 I would just condition my statement in that I think
10 there are exceptions. It is the information we want. It is
11 not the precise form. It is not just because it is secret
12 that we want it; it is because it is the manner in which the
13 community operates that we require this.

14 Mr. Johnson. Would the gentleman yield?

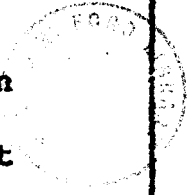
15 Mr. McClory. Yes.

16 Mr. Johnson. Would you agree with me, Mr. McClory, that
17 the subpoena which you offered, in which you requested
18 all 40 Committee and predecessor committee records of decisions
19 taken has not been complied with in any fashion.

20 Mr. McClory. The form I look at does not mean very much
21 to me. I think we need substantial additional information.

22 Chairman Pike. Mr. Aspin.

23 Mr. Aspin. It is tough to vote against these Rasten
24 substitute resolutions. I think almost everything of what
25 he says is correct. His political judgment about what is



1 possible to do, I think, is absolutely right. The only
2 problem that I have with him is the timing.

3 The House of Representatives, the Rules Committee,
4 is closed down for the year. They just say they cannot
5 give rules to anybody else because they are so backed
6 up that anything else would not get on the Floor.

7 What we are up against is the fact that we have to report
8 this thing by the end of January. That means that if we have
9 to go through this thing twice, it is not going to happen.
10 I have a feeling that if we pass only a resolution of necessity
11 the other side will know that we cannot go through that thing
12 again.

13 In spite of how big a vote, and I am sure Mr. Kasten
14 is right, we will have a bigger vote for a resolution
15 of necessity than we will for contempt, but even if we get
16 a bigger vote, they know we have a time deadline and cannot
17 go through the cycle again. It is too bad because I think
18 what he is saying is the right way to go but the circumstances
19 are different.

20 Chairman Pike. If an issue had been raised like this
21 several months ago, I would have attempted to go that
22 route rather than this myself.

23 Mr. Treen.

24 Mr. Treen. I would like to ask a couple of questions
25 of counsel.

1 Do the Administration people say this is the extent
2 of what we are going to get? Are there present efforts
3 to furnish additional information to work out a basis
4 of supplying information or what?

5 Chairman Pike. I would like to respond to that.
6 It has been indicated to me that I would be permitted to go
7 down and look at these documents. That is not satisfactory
8 to me. We subpoenaed these documents for the committee.
9 One of the difficulties which my predecessor had was that he
10 was in possession of information which the rest of the
11 committee did not have. This Chairman has made it clear from
12 the outset that when we subpoena documents for the committee
13 and when there is information which the committee feels
14 it is essential that the committee have, I am not going
15 to look at the information and deprive the rest of the
16 committee of it.

17 Mr. Treen. Mr. Chairman, I don't quarrel with you on
18 that point at all. I would not want to get myself in that
19 position if I were chairman, either. My question is really
20 directed to whether or not there are efforts being made now
21 and any suggestions by the Administration that more
22 information would be forthcoming, or is this it?

23 Is this the extent of it?

24 First of all, have the respondents to the subpoena
25 said this is it, this is all you are going to get?

1 Mr. Field. Mr. Treen, we are continually talking.

2 There is all sorts of talk that is going around, but
3 there has been no physical evidence, no hard event, or any
4 change in the type of information that we are going to get
5 for all this week.

6 Mr. Treen. I understand that you worked on this
7 with representatives of the respondents over the weekend
8 and have been working on it pretty full-time?

9 Mr. Field. That is correct.

10 Mr. Treen. But have they indicated that you are not going
11 to get any more?

12 Mr. Field. We have tried repeatedly to get even small
13 bits more, even characterizations of things.

14 Mr. Treen. Have they said this is it, you are not
15 going to get anymore? Have they told you that yet?

16 Mr. Field. They keep asking if we cannot work things
17 out but --

18 Mr. Treen. I just wanted to know.

19 Chairman Pike. Mr. Treen, they always indicate that
20 they are going to be fully cooperative. They always indicate
21 that they are going to cooperate to the hilt. But this
22 was a subpoena and it was returnable last Tuesday and this is
23 what we got.

