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**DECLASSIFIED****E.O. 13526 (as amended) SEC 3.3**MR # 09-01; #1NSC letter 3/19/72By dal NARA, Date 5/29/82

THE WHITE HOUSE

WASHINGTON

September 2, 1975

TOP SECRET

MEMORANDUM FOR THE PRESIDENT

FROM:

PHILIP W. BUCHEN *P.W.B.*

SUBJECT:

Documents Subpoenaed by the Senate Select  
Committee on Intelligence ActivitiesI. BACKGROUND

The Committee on August 12 subpoenaed me to produce on August 25 (later postponed to August 27) all materials held by the White House, including those within the Nixon Presidential materials, on:

- A. Activities during the period September 1 to November 3, 1970, directed toward preventing Salvador Allende from assuming the office of President of Chile, including minutes of Forty Committee meetings;
- B. Activities during the period April 1 - December 31, 1970, relating to the so-called Huston Plan and the Intelligence Evaluation Committee.

Certain of the materials subpoenaed are not covered by the Court restraining order, because they exist in NSC institutional files rather than in the Nixon Presidential materials. Among them are Forty Committee minutes and supporting documents which I could have produced on August 27 if it had not been that:

- A. Brent Scowcroft urged me to decline to do so on the grounds that Forty Committee materials constitute a record of confidential deliberations and recommendations to the President and fall clearly within the doctrine of Executive Privilege, and I agreed;




- B. You on the morning of August 27, when Brent and I met with you, concurred that I should refuse to provide such documents.

## II. MY MEETING WITH THE COMMITTEE

When I met with the Committee later the morning of August 27, I made these points:

1. The Forty Committee materials did not relate to "Track II" which was the covert operation for bringing about a military coup that resulted in the attempted kidnapping and the death on October 22, 1970, of Chilean General Schneider, who was opposed to perpetrating a coup, and, therefore, they could not be relevant to the Committee's inquiry into that event;
2. You had agreed to have all materials relating to alleged assassination plots furnished to the Committee (even though the materials may have involved confidential advice to a President) but the Schneider death did not involve an assassination plot and, even if it did, it was the result of an operation not approved by the Forty Committee;
3. Outside of materials involving an assassination plot or other alleged wrongdoing, you were not willing to have documents furnished to the Committee which revealed confidential advise to a President and, therefore, the Forty Committee minutes covered by the subpoena would not be furnished.

To my surprise, Chairman Church was able to represent to me that HAK when he testified before the Committee on August 12, 1975, had said the Forty Committee minutes did have a bearing on Track II. I had to admit I had no knowledge of what HAK may have said in that regard and I would have to check with him when he returned from the Mideast. I stated that whatever he had said might lead to reconsideration of the decision to decline furnishing copies to the Committee.



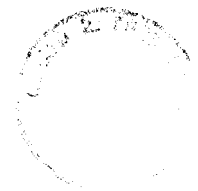
Not until afterwards did I find that Brent had received a transcript of HAK's testimony before the Committee, and he has since given it to me. My reading of this testimony now indicates that the position I took before the Committee, which I said was by your authority, had been undercut way in advance by HAK in his sworn testimony to the Committee on August 12.

### III. TESTIMONY OF HAK

HAK in his testimony started out by making the points that the Chilean effort in 1970 was "not an assassination effort" (p. 5) and later that "no plot was generated that even indirectly aimed at Allende" (p. 32). However, he did make these points:

1. The meeting of September 15, 1970, (when President Nixon in the presence of HAK, John Mitchell, and Helms instituted Track II to be conducted without informing the State Department or DoD) "has to be seen in the context of two previous meetings of the Forty Committee on September 8th and 14th in which the Forty Committee was to look at the pros and cons and the problems and prospects of a Chilean military coup to be organized with the United States assistance. "
2. When asked if he could assist in obtaining for the Senate Committee the Forty Committee minutes, he said "I leave that decision entirely to the individuals at the White House who have been designated as your contacts. I never advised them as to what to turn over or not to turn over, and I abide totally by their decisions. I personally have no objection to your receiving the minutes . . . of these meetings, and I have no objection to your saying this to Mr. Hills. "

In general HAK argued that the policy of instigating a military coup was consistent with Forty Committee policy, that implementing this policy was the purpose of Track II, that the tactics of implementation



as devised by the CIA were not approved by higher authority but the CIA could reasonably have assumed it had the authority for its actions and, if specific approval had been sought for what actually was done, it probably would have been given by HAK.

The Committee also questioned HAK about the Nixon "Special Files" which, of course, are covered by the Court restraining order. He denied knowledge of them but, when responding to a comment about the Committee's need for access to them, he said: "It would be at least an interesting reflection of what was considered special by the people who established the files." (p. 47). He also indicated he would not resist having the NSC staff determine how meaningful the Nixon special files might be to the Committee and would advise the Committee if it could be done (p. 47-48).

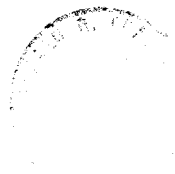
#### IV. MATTERS FOR YOUR DECISION

On the Huston plan documents, all of which are in the Nixon collection, and on those materials related to Chile which are likewise in the Nixon collection, we can continue maintaining that until the trial court in the Nixon documents case authorizes our search, we are unable to respond to the subpoena for these materials. However, I am close to working out an accommodation with the former President's counsel to provide so much of these materials as may be readily located. This step would avoid further delays and the necessity, if the court rules to authorize a search, of having to make an exhaustive, time-consuming search. I recommend your authorizing me to present to the Select Committee whatever helpful arrangements I can work out in this regard.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

On the matter of furnishing Forty Committee minutes and supporting documents related to Chile in the period September 1 to November 3, 1970, I recommend the second of the following two options:

Option #1: To abide by your view of August 27, 1975, that the Forty Committee minutes and supporting documents relating to Chile in 1970 should not be turned over to the Senate Committee.



Pros

It would be consistent with a policy of not waiving Executive Privilege for any similar documents in other connections, except when substantial charges of wrongdoing are involved.

Cons

The charge will be made that you are protecting the Nixon Administration even though you were willing to furnish minutes of comparable meetings during the Kennedy Administration which related to Cuba when, as part of the planning against Castro, assassination possibilities were discussed and led to actual but unsuccessful plotting.

The charge will be made that you are being more restrictive than HAK has stated to the Committee is necessary when he is a national security and foreign affairs expert and was himself involved.

I will continue to be exposed to enforcement of the subpoena, and in these unique circumstances a court may reject our reason for not furnishing those particular documents.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

Option #2: To furnish the minutes and supporting documents relating to Chile and advise the Committee that we are doing so only because certain members of the Committee see a resemblance between events in Chile under the Nixon Administration and alleged plots to assassinate foreign leaders occurring in earlier administrations, and that similar confidential documents will not ordinarily be given in other circumstances no matter which President was involved.

Pros

The charges of your favoring former President Nixon and my risks under the subpoena will be avoided.

Senators Tower and Goldwater will have a better chance of convincing other Committee members that the Chile operation in 1970 did not involve an assassination plot and should not be dealt with in the Committee report on that subject. The fact that the full documentation is before the Committee will eliminate any arguable suspicions that assassination-plotting might have been part of the U. S. policy toward Chile in 1970.

Cons

It will probably become more difficult in the future to resist furnishing confidential NSC and Forty Committee minutes under other circumstances.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

Attachments



MR 94-135, #12 CIA Hr. 6/17/98

9 September 1970

By KBH, NARA, Date 7/22/98

MEMORANDUM FOR THE RECORD

SUBJECT: Minutes of the Meeting of the 40 Committee, 8 September 1970

PRESENT: Mr. Kissinger, Mr. Mitchell, Mr. Packard, Mr. Johnson,  
Admiral Moorer, and Mr. Helms

Mr. Charles A. Meyer, Mr. Viron P. Vaky, Mr. William McAfee,  
Mr. Thomas Karamessines, and Mr. William Broe were also  
present.

Chile

a. The Chairman opened the meeting with a reference to Ambassador Korry's excellent cable of 7 September 1970 and asked for an analysis of where prospects now stand for taking any kind of action which might successfully preclude Allende assuming the presidency of Chile following his garnering of a plurality of the popular vote in the elections on 4 September.

b. Mr. Broe summarized the situation and highlighted some of the points in Ambassador Korry's cable. He noted that Korry is attempting to maintain flexibility and that there is some, but not much, fluidity in the situation. He pointed out that Frei is an essential cog to success in any action, congressional or military, to frustrate an Allende take-over and that Ambassador Korry is very pessimistic about the prospects of Frei doing much more than deploring Allende's electoral victory. He concluded that it is still too early to decide on a given course of action and suggested that the Embassy and CIA field elements be requested during the next week to probe all possible aspects of feasible actions and forward recommendations as to what might be done.

c. In the lively discussion which followed, there was general agreement that more time to assess the situation was essential. It was also agreed that there is now little likelihood of success in the previously proposed operation to influence the 24 October congressional run-off election against Allende.

d. Mr. Helms, noting that congressional action against Allende was not likely to succeed, offered his personal observation that once Allende is in office it is predictable that the Chilean opposition to him will disintegrate and collapse rapidly. He expressed the view that Allende will quickly neutralize the military and police after which there will be no effective rallying point for opposition against him. Without advocating it as a course of action, he observed that a military golpe



against Allende would have little chance of success unless undertaken soon. He stated that even then there is no positive assurance of success because of the apolitical history of the military in Chile and the presence of Allende supporters in various military elements.

e. Mr. Packard was also strongly of the view that any effective military action to prevent Allende from assuming the presidency would have to occur in the very near future. He expressed the hope that the Chilean military leaders would undertake such action soon on their own initiative.

f. Messrs. Johnson and Meyer pointed out that if Allende's election is frustrated by a military take-over, there is a strong likelihood that his supporters would take to the streets and plunge the country into full-scale civil war. They felt that Allende was possibly the lesser of two evils. They suggested that Frei should be strongly counseled to start immediately building an effective political opposition for the future before important individuals who would constitute that opposition might decide to leave the country.

g. The Chairman and Mr. Mitchell expressed considerable skepticism that once Allende is in the presidency there will be anyone capable of organizing any real counterforce against him.

h. In accord with the agreement of those present, the Chairman directed that the Embassy be immediately requested for a cold-blooded assessment of:

- (1) the pros and cons and problems and prospects involved should a Chilean military coup be organized now with U.S. assistance, and
- (2) the pros and cons and problems and prospects involved in organizing an effective future Chilean opposition to Allende.

i. The Chairman stated that these assessments and recommendations should be available in time for 40 Committee consideration in a meeting to be convened on 14 September.

*Frank M. Chapin*  
Frank M. Chapin

Distribution

Mr. Mitchell  
Mr. Packard  
Mr. Johnson  
Admiral Moorer  
Mr. Helms

22 October 1971

## MEMORANDUM FOR THE RECORD

SUBJECT: 40 Committee Decisions

Due to the illness of the Executive Secretary and the absence of detailed minutes, the following decisions are hereby recorded for the official record:

Meeting: 14 September 1970

Present: Mr. Kissinger, Mr. Mitchell, Mr. Packard, Mr. Johnson, Admiral Moorer and Mr. Helms.

Messrs. Charles A. Meyer, William McAfee, Viron P. Vaky, Thomas Karamessines, and William Broe were also present.

Subjects: (1) Chile - Review of Political and Military Options in Chilean Electoral Situation

The 40 Committee approved \$250,000 for use at Ambassador Korry's discretion in supporting President Frei and the PDC and other sympathetic elements.

(2) See Special Minute for additional item.

Meeting: 21 September 1970

Present: Executive Secretary did not attend.

Subject: Chile - Discussion regarding Chile elections.Meeting: 24 September 1970

Present: Mr. Kissinger, Mr. Packard, Mr. Johnson, and Mr. Helms.

Mr. William Broe was present for Item 1.

Mr. Marshall Green, Mr. William Nelson, and Mr. James Wilson were present for Item 2.

Mr. Thomas Karamessines was present for both items.

Subjects: (1) Chile - Conversation between Chilean President Eduardo Frei and Jorge Silva, Director of El Mercurio, on 22 September

Group discussion

DECLASSIFIED  
E.O. 12958 Sec. 3.6

LR 94-155, #13 CIA 15r 6/17/98

By KBH NARA, Date 7/22/98

THE WHITE HOUSE

WASHINGTON

September 8, 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: PHILIP BUCHEN

*P.W.B.*

After learning that Jack and his friend would be going to the Superior National Forest in Minnesota and talking with you, I contacted Stu Knight. He and I first contacted John R. McGuire, Chief of the Forest Service, and he referred us to James Torrence who is Superintendent of the Superior National Forest and whose office is in Duluth, Minnesota (218-727-6692). He indicated that he would be sure the Ranger Station at Ely, Minnesota did obtain Jack's trip plans and that the information would be made available to the Secret Service Office in Minnesota with a copy to the Washington Office.

He also said that the Rangers along Jack's route would be able to make casual contact with him on each day unless Jack should deviate from the route. Each contact would be reported back to me and if on any day no contact could be made, I would be so advised.

The Forest Service was advised to keep Jack's presence in the Forest confidential and not to make it apparent to Jack that the Rangers were checking on his progress.

We will also be notified if the press in the area picks up the story of Jack's presence or if there are any inquiries from newsmen. However, the fact that he is in the area may now become known because he stopped in Cocotte, Minnesota this afternoon to cash a check and a call came to the Secret Service

here to verify his identity. I will keep you advised of further developments.

To confirm the schedule I gave you, Jack plans to be back in the vicinity of Ely, Minnesota on September 16. He will drive to Minneapolis on the 17th to return the car he borrowed from Steve Bloomer and will be returning to Washington on a NorthWest Airlines flight that night which arrives in Washington about 8:09 p.m.



THE WHITE HOUSE  
WASHINGTON

*Class  
Chrom*

September 8, 1975

MEMORANDUM FOR:

HENRY A. KISSINGER

FROM:

PHILIP BUCHEN

*P.W.B.*

SUBJECT:

Requirements of Section 662(a),  
The Foreign Assistance Act of  
1961, as Amended, Concerning  
Expenditures for Certain CIA  
Operations

1. The Statutory Provision

Section 662 of the Foreign Assistance Act of 1961, as Amended (22 U.S.C.A., Sec. 2422) reads in its entirety as follows:

- (a) No funds appropriated under the authority of this chapter or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives.
- (b) The provisions of subsection (a) of this section shall not apply during military operations initiated by the United States under a declaration of war approved by the Congress or an exercise of powers by the President under the War Powers Resolution.



The required finding by the President

(a) When it must be made

The statute makes a finding by the President a condition precedent to the expenditure of funds for an operation that is covered by the statute. Therefore, no funds should be expended until after the President has made his finding.

(b) What the finding should be

The President must find for each operation that it is "important to the national security of the United States."

(c) How the finding should be made

As a matter of good practice, it should be in writing, signed by the President and should be supported by documents which the President has reviewed and which give a description and scope of the proposed operation and give a basis for determining that the proposed operation is important to the national security of the United States.

(d) Dissemination of finding

There appears to be no requirement under Section 662 (a) that the President's written finding must be furnished to the appropriate Committees of the Congress; only that "a description and scope" of the operation covered by the finding be reported to such Committees. Before Section 662 was added to the Act in 1974, there was a more general provision about Presidential findings, namely Section 654 (22 U.S.C.A. Sec. 2414). It relates only to cases where the "President is required to make a report ... concerning any finding or determination" under the Act. Then the following provision appears in Subsection (c) in respect to such a Presidential finding.

"[It] shall be published in the Federal Register as soon as practicable after it has been reduced to writing and signed by the President. In any case in which the President concludes that such publication would be harmful to the national



security of the United States, only a statement that a determination or finding has been made by the President, including the name and section of the Act under which it was made, shall be published."

This section was tailored to the situation where the finding itself was to be reported to Congress, and it does not cover the situation under Section 662 where the reporting requirements deal not with the finding itself or the basis on which it has been made, but with a description of the operation which follows from the finding.

Moreover, in the case of findings under the new Section 662 even a public disclosure that a finding was made under that section would itself be harmful to the national security and would vitiate the President's authority to have the CIA carry out covert operations. Public notice that a finding has been made in the context of known developments or events within a particular country would inevitably allow inferences as to the location and purpose of the planned covert operation, even though the published notice did not by itself disclose such information.