24 Mr. Treen. I understand that. There were five
25 subpoenas for a great deal of information. I am trying

1 to find out if they are having a pragmatic problem
2 of getting information together, of working things out
3 with you, or are the respondents advancing any notions that
4 the committee should not have the information because
5 of extra special sensitivity or things of that sort?

6 I am trying to find out if it is a practical problem.

7 Mr. Field. First of all, it is not a practical
8 problem. This set of documents has existed in entirety
9 since we began. Both of us knew about them. There was no
10 problem of pulling them out of files or anything.

11 The problem has been how much. In our private conversations
12 it has gotten down to the point they just don't want
13 to give us that information. In a non-legal sense, that is
14 what it gets down to.

15 Mr. Treen. Have they advanced any suggestions or notions
16 that extra sensitive matters are going to be revealed to
17 this committee as a reason for not wanting to furnish more
18 information?

19 Mr. Field. Not in any specific case. We already are
20 in possession of similar documents in this series which
21 are probably as sensitive as any that are in this type
22 of category. So there is no specific case where they would say
23 this is just too sensitive. It is just the bulk of materials
24 that they do not want to turn over to the committees.

25 Mr. Treen. A parliamentary inquiry, Mr. Chairman:

1 Would a motion be in order now or after the pending
2 resolution to call the respondent or representatives of the
3 respondent to testify as to the alleged non-compliance?
4 When would that be in order? I have no notion that that would
5 succeed, but when would such a motion be in order?

6 Chairman Pike. Since we are all agreed that it is not
7 going to succeed, I think it would be in order at any
8 time.

9 Mr. Treen. I make the motion at this time as a
10 substitute for the pending resolution.

11 Chairman Pike. The pending resolution is Mr. Kasten's
12 resolution.

13 Mr. Treen. Right, that one, and the basic resolution
14 that action be deferred on the resolution and the substitute
15 resolution until an opportunity has been afforded within
16 the next two working days for the respondent of the
17 subpoena to explain the reasons for the alleged non-compliance.

18 Chairman Pike. All those in favor of the motion made
19 by the gentleman from Louisiana, signify by saying aye.

20 (Chorus of ayes.)

21 Chairman Pike. Contrary, no.

22 (Chorus of noes.)

23 Chairman Pike. The noes appears to have it. The motion
24 is not agreed to. The question is on the resolution in
25 the nature of a substitute offered by Mr. Kasten. Those in

1 favor of the resolution signify by saying aye.

2 (Chorus of ayes.)

3 Chairman Pike. Contrary, no.

4 (Chorus of noes.)

5 Chairman Pike. The noes appear to have it.

6 The substitute is not agreed to.

7 The question is on the resolution offered by the
8 gentleman from California, Mr. Dellums; the Clerk will
9 call the roll.

10 The Clerk: Mr. Giaimo.

11 Chairman Pike. Mr. Giaimo votes aye by proxy.

12 The Clerk. Mr. Stanton.

13 Chairman Pike. Mr. Stanton votes aye by proxy.

14 The Clerk. Mr. Dellums.

15 Mr. Dellums. Aye.

16 The Clerk. Mr. Murphy.

17 Chairman Pike. Mr. Murphy votes aye by proxy.

18 The Clerk. Mr. Aspin.

19 Mr. Aspin. Aye.

20 The Clerk. Mr. Hayes.

21 Mr. Hayes. Aye.

22 The Clerk. Mr. Lehman.

23 Chairman Pike. Mr. Lehman votes aye by proxy.

24 The Clerk. Mr. McClory.

25 Mr. McClory. No.

The Clerk. Mr. Treen.



1 Mr. Treen. No.

2 The Clerk. Mr. Kasten.

3 Mr. Kasten. Aye.

4 The Clerk. Mr. Johnson.

5 Mr. Johnson. Aye.

6 The Clerk. Mr. Chairman.

7 Chairman Pike. Aye.

8 By a vote of ten ayes and two nays, the resolution is
9 agreed to.

10 Mr. McClory.

11 Mr. McClory. Mr. Chairman, I ask leave to read into
12 the record at this point a short letter from George E. Aldrich,
13 Acting Legal Adviser to the Department of State.