It is evident from the legislative history of Section 662 that it was a sui generis provision, that it was conceived and adopted without consideration of any other provisions in the Act, that its purpose was to provide information for only the jurisdictional committees concerned with CIA operations and the respective Senate and House Committees on Foreign Relations and on Foreign Affairs, and that even for the particular committees to be involved "the quality or the detail or the minutia" of the report would be up to the President (Congressional Record of October 2, 1974, p. S.18063-5; House Conference Report 93-1610 of December 17, 1974 on S. 3394 at pp. 42-3). In the Conference Report, it was stated:



"The committee of conference agreed that strict measures should be taken to insure maximum security of the information submitted to the Congress pursuant to this provision."

Such measures would be in vain if the existence of a covert operation became known through a publication requirement of any kind as provided in Section 654.

Therefore, it is concluded that the purpose and effect of Section 654 conflicts with Section 662, with the intent of Congress when it enacted the latter section, and with the right and authority of the President in the protection of national security and the conduct of foreign affairs. Consequently, there exists no dissemination or publication requirement for a finding by the President under Section 662.

3. The required reports by the President to the appropriate Committees of the Congress

(a) When they must be made

Section 662 was added in 1974 to the Foreign Assistance Act. The attached memorandum from the CIA makes a convincing argument for interpreting the words "reports, in a timely fashion" to mean that the act of reporting is not a condition precedent to expenditure of funds. It deals with the ambiguity created by the words "unless and until" which precede the verb "finds" and the verb "reports" but which cannot apply to both verbs without rendering nugatory the next words "in timely fashion." It resolves this ambiguity by concluding that the words "in timely fashion" give to the reporting requirement a status different from the finding requirement so as to allow reports to be made after the start of expenditures. This is certainly a valid interpretation, and it allows for reasonable time to include all the appropriate committees as recipients of the required reports. For purposes of demonstrating good faith compliance with these reporting requirements, the report of each operation



should be made with due and deliberate speed. The Chairman of each Committee should be notified of a finding by the President as soon as secure communication to him is possible, along with information as to the nature and location of the operation sufficient to permit the Chairman to judge how quickly he may want the "description and scope" to be reported. This method should satisfy the "timely fashion" requirement for each intended recipient of such a report, without in any way conceding that the report must precede the initiation of expenditures.

(b) The recipients of the reports

The language in Section 662 which specifies the recipients of reports is: "appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives." The history of the legislation indicates that beyond the two committees expressly included, the other committees (or subcommittees) were at the time of enactment intended to be "the present Armed Services Committees and the present Subcommittees handling the oversight of matters of intelligence and the CIA," the latter being subcommittees of the respective Senate and House Appropriations Committees (Congressional Record of October 2, 1974, p.5, S.18064). Since then the Senate and House have each created Select Committees with authority which includes investigation of the extent of, and necessity for, covert intelligence activities in foreign countries. However, these are committees of limited duration which have not supplanted in oversight of intelligence matters the previously established and continuing committees serving this purpose. While the Select Committees may be entitled to the same information, this particular statute does not appear to require their inclusion as recipient of timely reports on each new operation covered by Section 662.

(c) Who is to report

Section 662 requires the President to report, but there is nothing to prevent him from delegating his authority and responsibility in that regard, as he has done, to the Director of CIA. It may be better practice in the future to have the President, when he makes a written finding, delegate in writing to the Director the authority and responsibility to make the required reports.

(d) Form and content of reports

The reports have to provide "a description and scope" of each operation. According to the legislative history, and as has been accepted in practice, the reports may be oral. Also, in the process of the Congressional debates the words "detailed description of the nature and scope" were deliberately changed to allow latitude on the part of the President. (See Congressional Record of October 2, 1974 at S.18063-4).

(e) Record of reports

Apart from whatever record each recipient committee may make of each report, it will be good practice for the Director of CIA to provide a full record for the President of the time, nature and scope of each preliminary approach and ultimate report made pursuant to Section 662.

cc: William Colby  
Jim Lynn

MEMORANDUM

SUBJECT: Legislative History Surrounding Reporting Requirement  
for Covert Action Expenditures (P.L. 93-559, Section 32)

Question: Is the reporting to appropriate committees of the Congress of the Presidential finding a condition precedent to the expenditure of funds?

Answer: No. To interpret new Section 662 of the Foreign Assistance Act of 1961, as amended, in this fashion would require that no force or effect be given to the adverbial phrase, "in a timely fashion," which modifies the verb "reports" in the legislation. Various versions of the provision during its legislative processing in the Congress clearly established a condition precedent requirement in one case relating to the Presidential finding and in the other case relating to both the finding and the report, yet the conferees chose to reject such formulations with respect to the reporting requirement imposed in the provision, as outlined below:

A. Senate Version - Made the finding and the reporting both a condition precedent to the expenditure for funds for covert actions by using the phrase, "if, but not before," as the full modifier. (See attachment A)

B. House Committee - Such expenditures were prohibited "unless" there was a Presidential finding to be reported "in a timely fashion." In giving any meaningful reading to these words, one must conclude that the word "unless" modifies the finding requirement and the phrase "in a timely fashion" modifies the reporting requirement. Clearly, the House Committee version no longer has a single modifier as the earlier Senate version.  
(See attachment B)



C. House Floor.

1) There was some concern that the word "unless" did not impose a condition precedent of the Presidential finding before covert action funds could be expended. This led to the adoption of an amendment so that the modifier applying to the Presidential finding became "unless and until."

2) In a colloquy designed to bring out the meaning of the provision, the provision was:

a) Characterized as "restraining certain operations of CIA to those "important to the national security and in a timely fashion they are obliged to bring to the notice of Congress any activities in which the CIA may be engaged in..." (Emphasis added)

b) Was further characterized as carrying out and providing a further statutory basis for an understanding between the Secretary of State, the Director of Central Intelligence and the committee reporting the provision to report to that committee actions in which the Agency was engaged. Such a report was not a condition precedent to engage in such activities but to keep the committee informed of intelligence activities relating to foreign policy. (A similar requirement was subsequently approved as a special oversight function of the Committee on Foreign Affairs.) (See attachment C)

D. Conference - There were several versions of language before the conferees:

1) The Senate version clearly established Presidential finding and reporting as a condition precedent to the expenditure of funds.

2) The House version clearly imposed by the words "unless and until" such a condition precedent only with respect to the finding, not with respect to the reporting, if we are to follow rules of statutory construction designed to give meaning to words used, i. e., "reports, in a timely fashion."

3) Finally, the House conferees were aware that the reporting requirement was similar to a procedure worked out by the committee reporting the legislation and Executive Branch officials which in itself had been recently incorporated into the new rules of the House of Representatives. There is no evidence that these procedures or rules contemplated any reporting to the committee prior to the undertaking of action. In fact, the colloquy referred to above indicates the opposite to be the understanding.

E. Procedures After Enactment - The six committees of Congress receiving reporting under this provision of law realize that they are getting reporting after the fact but in a "timely fashion." One of the members of these committees has introduced a bill which among other things makes it clear that the reporting must be accomplished prior to the commencement of the activities, in recognition that the current law does not so provide. (See attachment D)

THE WHITE HOUSE

WASHINGTON

September 10, 1975

*(Handwritten)*  
Chron

MEMORANDUM FOR:           JEANNE DAVIS  
FROM:                       PHILIP BUCHEN *P.W.B.*  
SUBJECT:                    FOIA Appeal by Mr. William Beecher

In response to your memorandum of August 28, 1975, concerning Mr. William Beecher's FOIA appeal for documents concerning himself, we have conferred with the Office of Legal Counsel at the Department of Justice. Your withholding of the internal memorandum (at Tab F) containing the recommendations of an NSC staff member is proper under 5 U.S.C. 552(b)(5). With respect to NSSM3 placed in Mr. Beecher's file by DOD, we agree with you that it does not appear to be relevant. However, you should indicate in your response that a classified document which neither directly or indirectly refers to him was forwarded to the NSC by DOD, and because it is not relevant, you have not reviewed it for FOIA purposes.

With respect to the memorandum at Tab D, there is no basis to claim that this document sent to you by DOD falls under the court order in Nixon v. Sampson, et al. However, we do believe that there is a basis for withholding this document apart from the matter of its classification. This memorandum represents communications between the President and his close personal advisers, and as such, is not subject to the FOIA (see House Report No. 93-1380, 93d Congress, 2d Session, p. 15). Moreover, the nature of the document is such that we believe it is exempt from disclosure in accordance with 5 U.S.C. 552(b)(5). On the basis of its internal nature, we recommend that this type of document generally not be released.


If you have any additional questions in this regard, please do not hesitate to contact me.



SECRET ATTACHMENTS

August 28, 1975

FREEDOM OF INFORMATION ACT APPEAL

MEMORANDUM FOR: PHILIP W. BUCHEN  
FROM: Jeanne W. Davis   
SUBJECT: Mr. William Beecher Request  
for Information on Himself

In early July the NSC received a request from Mr. William Beecher (Tab A) for information in NSC files concerning him. In response to this request we reviewed the NSC files and also the papers from President Nixon's files in the second floor vault for any NSC papers which might refer to Beecher.

Because Beecher was involved in the public disclosure of the U. S. position at the SALT negotiations, which resulted in an extensive investigation within the Executive Branch, we knew that we had files relating to him and the newspaper articles he had written. Until we had located and examined the documents, however, we didn't know whether the documents were NSC papers or papers from the White House Office of the Assistant to the President for National Security Affairs. After we reviewed the materials we had collected and were able to determine that almost all of them were White House documents, we addressed our review of Mr. Beecher's FOIA request to the documents properly a part of the NSC files.

While Mr. Beecher's request of July 1 was under consideration, we received from the Department of Defense a referral (Tab B) containing NSC/WH documents they had retrieved from their files in response to an FOIA request Beecher had directed to them. Defense asked that we review the documents and respond directly to Beecher.

One of the documents retrieved in Beecher's file by Defense is National Security Study Memorandum (NSSM) 3 (Tab C) concerning

SECRET ATTACHMENTS

U. S. Military Posture and in no way refers to Beecher, by name or otherwise. The second document is a Secret/Eyes Only November 1969 memorandum from Mr. Kissinger to the Secretaries of State and Defense (Tab D) conveying the President's order of an embargo on discussions of U. S. troop withdrawals. Clearly, it is a document which emanated from the White House, is not contained in NSC files, and should be categorized as being among the Nixon materials subject to the order of the Court.

In my letter of August 1, 1975 to Mr. Beecher (Tab E) I indicated that we had located in NSC files and reviewed two documents which referred to a meeting he had with an NSC Staff member one of which we released to him. The other document (Tab F) is a memorandum from the NSC Staff member to Mr. Kissinger recommending further action on Mr. Beecher's request for information on strategic planning. This document contains nothing more than the personal advice of one of our staff members and we informed Mr. Beecher that it was being withheld under 5 U. S. C. 552 (b)(5). At that time I also informed Mr. Beecher that we had identified other materials which refer to him but that these records are part of President Nixon's papers and are not subject to review in response to a request under the FOIA.

Mr. Beecher has now appealed (Tab G) the NSC Staff decision to withhold one of the NSC documents we reviewed in response to his request and Secretary Kissinger must respond to this appeal by September 10.

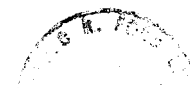
Before we forward this appeal, along with the NSC Staff recommendations, to Mr. Kissinger for review we would like your guidance on three points relating to this request:

1. Although there is no substantive objection to the release of the memorandum (Tab F) containing the recommendations of an NSC Staff member, we are reluctant to set a precedent of releasing such internal communications and thus would like to know if this document has properly been and should continue to be withheld under 5 U. S. C. 552 (b)(5).
2. NSSM 3 (Tab C) in no way refers to Mr. Beecher although it was referred by Defense as one of the documents they have in their file on Beecher. Because Defense believes it pertains to Beecher, does the NSC Staff have to review the NSSM for release and so inform Beecher, or may we declare that it does not fall under his request since it does not refer to him?



3. Under the FOIA, must we review a document referred from another agency when the same document would have been excluded from our own review, specifically in the case of the memorandum at Tab D which is a record from the Nixon Administration?

We would appreciate your thoughts on these matters and your recommendations on how we should handle the Beecher appeal.



TOP SECRET/SENSITIVE

THE WHITE HOUSE

WASHINGTON

September 16, 1975

*Classified  
Chen*

MEMORANDUM FOR: BRENT SCOWCROFT

FROM: PHILIP BUCHEN

*T.W.B.*

Attached is a "Top Secret/Sensitive" document from Attorney General Levi to the President.

Kindly see that this is staffed to the appropriate parties so it can go to the President for action with the necessary comments.

In view of the urgency for changing our procedures in this respect, I urge quick action.

Attachment

UNCLASSIFIED UPON REMOVAL  
OF CLASSIFIED ATTACHMENTS

TOP SECRET/SENSITIVE

*[Faint circular stamp]*

THE WHITE HOUSE

WASHINGTON

September 18, 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: PHILIP BUCHEN *T.W.B.*

Henry A. Berliner, Jr., Chairman of the Commission on Judicial Disabilities and Tenure, reported to me this morning that the Commission will have its written evaluation concerning Superior Court Judge Charles W. Halleck ready for delivery to me in your behalf about the middle of Friday afternoon, September 19. Shortly thereafter, the Commission wants to give a copy to Judge Halleck and to announce to the press that the Commission determines this candidate for reappointment to be qualified for another term.

If the Tenure Commission were to have found that the candidate was exceptionally well-qualified or well-qualified, then his term would be automatically extended. In the case of an unqualified determination, he would not have been eligible for reappointment.

However, in the case at hand, you have the option of whether or not to nominate the incumbent for reappointment, and if you do so, his nomination will be subject to consent of the Senate.

The candidate's term expires on October 20, 1975, and you should make your decision on the question of whether to nominate or not before that date. A prompt decision should be made, however, on whether to release to the press a copy of the Commission's submission to you. I understand it will be about four pages and will state wherein the Commission has found the candidate to have performed competently but will also relate instances where he appears to have violated the judicial canons of ethics.

Mr. Berliner recommends that we release copies of this submission promptly. He points out that otherwise the candidate himself may issue copies and in any event Members of the Commission may very well talk about its contents in a fragmented way to the press.

As you know, this Commission is not a Presidential Commission inasmuch as you appointed only one of seven members; although, your appointee was elected Chairman.

On balance, I would concur in Chairman Berliner's recommendation for immediate release of the submission to you.

APPROVE RELEASE \_\_\_\_\_

HOLD UNTIL MY RETURN FOR  
SUBSEQUENT DECISION \_\_\_\_\_



ADMINISTRATIVELY CONFIDENTIAL

THE WHITE HOUSE  
WASHINGTON

*Classified  
Conf.*

September 24, 1975

MEMORANDUM FOR: THE PRESIDENT  
FROM: PHILIP BUCHEN *P.W.B.*  
SUBJECT: Phillips Petroleum Contributions

Phillips Petroleum's report on illegal corporate contributions will probably be presented to the SEC either this Friday or next Monday. Included in the report will be a listing of Congressmen and Senators receiving cash contributions in 1970 and 1972. This listing has already been turned over to the Special Prosecutor and IRS, who have both apparently advised Phillips that they intend to take no further action. The report will indicate that Carstens Slack, Phillips' Washington Vice President, had no knowledge that corporate funds were used.

Therefore, the only question raised is what happened to the contributions to you in 1970 and 1972. Jack Mills advises that Slack recalls personally giving you a sealed envelope containing \$1,000 cash and his card in both of these years. Jack advises that the 1972 contribution apparently was made prior to April 7, the effective date of the Federal Election Campaign Act of 1971 (FECA), which required public disclosure of contributions in excess of \$100. We cannot identify the 1972 contribution in the 1972 FECA reports, (probably because it came before April 7, 1972) and cannot identify from your Michigan reports the contribution for either 1970 or 1972 because it did not go directly to a Michigan Committee).