14 Chairman Pike. Is this the letter which I just
15 saw Mr. Leppert come up to the committee table and deliver
16 to Mr. Donner and then walk out that door and then come
17 back in that door over there?

18 Mr. McClory. It may well be.

19 "Dear Mr. Chairman:

20 "The Secretary of State has been instructed by the
21 President respectfully to decline compliance with your subpoena
22 to the Secretary of November 6, 1975, for the reason that it
23 would be contrary to the public interest and incompatible
24 with the sound functioning of the Executive Branch to
25 produce the documents requested.

"The subpoena sought all documents relating to

1 State Department recommending covert action made to the
2 National Security Council and the Forty Committee and its
3 predecessor committees from January 20, 1961, to present.
4 The committee staff has made clear that this is intended to
5 cover recommendations originating with the State Department.
6 An examination of our records has disclosed ten such documents,
7 dating from the period 1962 through 1972. These consist
8 of recommendations from officials in the State Department,
9 sometimes the Secretary of State, to the Forty Committee or its
10 predecessor, 303 Committee, or to the President himself in
11 connection with consideration by one of those committees.

12 "The documents in question, in addition to disclosing
13 highly sensitive military and foreign affairs assessments
14 and evaluations, disclose the consultation process involving
15 advice and recommendations of advisers to former Presidents,
16 made to them directly or to committees composed of their
17 closest aides and counselors.

18 "Therefore, I advise you that the Secretary of
19 State is declining to comply with such subpoena on the
20 basis of the President's assertion of Executive privilege.
21 Sincerely, George H. Aldrich, Acting Legal Adviser to the
22 Department of State."

23 Mr. Chairman, I ask permission to have this inserted
24 in the record.

25 Chairman Pike. It has just been inserted in the record.

1 Mr. Field, would you proceed with the next item
2 which is the non-compliance with the subpoena addressed
3 to the SALT document?

4 Mr. Field. Thank you, Mr. Chairman. This is Subpoena
5 No. 5, which was issued on November 11. It is the subpoena
6 the committee refers to as the SALT document. It is addressed
7 to the Assistant to the President for National Security
8 Affairs who again is Dr. Kissinger. Now as of yesterday,
9 Mr. Chairman, the committee had been provided with a set
10 of pamphlets which I showed to the committee yesterday,
11 about an inch and a half thick. We had been told repeatedly
12 that that was all that the National Security Council had
13 in its possession relating to SALT I compliance. It
14 turns out that upon reviewing their files, that was not all that
15 the National Security Council had. So last night the White
16 House delivered to the committee additional materials.
17 If you will refer to your briefing books, you will see
18 a good portion of the materials in your book.

19 What you will see in your book are primarily either
20 newspaper articles or CIA analysis of newspaper articles.
21 The first is an analysis of an Aviation Week article.
22 The next, I believe, is a reprint.

23 Chairman Pike. Mr. Field, I would suggest to you that you
24 are now reading from top secret documents. I think you must
25 be very careful.

1 Mr. Field. I am just checking, Mr. Chairman, to see
2 if the actual articles are stamped top secret. The article
3 by Tad Schultz is not stamped top secret. We have
4 had a copy of that. There is an analysis of that article
5 by the CIA. That was a substantial portion of materials
6 provided last night. The rest of them are contained
7 here. I have about another half inch of materials. This morning
8 we interviewed under oath Major Daniel Christman, who is a
9 staff member of the National Security Council. He is the
10 principal National Security Council staff officer in
11 charge of SALT compliance.

12 We asked him to identify the types of materials which
13 he would have in his files at the National Security Council
14 with respect to SALT compliance. He described a Soviet
15 compliance file which he said was some two feet thick. Of
16 that perhaps a quarter inch to a half inch of materials
17 have been provided to this committee. The remaining
18 materials in that file apparently are primarily Standing
19 Consultative Commission records which is the Commission
20 that meets in Geneva to register complaints with the
21 Soviets. There are memos and documents related to that.