After discussing this separately with Jack Mills and Benton Becker, it appears likely that you sent the money either to your D. C. Committee, the Republican Congressional Campaign Committee or the Boosters Club. A fourth possibility, but one which Benton feels

ADMINISTRATIVELY CONFIDENTIAL

*CONFIDENTIAL*

-2-

is less likely, is that you sent it directly to another candidate's campaign. Benton notes that your practice was to personally accept contributions only when your schedule permitted, and that you would then turn them over to Frank Meyer for disposition.

Reports by the Boosters Club and the Congressional Campaign Committee prior to April 7, 1972, were destroyed by the Clerk of the House after two years, and we were unable to find any copies still in existence. We could not identify this contribution in their 1972 FECA reports.

Your D. C. Committee was not required to disclose its contributors and their records have since been destroyed. The Senate Rules Committee report on your confirmation, apparently on the basis of deposit slips, states that the D. C. Committee received several cash contributions in both 1970 and 1972, in amounts equal to or greater than \$1,000. However, the Rules Committee was unable to identify the contributors. For your information, in 1970 the D. C. Committee apparently raised \$15,900, all of which was expended between August 27, 1970, and April 8, 1971. In 1972, the D. C. Committee expended \$49,855, of which \$38,216.61 was transferred on April 6, 1972 to the Ford for Congress Committee. The D. C. Committee ceased operations prior to April 7 and was therefore not subject to the FECA.

Should any inquiries be made to Ron Nessen on this matter, I recommend that he make the following comments:

1. The entire matter of your campaign financing was thoroughly explored and satisfactorily resolved in the course of the confirmation hearings.
2. He has discussed this with you and you indicated that as Minority Leader you received many contributions which, when not needed for your election efforts, were used to benefit other Congressional candidates, and were transferred to the Republican Congressional Campaign Committee, the Republican Boosters Club and the like. This has been a traditional practice of Congressional leaders in both parties. While you don't recall the specifics, this is probably what occurred here.

THE WHITE HOUSE

WASHINGTON

September 27, 1975

MEMORANDUM FOR:

DON RUMSFELD

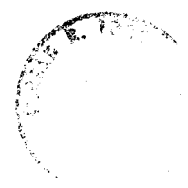
FROM:

PHIL BUCHEN *P.*

The only reason that the Halleck matter was taken up directly by me with the President (through two memos of mine to the President which were sent to you) was because the President had personally called me about certain sensitive aspects of this matter and because this was an unusual situation where an outside Commission was making a report to the President.

All other Presidential appointment matters we, of course, do handle with Doug Bennett's office and our relationships have been good.

*John  
(closed)*



MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

September 26, 1975

MEMORANDUM

FOR: PHIL BUCHEN  
FROM: DON RUMSFELD

As people come to you on personnel matters, I hope that, rather than dealing with the President or other people on the staff on those matters directly, you will see that they straight to Doug Bennett's office so that the President can deal with these things in an orderly way through the Personnel Shop as he desires.

The reason I mention this is because, apparently there was some confusion over the Halleck question.





October 4, 1975

List of Lawyers for Appointment Consideration

Executive Office of the President (EOP)

Cal Collier  
Mike Duval  
Jim Falk  
Judy Hope  
Charlie Leppert  
Peter McPherson  
Pat O'Donnell  
Dick Parsons  
Russ Rourke  
Robin West

Departments

Bob Aders	Under Secretary of Labor
Dick Albrecht	General Counsel, Treasury
Greg Austin	Interior Dept. candidate for GC
Jim Baker	Under Secretary of Commerce
John Barnum	Deputy Secretary of Transportation
Bob Bork	Solicitor General
* Bob Elliot	General Counsel, HUD
Lew Engman	Chairman, FTC
Kent Frizzell	Interior candidate for Under Secretary
Ed Hidalgo	Commerce candidate for GC
* Thomas Kauper	Assistant Attorney General
William Kilberg	Solicitor, Labor Dept.
Monroe Leigh	General Counsel, State
David Macdonald	Assistant Secretary of Treasury
* Nino Scalia	Assistant Attorney General
* Ed Schmults	Under Secretary of Treasury
William Taft	Secretary's Office - HEW
Richard Wiley	DOD candidate for GC

Outside

* William Baxter	* Charles Meyers
* Ray Clevenger	* Jim Mitchell
* William Condrell	Jack Pettit - formerly GC, FCC
* Hayden Crawford	* Sam Pierce
* David Gunning	* David Place
* Marc Leland	

\* Resumes attached

THE WHITE HOUSE

WASHINGTON

October 9, 1975

*copy*

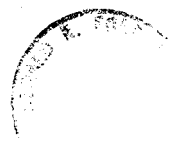
MEMORANDUM FOR: DON RUMSFELD  
THROUGH: PHIL BUCHEN *P*  
FROM: KEN LAZARUS *ke*  
SUBJECT: Statement by the President on  
Attempted Assassination in  
San Francisco

Attached is a statement which was developed on the bases of the President's recorded remarks which you forwarded to Mr. Buchen under date of September 25, and relevant excerpts from Secret Service reports.

The President should review the document as soon as practicable and, assuming it is complete and accurate, sign the statement and return it to the writer for distribution to the Criminal Division, FBI and Secret Service in accordance with their joint request.

Thank you.

Attachment



STATEMENT OF  
PRESIDENT GERALD R. FORD

I, Gerald R. Ford, President of the United States of America, pursuant to the joint request of the Criminal Division and the Federal Bureau of Investigation within the Department of Justice, submit the following:

1. During the afternoon of September 22, 1975, I was in the St. Francis Hotel, San Francisco, California.
2. At approximately 3:30 p. m., I left the hotel through the Post Street entrance.
3. I walked directly toward my limousine which was parked on the south side of Post Street adjacent to the hotel.
4. As I came within two or three feet of the limousine, I stopped momentarily, waiting for the door of the limousine to be opened by a Secret Service agent.
5. As the door of the limousine was being opened, I looked across to the north side of Post Street and waved to the crowd gathered there.
6. As I waved, I heard a noise which sounded like a gun shot. Almost instantaneously, several people pushed me down to the sidewalk.



7. At the direction of the Secret Service, I crawled the few feet into the limousine.

8. Two Secret Service agents, Ron Pontius and Jack Mechant, and my assistant, Donald Rumsfeld, crawled into the limousine on top of me. We all remained below window level.

9. I was immediately driven away from the scene in an easterly direction on Post Street and taken directly to San Francisco International Airport.

10. This is a complete and accurate statement of my recollections of the incident described above.

---

GERALD R. FORD

The White House  
Washington, D. C.  
October , 1975



THE WHITE HOUSE

WASHINGTON

October 9, 1975

*Classified  
10/10/75*

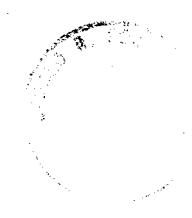
MEMORANDUM FOR: DOUG BENNETT  
FROM: PHIL BUCHEN *P.W.B.*  
SUBJECT: C. Sutton Mullen, Jr.  
Board of Directors, National  
Institute of Building Sciences

This office cannot concur in the nomination of Mr. Mullen because of his wife's holding in a business that is specifically barred by statute for members of this Board.

Mrs. Mullen owns an interest in Jones Newby Supply Company which installs air conditioning systems in private homes. It is an interest in a family business that she would not be willing to dispose of for the sake of her husband's participation on the Board of the National Institute of Building Sciences. Section 809(c)(1)(B) of the Housing and Community Development Act of 1974, P.L. 93-383, provides that the category of Board members for which Mr. Mullen is being considered --

"shall hold no financial interest or membership in nor be employed by, or receive other compensation from any company, association, or other group associated with the manufacture, distribution, installation, or maintenance of specialized building products, equipment, systems, subsystems, or other construction materials and techniques for which there are available substitutes."

Since this interest falls squarely within the category of interest prohibited by the statute, Mr. Mullen is disqualified from membership on the Board.



THE WHITE HOUSE

WASHINGTON

October 9, 1975

*Claude Kirk*

MEMORANDUM FOR: DOUG BENNETT  
FROM: PHIL BUCHEN *P.W.B.*  
SUBJECT: Jack Eckerd/Conflicts Review

The attached letter should be sent to Jack Eckerd when you announce his nomination.

The only matter of potential embarrassment of which we are aware stems from Mr. Eckerd's unsuccessful campaign for Governor against Claude Kirk in 1970.

Two allegations may be made. One is that his total campaign expenses exceeded the statutory limit of \$350,000. A suit was brought against Eckerd on the basis of this allegation but was dismissed as moot when he lost the election. Unfortunately, Mr. Eckerd failed to advise us of the litigation in response to our questionnaire and we only learned of it through our interview with him and the FBI file, which has delayed our final action. We have reviewed the file which appears to bear out his contention that there was no violation of the spending limit because the law was enacted in the middle of the campaign and was not intended to have retroactive effect. The alleged excess expenditures were based on cumulating expenses prior to the effective date of the act with those made afterward. This does not appear to be a problem.

The second allegation appears to have more substance. During that campaign, his campaign manager, without his knowledge, commissioned a book that was highly derogatory to Claude Kirk. When Eckerd learned of it, and read the book, he barred its sale at all of his drug stores. The problem arises from the failure to



report its cost as a campaign expense. Eckerd's campaign manager took the position that the book was an investment rather than a campaign expense and therefore did not report it as a campaign expenditure. Eckerd, himself, signed the statement of expenses -- presumably after he knew of the book -- apparently on the same theory. (We have not had a chance to discuss this with him because of his vacation.)

There is some conflict between the FBI interviews and the facts as related by Eckerd's lawyer, Norman Stallings, as to the precise amount of money that came from each of the different sources that financed the book. It appears undisputed, however, that the total cost of the book was financed in part by an anonymous person who treated it as an investment and did in fact recover his principal, but no profit, from the revenues of the book. Additional funds were supplied by the campaign manager, without Eckerd's knowledge, from Eckerd's private campaign fund which the manager was authorized to draw upon. Part, but not all, of the investment from Eckerd's own funds was recovered from revenues. The fund itself appears to have been entirely legal under Florida law. The failure to report the expense of the book as a campaign expenditure, however -- on the theory that it was an investment -- appears highly questionable. The statute of limitations has run on any offense that might arise from this reporting failure, but the subject has obviously potential for embarrassment during the hearings. Kirk has indicated his intention to raise the issue.

I suggest you discuss this with Eckerd. You should also mention to the President the controversial religious ad in his 1974 Senate campaign, which will undoubtedly receive some publicity.

THE WHITE HOUSE

WASHINGTON

October 9, 1975

Dear Mr. Eckerd:

The following will confirm our oral advice to you during our meeting of October 1, 1975 as to the actions you should take to avoid actual or apparent conflicts of interest in the performance of your duties as Administrator of the General Services Administration.

- (1) Resign as Chairman of the Board, Director and consultant to the Jack Eckerd Corporation.
- (2) Resign as Director of Southeast Banking Corporation.
- (3) Resign as Director of the Jack Eckerd Corporation employee pension and profit sharing plan.
- (4) Except for your holdings in the Jack Eckerd Corporation, place your personally held stocks, bonds and notes in a blind trust.
- (5) Except for her Jack Eckerd Corporation holdings, place your wife's stocks and bonds in a blind trust.
- (6) Resign as trustee of the Jack Eckerd Trust, the Nancy Eckerd Trust, the Kennedy Richard Eckerd Trust, and the J. Milton Eckerd Trust, and instruct the professional trustee to tell you nothing about the assets of these trusts just as if it were a blind trust for your own benefit.
- (7) Once in office, you should disqualify yourself from any matters coming before you that could impact on:
  - (a) the Jack Eckerd Corporation;
  - (b) your real estate holdings;
  - (c) the holders of your outstanding notes;
  - (d) the persons whose notes you hold;
  - (e) the Jack and Ruth Eckerd Foundation.
  - (f) Eckerd College



October 9, 1975

Page Two

This can be accomplished by a memorandum to a deputy specifying all such interests and instructing him to act in your place with respect to them. This memorandum can be drawn up by the GSA General Counsel. In addition, you should consult with the General Counsel prior to any changes in your investments once you are in office.

If either my staff or I can be of further assistance to you, please do not hesitate to call upon us.

With best wishes.

Sincerely,

A handwritten signature in cursive script that reads "Phil".

Philip W. Buchen  
Counsel to the President

Mr. Jack M. Eckerd  
Jack Eckerd Corporation  
2120 U. S. Highway 19 South  
Clearwater, Florida 33518



## NATIONAL SECURITY COUNCIL

71 SC

October 17, 1975

MEMORANDUM FOR PHILIP BUCHEN

FROM: Jeanne W. Davis *JWD*

SUBJECT: Correspondence on Rudolf Hess

Mr. Merrel Frazer, a U.S. attorney, has written the President asking him to help obtain Rudolph Hess' release from Spandau Prison (Tab B).

We have received the attached proposed reply prepared by the Department of State, in which we concur, for Roland Elliott's signature to Mr. Frazer. Because of the considerations of law involved, I would appreciate your concurrence in the proposed reply.

Concur \_\_\_\_\_ \*

As amended \_\_\_\_\_

October 20, 1975

\*Note: Mr. Frazer asked in the last paragraph of his letter to have the reply sent to him at several points throughout Europe rather than his home in Austin, Texas. Also, rather than have the letter go out over Roland Elliott's signature, I recommend that it go out over General Scowcroft's signature.

*P.W.B.*  
Philip Buchen



Mr. Merrel Frazer, Jr, JD  
Attorney and Counselor at Law  
P.O. Box 5302  
Austin, TX 78763

Dear Mr. Frazer:

The President has asked me to reply to your letter of September 20 concerning the continued imprisonment of Rudolf Hess.

As you point out in your letter, the United States, France and Great Britain would be willing to free Mr. Hess on humanitarian grounds. This has been the view of the Western Allies for a number of years, and the United States position on the release of Mr. Hess, who is over 80 and in failing health, has not changed. Nonetheless, the Three Western Powers are not free to release Mr. Hess without the consent of the Soviet Union.

Mr. Hess was tried and convicted by an international tribunal in which the United States was represented, and sentenced to life imprisonment. The United States continues to hold that the sentences imposed by the tribunal were reached in accordance with due process under its rules. The United States, the Soviet Union, the United Kingdom and France were jointly charged by the international tribunal with the responsibility of seeing that Mr. Hess' sentence was carried out. Under the terms of his imprisonment, Mr. Hess can be released only if all four powers agree.

The Three Western Allies have approached the Soviet Union on this subject on a number of occasions over the past decade. However, the Soviet government has consistently refused to agree to Mr. Hess' release. The Soviets claim that an early termination of Mr. Hess' sentence, who represents for them a symbol of the acts and crimes of Nazism, would be misunderstood by the Soviet people and by many people and countries around the world as signifying an amnesty for Nazi war crimes. We have no reason to believe that a further approach to them on this subject would be productive.

In view of four power responsibilities for Mr. Hess, I cannot agree that the Three Western Allies have the right to unilaterally release him from custody. Even in the unlikely event that France and the United Kingdom would agree to terminate Mr. Hess' imprisonment on this basis, it would not be in the interest of the United States to breach its four power obligations in this way, which would undoubtedly evoke a strong Soviet reaction and perhaps put in question four power rights and responsibilities for Berlin on which much of the Allied legal position concerning the city rests.

Perhaps I can reassure you on the question of American taxpayers bearing a financial burden as a result of Mr. Hess' imprisonment. Under the arrangements made for the occupation of Germany and Berlin after World War II, the Federal Republic of Germany bears the entire operating cost of Spandau Prison. No operational costs at the prison are borne by the United States government.

The United States guard contingent at Spandau Prison, which serves in rotation with guard contingents of the Soviet Union, the United Kingdom and France, is drawn from United States forces stationed in Berlin. These troops perform a variety of other duties in Berlin in addition to guarding the prison. Consequently, there are no special salary or other costs for American personnel directly related to the prison guard duty which they perform.

Sincerely,

cc: Mr. Frazer

c/o American Embassy, Paris

c/o United States Mission, Berlin

c/o American Consulate General, Munich





MERRELL FRAZER, JR., J. D.

ATTORNEY AND COUNSELOR AT LAW

P. O. BOX 5302

AUSTIN, TEXAS 78763

PHONE 512/478-9918

20. IX. 75.

THE HONORABLE GERALD FORD  
PRESIDENT OF THE UNITED STATES OF AMERICA  
THE WHITE HOUSE , 1600 PENNSYLVANIA AVE.  
WASHINGTON, D.C.