22 We specifically subpoenaed those materials as they
23 were provided to the National Security Council. Those
24 records, some 12 or 18 inches of them, were in fact
25 provided to the National Security Council by the Standing

1 Consultative Commission. In addition, he testified
2 that there are letters and memos from Director Colby and
3 Deputy Secretary of Defense Clements to the National
4 Security Council on SALT compliance that have not been
5 provided to this committee, that there are written
6 briefings in the DCI that have been given to the National
7 Security Council and the verification panel that have not been
8 provided to this committee.

9 I might point out that among other things there is
10 the United States Intelligence Board white paper on SALT
11 compliance in 1975 that has been used to brief Congress, but
12 it was not provided to this committee pursuant to our
13 subpoena. Our subpoena did cover intelligence community materials
14 provided to the National Security Council. The USIB is a
15 member of the intelligence community staff and would fall
16 directly within the subpoena. There are option papers
17 from the intelligence agencies containing SALT
18 compliance analyses that have not been provided to this
19 committee. There are intelligence dailies and digests
20 containing SALT compliance information which are in the
21 possession of the National Security Council and have not
22 been provided to this committee and that would fall
23 within the purview of our subpoena. In addition, there
24 is a verification panel on the National Security Council,
25 whose sole responsibility is to verify when a possible

1 violation comes over from the intelligence community's
2 monitoring groups.

3 There is a restricted working group which is a sub-group
4 of the verification panel. The verification panel meetings,
5 the memos, some of which come from the intelligence community
6 in preparation for those meetings, the meeting memos
7 themselves, the minutes of those meetings, any decision
8 memos coming out of them, have not been provided to this
9 committee. The memos circulated by the restricted working
10 group of which the CIA, DIA, NSA, and the State Department
11 are all members and therefore memos coming from various
12 members of the intelligence community to the National Security
13 Council which is where the restricted working group resides,
14 have not been provided this committee. There has not been
15 one single piece of paper from either the restricted working
16 group or the verification panel which has been provided to
17 this committee.

18 Based upon that information, as well as information
19 we received from the source agencies, the CIA particularly,
20 including such things as National Security Council complaints,
21 which have been forwarded to the monitoring groups in the
22 intelligence community and on which there has been
23 correspondence back and forth, none of which we have seen,
24 I would say that there is a substantial amount of information
25 residing in the National Security Council files that has

1 not been provided to this committee pursuant to
2 our subpoena.
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1 Chairman Pike. Mr. Kasten?

2 Mr. Kasten. Why has not that information been provided
3 to our committee?

4 Mr. Field. This morning when we were interviewing Major
5 Christman he began to bring up the questions of, "Well, of
6 course the National Security Council is advisor to the
7 President, et cetera." We began to address to him, "Are you
8 therefore implying there is Executive privilege?" The
9 transcript will be available shortly. But I cut it off because
10 I did not feel it was up to us to get into a discussion with
11 Major Christman, who is not an attorney, as to whether exec-
12 utive privilege was being asserted. That is the only discussion
13 I have ever had.

14 It is hard to have a discussion with anybody else about
15 it because they fairly consistently maintain there are no
16 other files relating to compliance.

17 Mr. Kasten. Up until this morning hadn't we been told
18 there were no files such as you are describing to us? Haven't
19 we been told this, that these files do not exist, by repre-
20 sentatives of the National Security Council?

21 Mr. Field. We had been told that categorically. Two days
22 ago Colonel McFarland maintained very specifically that the
23 initial documents we recieved were all that the National
24 Security Council had with respect to compliance. We now see
25 additional materials including some of the newspaper articles
analyses which do pertain to compliance and which were in

1 their possession which were not provided. So we are now
2 at the point where the additional materials are all there.

3 Mr. Kasten. Is there any question in your mind that the
4 materials that were described by the person you interviewed
5 this morning are in the possession of the National Security
6 Council? Are you sure that they are there and our subpoena
7 is in the correct form? Is it possible that the materials
8 he is describing are in existence but not available at the
9 National Security Council?

10 Mr. Field. Mr. Kasten, Major Christman was describing
11 to us the materials that are in his files at the National
12 Security Council. He is one of let's say seven people who
13 are working on this.