PERSONAL, PLEASE

Re: The Case of Rudolph Hess

My Dear Mr. President:

As an attorney and a duly qualified member of the State Bar of Texas I shall leave this country very shortly on a legal mission of extreme importance to the integrity and honor of our Anglo-American system of jurisprudence.

My mission is to assist Herr Wolf Rüdiger Hess of Munich, Germany to secure the release of his aging father, former Deputy Führer Rudolph Hess, from Spandau prison where he has been incarcerated since the Nurember Military War Crimes Trial of 1945-46. Herr Hess has, in fact, been a prisoner since May 10, 1941 when he flew to Great Britain.

What concerns me most as an international attorney is that this 81 year old unintelligible man has been held prisoner in the most inhumane conditions - illegally - since he was released as a prisoner of war in 1945. Moreover, the records of his case are replete with documented evidence that this prisoner suffered badly of mental disorders and would never have been convicted in any free society's legal system.

Herr Hess is the only man in the history of mankind to have been convicted of "crimes against peace" and there was never any precedent in international law under which to try and to convict him. For many years now, as you know, the three great Allied powers, Great Britain, France and the United States have been willing to free or to pardon Herr Hess; only the Soviet veto has blocked his release.

As a matter of international law, the very reasons for the existence of Spandau Prison evaporated in 1966 when the last of the Nazi war criminals were released, Albert Speer and Baldur von Schirach.

It is a blight on this land and upon our judicial system to continue to hold this helpless aged prisoner at Spandau when he could spend his few remaining years (or months) with his wife and son. Further, I am reliably informed that the cost to this government each year for maintaining this one prisoner in a fortress designed to hold 600 inmates exceeds \$250,000.00. What a total waste upon the taxpayers of this land.

In years past, three other convicted Nazi war criminals, Grossadmiral Erik Rader, Walthur Funk and Konstantine von Neurath, had their sentences commuted because of their ill and failing health. Herr Hess has spent much of the last 10 years in the hospital within the British Zone of West Berlin

Mr. President, as we here in the United States are about to embark upon our third century as a Nation, do you not think that we owe it to our legal dogma and to the great legal principles upon which our nation was founded, to achieve some dignity in what has become a landmark case of tragedy for our legal system.

Time after time, both while a prisoner in England and again during the Nuremberg war crimes trial, Herr Hess was examined and found to be suffering from illusions of grandeur, schizophrenia, paranoia, amnesia and other mental aberrations any one of which would have, and in fact did, prevent him from being able to properly defend himself. He was without adequate counsel and as we won the war and the hatred of the enemy was rampant at that time, we tossed away our legal integrity and allowed the Russians to pressure us into sending what has amounted to a non-compos-mentis case to a life of exile in a cold and gloomy prison. The political implications are well known and as President you most assuredly are cognizant of the reasons the Soviet Union will not allow Hess to be released; it gives them vital access to West Berlin with their military troops every four months.

I presently am in route to meet with Herr Wolf Rüdiger Hess concerning his father's case. We shall propose two things: 1) that Herr Hess be released for purely humanitarian reasons as were three of his co-defendants; and, 2) that some quid-pro-quo be made with the Soviet Union to gain their consent to release the prisoner Hess. We shall ask that the Soviet Union agree to the release of Herr Hess and will call an international news conference in both Munich and Berlin within the next few days to call attention to the illegality of the Hess incarceration.

As the American attorney who has been asked to assist his son in this case, I am asking you, Mr. President, to call upon your Secretary of State, Mr. Henry Kissinger, to ascertain some suitable agreement with the Soviet Union in a true spirit of détente as we begin this, our third century as a free nation. Certainly, if Russia is at all in any way sincere with its avowed determination to create and foster better understanding among our nations, they could best show their sincerity by acquiescing to the release of this pitifully aged and mentally retarded victim of military hostility.

While in Germany, I shall again confer with former Nazi Minister of Armaments and Production, Herr Albert Speer, and the former Grossadmiral of the Germany Navy, Herr Karl Dönitz who, as you know, succeeded Adolph Hitler as the last Chancellor of Nazi Germany. These men previously have served their complete Nuremberg sentences to the exact hour and they are quite anxious that this blight on the international law as exercised by the International Military Tribunal at Nuremberg be forever removed.

As President of this great nation whose fundamental legal concepts were based upon equal justice under law, I ask you Sir to take some positive course of action to see that Herr Hess is released. I believe the United States, together with Great Britain and France have the right to summarily release Hess and close Spandau Prison, notwithstanding the initial agreement to which we were a signatory in the London Accords of 1945 which established the International Military War Crimes Tribunal.

At this particular era in our international relations with the Soviet Union your government is especially and vitally engaged in negotiations concerning the sale of American grain, an agreement on hydrocarbons and petrochemicals, respective spheres of influence in the middle east, the total balance of power picture throughout the free world as well as the S.A.L.T. conferences. Only a few weeks ago you attended the Helsinki world conference where with other leaders you opted for a closer understanding among all nations.

Certainly, if we can take any Soviet gesture upon its face value, and in an even more humanitarian effort as we bury the past three decades and embark upon a new era of détente between our two great nations, the Soviets should have impressed upon them that this aged and near-senile man serves the purpose of no prior hostility by being locked in a prison cell while his final hours upon this earth expire.

While not a churchgoer, Herr Hess has always professed a faith in God and in the triumph of justice as we here in this nation perceive it to be. The eminent British wartime leader and perhaps this century's greatest statesman, Sir Winston Churchill, stated after the war that Hess should be tried, not as a war criminal but as a sick man who came of his own volition to help initiate peace between Germany and England. Hess's mental aberrations were well known to the British.

His subsequent incarceration at Nuremberg, his denial of adequate psychiatric examination and treatment, and his total inability to adequately participate in his own defense are contrary to the highest principals of legal defense for defendants of a retarded mental nature within the entire World system of jurisprudence.

I am, therefore, Mr. President, asking that you take immediate steps to instruct your government to initiate serious negotiation with the Soviet Union for the release of Herr Hess and to advise both the U.S. Ambassador in Germany and the Chief of the U.S. Mission in Berlin that I shall soon call upon them asking for their assistance in the legal representation of this defendant. I further ask that you instruct your Secretary of State to immediately make contact with proper Soviet officials and to seek their approval to have this prisoner released to his family before he dies if for no other reason than for the most humane reasons of decency and honor.

I know that you are a fair man, Mr. President, and despite the political overtones with which this case has been staged during the past three decades, I believe with concrete conviction that you will not place a political label on the handling of this case. You must remember, Sir, that Hess was not in Germany during the atrocities charged to the German Nazi government, nor was he convicted of such an act. His only crime was to have been a part of a government that committed such crimes and then lost the war. We, as victors, served as prosecutor, judge and jury. Not since the Biblical days of King David has such perfidy been unilaterally committed in the legal processes.

By way of appellate procedure in advance, I am asking that you take immediate steps to initiate legal, diplomatic and vigorous action to resolve this stigma upon our legal system. You may answer this letter either to the U.S. Consulate in Munich, Germany, the U.S. Mission in Berlin, or to the U.S. Embassy in Paris, France where my good friend, the former Ambassador to Germany, The Honorable Kenneth Rush now serves as U.S. Ambassador to France.

Thank you for your time, consideration and assistance in this case.

Most respectfully yours,

IRRELL FRAZER, JR.

MF:sf



6469 *Class. Chron*

NATIONAL SECURITY COUNCIL

October 17, 1975

MEMORANDUM FOR PHILIP BUCHEN

FROM: Jeanne W. Davis *JWD*  
SUBJECT: Correspondence on Rudolf Hess

Mr. Merrel Frazer, a U.S. attorney, has written the President asking him to help obtain Rudolph Hess' release from Spandau Prison (Tab B).

We have received the attached proposed reply prepared by the Department of State, in which we concur, for Roland Elliott's signature to Mr. Frazer. Because of the considerations of law involved, I would appreciate your concurrence in the proposed reply.