14 Mr. Kasten. Thank you, Mr. Chairman.

15 Chairman Pike. Is there any further discussion?

16 Mr. Dellums?

17 Mr. Dellums. I would like to move the following resolution,
18 Mr. Chairman.

19 Resolved, That the Speaker of the House of Representatives
20 certify the report of the Select Committee on Intelligence of
21 the House of Representatives as to the contumacious conduct
22 of Henry A. Kissinger, as Assistant to the President for
23 National Security Affairs, in failing and refusing to produce
24 certain pertinent materials in compliance with a subpoena duces
25 tecum of said Select Committee; described in said subpoena as

1 all documents furnished to the National Security Council as
2 relating to adherence to the provisions of the Strategic Arms
3 Limitation Agreement of 1972 and the Vladivostok Agreement of
4 1974; which subpoena was served upon the Assistant to the
5 President for National Security Affairs, who was then and
6 there Henry A. Kissinger, and as ordered by the Select Committee,
7 together with all the facts in connection therewith, under the
8 seal of the House of Representatives, to the United States
9 Attorney for the District of Columbia, to the end that the
10 said Henry A. Kissinger, as Assistant to the President for
11 National Security Affairs, may be proceeded against in the
12 manner and form provided by law.

13 Chairman Pike. Mr. Kasten?

14 Mr. Kasten. Mr. Chairman, at this time I had intended
15 to offer a resolution in the nature of a substitute. But
16 based on the information that was provided by our staff and
17 information that I personally have been made aware of over
18 the past three or four days and consultation with the repre-
19 sentatives of the Administration and National Security Council,
20 I think my resolution of necessity would not be appropriate
21 and I would support the resolution of the gentleman from
22 California.

23 Chairman Pike. Mr. Treen?

24 Mr. Treen. First of all I want to ask a question of
25 counsel and perhaps the Chairman can also enlighten me on this.

1 In this area, and I raised this question from the time we
2 took up the subpoena, the areas of the SALT compliance which
3 we all recognize to be an extremely important thing and I
4 certainly do as a member of the Armed Services Committee, I
5 think this is a most fundamental question that could be of
6 greatest importance of any issue we have been into yet. What
7 are we trying to get into here?

8 Are we trying to get at the quality of our intelligence-
9 gathering with respect to verification?

10 Are we trying to get at the question of whether or not
11 this intelligence gets to our top policy makers?

12 Are we trying to get at the basic question of what our top
13 policy makers ought to be doing in this area, all of which
14 are interesting questions. But what are we trying to get at
15 here now?

16 Mr. Field. To be as specific as possible, I think we are
17 trying to determine whether or not the predispositions of
18 policy makers may in some fashion influence intelligence.

19 Mr. Treen. In other words that intelligence would be
20 arranged or distorted to fit what the policy makers want? Is
21 that right?

22 Mr. Field. That is correct.

23 Mr. Treen. Do we have any indication that any of this
24 information with regard to SALT compliance is not reaching
25 the President of the United States, either this one or

1 the previous President?

2 Mr. Field. Those are pretty dangerous questions to ask.
3 If I said we had that indication I might be giving too much
4 credibility to a small piece of information. In light of
5 the general interest in the subject I would rather discuss
6 it personally with you if you would like to go over what we
7 have been told, what we are looking at and that kind of thing.

8 Mr. Treen. I can understand the sensitivity of the
9 whole thing. Again, the mandate of this Committee is to
10 determine if we are getting our money's worth with our
11 intelligence, is the intelligence apparatus working properly
12 and is this getting to our top policy makers. I am vitally
13 interested in that question. In fact I would hope that we
14 could maybe have a committee of Congress, if we run out of
15 time on it, to investigate just that question, whether or not
16 we are having SALT compliance. That is extremely important.
17 Again I wonder a little bit whether it is within our mandate
18 if we are getting to the question of what the President may
19 be deciding on the basis of that intelligence that is not
20 within our purview.

21 Chairman Pike. Mr. Treen, if you would yield, I think
22 we have a rather legitimate area of inquiry, in addition to
23 the question of whether the intelligence is being slanted, as
24 to not whether proper objective intelligence is getting to
25 the President alone but whether it is getting to Congress.

1 Mr. Treen. Well, I agree with you because I think we
2 need to have some oversight on SALT compliance in this
3 Congress. Let me ask one other question, Mr. Chairman. Do
4 the respondents to the subpoena here indicate that they are
5 having a pragmatic problem because of time or for any other
6 reason they are unable to gather the information we have
7 requested or do you believe we have now gotten all we are
8 going to get?

9 Mr. Field. They seem to be having a lot of problems but
10 we get no indication as of right now that there is anything
11 additional coming to us.

12 Mr. Treen. Pragmatic problems as well as the question
13 of whether they want to give us the information, would you say
14 in both categories?

15 Mr. Field. First they don't seem to be able to locate
16 their files which seems somewhat incredible. Secondly, we
17 are asked to believe that they just don't keep records of
18 major events in their own existence.

19 Mr. Treen. Mr. Chairman, I don't care who this may
20 ultimately embarrass, but I think we ought to have a record
21 of the efforts to comply with this subpoena. If they don't
22 know where records are, I would agree that is incredible, if
23 that is true. I think perhaps we ought to have a record before
24 we go to the Floor on this particular resolution. Therefore
25 I would offer a motion, if the Chair will entertain it, at

1 this time, to defer action for two working days on the
2 pending resolution until we have the opportunity to question
3 respondents or the representatives of the respondents with
4 regard to compliance with the subpoena.

5 Chairman Pike. I would like to speak in opposition to
6 your motion for this reason. I think we have a pretty good
7 record. Mr. Field has stated that he and Mr. Donner went
8 down to the White House and were told that there were no other
9 documents than the United States Information Board summaries
10 which had been provided to this committee.

11 Mr. Treen. Would you yield?

12 Chairman Pike. Certainly.

13 Mr. Treen. They said they are not in existence or they
14 didn't have them?

15 Chairman Pike. They said there were none. It was rather
16 obvious to both Mr. Field and Mr. Donner that this was an
17 incredible statement and therefore being incredible they did
18 not believe it. The fact of the matter is that Mr. Donner
19 and Mr. Field were correct, they had not been told the truth.

20 The White House has now miraculously found some documents
21 and we have been given a handful of them. They are very
22 sensitive documents. There is no question about it. They are
23 tremendously sensitive documents. But it is a tremendously
24 important issue in which I think that Congress, as that
25 consumer of intelligence responsible for raising and supporting

1 armies and providing and maintaining a Navy, has equal
2 right to with the President.

3 Mr. Treen. I agree with you on that point.

4 Chairman Pike. I don't think we need any additional
5 time to demonstrate that as to this issue they have simply
6 not told the truth. They have in effect admitted that they did
7 not tell the truth and when I say "they" that is not fair.
8 A man did not tell the truth but he was the man who was
9 given the responsibility of cooperating with this committee.

10 Mr. Treen. Would the Chairman yield?

11 Chairman Pike. Certainly.

12 M r. Treen. That is exactly the point. We say "a man".
13 We don't know what his authority was.

14 Chairman Pike. Colonel McFarland.

15 Mr. Treen. We don't know what his authority and responsi-
16 bility was.

17 Chairman Pike. We know that.

18 Mr. Treen. But when we go to the Floor and this comes
19 up for argument we are going to be talking about what someone
20 told us. Sometimes it will be hearsay in the first instance
21 and hearsay in the second instance. It would seem to me no
22 matter what side we end up on on this issue, and you may find
23 me right with you on this one Mr. Chairman, that it makes
24 sense to have the record by these witnesses, the respondent
25 himself even, as to what was done to comply, why they have not

1 complied, the explanations for the alleged misstatements to the
2 staff of this committee. All of that ought to be in the
3 record. Otherwise I don't think you can really point to it
4 officially when you go to the Rules Committee or when you go
5 to the Floor.

6 Chairman Pike. Mr. Hayes?

7 Mr. Hayes. I would respectfully submit that it is not
8 our burden to show cause as to why the subpoenas have not
9 been complied with. That is the burden of those to whom the
10 subpoenas were directed.

11 Mr. Treen. Would the gentleman yield on that point?

12 Mr. Hayes. Yes.

13 Mr. Treen. That is exactly the purpose of my motion,
14 Mr. Hayes, to have someone come here and put on the record
15 why there has not been compliance so we will have that for
16 the entire Congress.

17 Mr. Hayes. But the problem with that is, Mr. Treen, that
18 it is beyond the scope of any kind of procedure that I am
19 familiar with in seeking out information. Certainly we have
20 the discretion, probably, to ignore our own subpoenas, which
21 is one of the options described by the Chairman. But we
22 get ourselves into just exactly that fix, ignoring our own
23 subpoena and using our discretion to say we really didn't mean
24 it at all. In the past I have supported resolutions here to
25 accept as a form of compliance some rather shaky bits of

1 compliance. It is not that I don't feel I have gone completely
2 out of my way to do that and exercise what I think is the
3 extreme limit of the discretion of the committee and the
4 extreme limit of my own discretion as a member of the committee
5 in casting that vote. But we are in the position today of
6 saying that we should make a record and that we should go
7 down and instruct those persons to whom the subpoenas were
8 directed on how to do that. I think the best course of action
9 for this committee or any committee of Congress to take is
10 to direct our subpoena and make them as specific as possible --
11 I was one who was flashing the whip-handle to get those things
12 as specific as possible -- and then come back and be willing and
13 ready to enforce those.

14 I think the Executive is perfectly capable. They have a
15 good budget and a lot of talent down there. Surely those
16 distinguished gentlemen to whom we have directed these sub-
17 poenas can in fact get the kind of help they need to show
18 cause as to why they could not comply.

19 Mr. Treen. If you will yield, you touched upon the
20 problem when you said "show cause." This is not a judicial
21 procedure. In a judicial proceeding there would be an
22 opportunity for the respondents to show cause why they had not
23 responded to a subpoena. The basis of that is pure logic
24 that the judge must have the opportunity on the record, with
25 testimony under oath, to determine why there has not been

1 compliance. Although we are not required to do that, I
2 agree 100 percent. It seems to me that the underlying
3 principle of the judicial process with respect to the enforce-
4 ment of subpoenas should apply here in order to give the judge,
5 which in this sense will be the House of Representatives, the
6 opportunity to see what the respondent says.

7 Chairman Pike. Mr. Treen, obviously, one, if you look
8 at the language of the resolutions which Mr. Dellums has
9 offered what we are asking is that a report be certified and
10 there must be a report and there will be a report and the
11 last item of business today will be, I hope, that the
12 committee will authorize the filing of such a report and the
13 reports will in fact be filed. I believe that they will be
14 adequately specific as to what has happened.

15 The question is on the motion of the gentleman from
16 Louisiana, Mr. Treen. All those in favor of the motion
17 signify by saying aye.

18 (Chorus of ayes.)

19 Chairman Pike. Contrary, no.

20 (Chorus of noes.)

21 Chairman Pike. The noes appear to have it. The motion
22 is not agreed to.

23 The question is on the resolution offered by the gentleman
24 from California, Mr. Dellums. The Clerk will call the roll.

25 The Clerk. Mr. Giaino?

1 Chairman Pike. Mr. Giaimo votes aye by proxy.

2 The Clerk. Mr. Stanton?

3 Chairman Pike. Mr. Stanton votes aye by proxy.

4 The Clerk. Mr. Dellums?

5 Mr. Dellums. Aye.

6 The Clerk. Mr. Murphy?

7 Chairman Pike. Mr. Murphy votes aye by proxy.

8 The Clerk. Mr. Aspin?

9 Mr. Aspin. Aye.

10 The Clerk. Mr. Hayes?

11 Mr. Hayes. Aye.

12 The Clerk. Mr. Lehman?

13 Chairman Pike. Mr. Lehman votes aye by proxy.

14 The Clerk. Mr. McClory?

15 Mr. McClory. No.

16 The Clerk. Mr. Treen?

17 Mr. Treen. Present.

18 The Clerk. Mr. Kasten?

19 Mr. Kasten. Aye.

20 The Clerk. Mr. Johnson?

21 Mr. Johnson. Aye.

22 The Clerk. Mr. Chairman?

23 Chairman Pike. Aye.

24 By a vote of 10 ayes and 1 nay and 1 present the
25 resolution is agreed to. I request that the staff be instructed

1 to file a report and that the Chairman be requested to go to
2 the Rules Committee and ask for a rule on this.

3 Mr. Aspin. Will we have an opportunity to see the
4 report?

5 Chairman Pike. You will have all the opportunity you
6 wish to look at the report. I had not planned additional
7 meetings for the purpose of approving the report. It will be
8 a report in the normal course of business. There will be the
9 usual opportunity for Minority views if the Minority wants
10 to write Minority views.

11 Mr. Aspin. Could you give us assurances so that we
12 could read it before it is in final form?

13 Mr. Field. Mr. Chairman, I think our rules require
14 five calendar days excluding Saturdays and Sundays so we will
15 be working toward next Friday.

16 Mr. Treen. Is that from today?

17 Chairman Pike. From right now.

18 Mr. Treen. First of all, I do want to serve notice
19 that I want to file Minority views. Secondly, will we have
20 the five days from the time the report is put together.

21 Chairman Pike. No. The five days will start as of now.

22 Mr. Aspin. Today is not within the five days?

23 Chairman Pike. No. Today is not within the five days.

24 Let me correct that. Either today is not or the one on the
25 other end is not. There are five days, just the way you count

1 five days on a calendar.

2 Mr. Johnson. Isn't there a 24-hour time limit for
3 Minority views to be prepared after the Majority report is
4 prepared? There is an additional time.

5 Chairman Pike. I can only state in all humility that
6 I am not precisely sure of what the rights of the Minority
7 are. But I can assure you that they will be obeyed and
8 protected.

9 Mr. Johnson. We are operating under the House rules.

10 Chairman Pike. Yes, we are and we will continue to do
11 so.

12 Mr. Treen. Mr. Chairman, that is five legislative days?

13 Mr. Field. Five calendar days, excluding Saturdays and
14 Sundays from the time the Committee gives notice to file a
15 report, which would be a few minutes ago.

16 Mr. Treen. We have only four legislative days, assuming the
17 recess resolution is adopted. So we would run out of time and
18 next Friday would be the last day that we could file. In
19 view of the fact that we are going to be in recess, Mr.
20 Chairman, I urge a request that we be given an opportunity to
21 file the report and/or the Minority views as of the first
22 day that we return, Monday, December 1.

23 Chairman Pike. The Chair simply cannot agree with that.
24 That sets us back another whole week.

25 Mr. Treen. No, Mr. Chairman. We are not in session.

1 Chairman Pike. We will follow the rules of the House.
2 If the rules of the House require that it be delayed until
3 after the recess, that will be done. If the rules of the
4 House do not require that it be delayed until after the
5 recess, that will not be done.

6 Mr. Treen. One further inquiry, Mr. Chairman. If the
7 rule then is that the report may not be filed until December 1,
8 because the fifth legislative day will be this Friday and
9 we are not in session, will the other members of the committee
10 have the right to file their supplementary views up until
11 let's say the 30th of November?

12 Chairman Pike. As I said to Mr. Johnson earlier, I
13 will follow the rules. I can't tell you offhand precisely
14 what you are entitled to --

15 Mr. Treen. We are going to get only what we are legally
16 entitled to, although we are going to be in recess? Is that
17 what the Chairman says?

18 Chairman Pike. The Chairman is saying you will get what
19 you are legally entitled to and if the recess comes out of
20 that entitlement you will get more than the Chair really
21 wishes. If it does not, you won't.

22 I think we have to keep moving on this for it to be
23 real. If we try to delay it until after the recess --

24 Mr. Treen. If Congress is not going to be in session why
25 not give us an opportunity to use that recess period to file

1 what is going to be filed on December 1.

2 Chairman Pike. The Chair is really trying to cooperate with
3 the gentleman. You know today what you are going to say. You
4 know you are not going to change your views much between now
5 and December 1. There will be adequate opportunity for you
6 to present Minority views.

7 Without objection the report will be filed, the Minority
8 will have appropriate time to present Minority views and
9 the staff will be in touch with the individual members as to
10 what the appropriate time will be.

11 The Committee stands in recess until 10:00 a.m. Tuesday
12 morning.

13 (Whereupon, at 12:02 p.m., the Committee recessed.)

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