Concur \_\_\_\_\_ \*

As amended \_\_\_\_\_

October 20, 1975

\*Note: Mr. Frazer asked in the last paragraph of his letter to have the reply sent to him at several points throughout Europe rather than his home in Austin, Texas. Also, rather than have the letter go out over Roland Elliott's signature, I recommend that it go out over General Scowcroft's signature.

*P.W.B.*  
Philip Buchen





THE WHITE HOUSE

WASHINGTON

October 22, 1975

*Jan  
Chapman*

Dear Mrs. Van Dyk:

This will acknowledge your letter to President Ford of July 28, 1975, concerning your outstanding claim against Mr. Robert Mead. Please excuse the delay in response.

We have questioned both Mr. Mead and his lawyers concerning the status of his claim which he is presently unable to pay. Since his failure to pay does not represent a voluntary refusal to pay, this cannot be viewed as a violation of either the letter or spirit of our regulations.

Sincerely,

*Dudley Chapman*

Dudley Chapman  
Associate Counsel

Mrs. Robert F. Van Dyk  
Qtrs. 2328 Stryker Avenue  
Ft. Lewis, Washington 98433



THE WHITE HOUSE

WASHINGTON

October 23, 1975

MEMORANDUM FOR: JEANNE W. DAVIS  
THROUGH: PHILIP W. BUCHEN *P.W.B.*  
FROM: JAY T. FRENCH *JTF*  
SUBJECT: FOIA Request for NSC File Index  
(Bennett)

You have requested the White House Counsel's guidance in your consideration of a Freedom of Information Act appeal of your decision to deny release of certain indices to NSC documents, minutes and policy decisions. The initial request from Mr. Jonathan Bennett was denied primarily because the indices were not considered "records" for purposes of the FOIA.

The NSC's determination that indices are not records subject to the FOIA was apparently based on the legal analysis of the State Department in replying to a similar request for indices from Mr. Bennett. However, our discussions with Mr. Robert Saloschin of the Justice Department's Office of Legal Counsel (and Freedom of Information Committee) indicate that such a legal rationale is not defensible. Accordingly, you should not rely upon such grounds in denying Mr. Bennett's appeal.

It would be proper for the NSC to withhold these indices if they are specifically authorized to be kept secret by Executive order and have been properly classified pursuant to such Executive order. In that regard, it was helpful that your memo recalled the current litigation involving Morton Halperin's request for certain other indices to NSC documents. Presently, the Justice Department is defending the NSC's denial of Mr. Halperin's request on grounds that indices taken as a whole can be classified even though specific titles listed in those indices cannot be classified standing alone. As long as the Department is in



litigation defending this position, the NSC may continue to rely upon it as grounds for denying the release of other indices, such as those requested by Mr. Bennett.

In relying upon such a defense, however, it is important to keep in mind that Mr. Bennett is requesting indices for 1953 and earlier, while Mr. Halperin is requesting indices for 1969 until the present. This time difference is a material distinction between the Halperin and Bennett requests. Consequently, it is my advice in this instance that you reluctantly and sparingly apply the legal reasoning of the Halperin defense and release as many portions of the requested indices as may be segregated from those which are properly classified.

This reply has been approved by the Freedom of Information Committee at the Justice Department in accordance with the requirements in 28 C.F.R. § 50.9.



~~SECRET~~

THE WHITE HOUSE

WASHINGTON

October 24, 1975

MEMORANDUM FOR: JEANNE W. DAVIS

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

This memorandum is in response to your note dated October 22 requesting my comments on a proposed Presidential memorandum to the Secretary of Defense concerning the use of riot control agents (RCAs). The materials which you forwarded (Tab A) indicate that the Secretary is requesting authorization to use RCAs to recover or protect nuclear weapons. Such authority is required because Executive Order 11850 (Tab B) prohibited the use of RCAs without prior Presidential approval.

The Secretary's request is for authority to use RCAs in war and peacetime. However, Executive Order 11850 only prohibited the use of RCAs in war. There are no restrictions on the use of RCAs in peacetime. Therefore, it is appropriate only for the President to authorize such use in war. If the Secretary wants to clarify, for the benefit of local commanders, the use of RCAs in peacetime to protect nuclear weapons, he may presumably do so.

The suggested memo for the President's signature (Tab A) recites that the President is acting, "Pursuant to your [the Secretary's] request of August 13, 1975,..." Since David Elliott has pointed out that the Secretary's request unnecessarily requested authority to use RCAs in peacetime, it might be best not to reference this memo in the President's memo. Also, the President's action is actually pursuant to Section 1 of Executive Order 11850.

As a result of the foregoing considerations, it is recommended that Secretary Kissinger forward a differently worded memorandum for the President's signature (Tab C).

DECLASSIFIED  
E.O. 12958 Sec. 3.8

~~SECRET~~

*MR 94-152 #14, NSC Ltr 9/8/98*

*By lt NARA, Date 6/6/00*

Additionally, you might wish to consider the following collateral questions:

1. Should the protection and recovery of other weapons in war (e.g., chemical warfare weapons) be included in this authorization?
2. Should advance written authority for the use of RCAs as set forth in the examples described in the preamble to the operative language of Executive Order 11850 be included in this authorization?



*Classified  
chron*

THE WHITE HOUSE

WASHINGTON

October 24, 1975

MEMORANDUM FOR: CAPT. L. S. KOLLMORGEN

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

SUBJECT: White House Emergency  
Actions Officer

The Counsel's office has no objections to your proposed memorandum to the President as set forth in your secret memorandum of October 3, 1975.



*Justice*

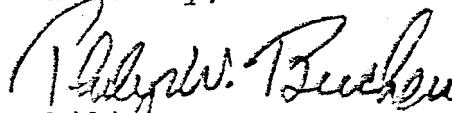
THE WHITE HOUSE  
WASHINGTON

October 24, 1975

Dear Mr. Thornburgh:

In accordance with your conversation with a member of my staff, enclosed is a copy of the subpoena directed to the President with respect to United States v. Fromme, E. D. Cal., CR. No. S-75-451, for appropriate handling.

Sincerely,



Philip W. Buchen  
Counsel to the President

The Honorable Richard Thornburgh  
Assistant Attorney General  
Criminal Division  
Department of Justice  
Washington, D. C. 20530

Enclosure



10/24/75

District Court of the United States

Eastern DISTRICT OF California

Gerald R. Ford, President of The United States Washington, D .C .

To

BY VIRTUE OF A SUBPOENA issued out of the District Court of the United States, you are required to be and appear before the said Court at

at o'clock m., on the day of , 19

then and there to testify on behalf of the in the case of

United States of America

vs. Lynette Alice Fromme

CR. No. S-75-451

~~and to do so with the following conditions~~

YOU ARE HEREBY REQUIRED TO APPEAR AT A LOCATION TO BE DETERMINED BY YOU AT ANY TIME CONVENIENT TO YOU ON OR BEFORE OCTOBER 31, 1975, TO TESTIFY IN THE ABOVE ENTITLED CASE BY WAY OF A VIDEO-TAPED DEPOSITION.

and not to depart without leave. If you fail to obey such subpoena, you may be fined and imprisoned, as the Court may direct.

George K. McKinney U. S. Marshal.

John E. Virga Attorney for defendant 721 11th St. Sacramento, California 95814 Tel: (916) 444-6595





MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 24, 1975

MEMORANDUM FOR:

PHIL BUCHEN

FROM:

DONALD RUMSFELD

I have read your memo to Brent Scowcroft of October 20 concerning gifts to U. S. Government Officials. It seems to me that what you ought to do is sit down with Brent and Henry and lay down the law. I don't see any need for a meeting unless that doesn't work.

*Called Brent  
11/7/75*

THE WHITE HOUSE

WASHINGTON

*Handwritten initials/signature*

October 20, 1975

MEMORANDUM FOR: BRENT SCOWCROFT

FROM: PHILIP BUCHEN *P.*

SUBJECT: Gifts to U. S. Government  
Officials

In view of the information being disclosed to the House Select Committee involving the Barzani gifts and the discussions we had last evening, I attach the following:

- (1) A copy of the statute on foreign gifts and decorations (5 USCA, Section 7342).
- (2) Regulations issued from the State Department on acceptance of gifts and decorations from foreign governments (22 CFR, part 3).
- (3) Procedures adopted for processing of gifts received by or on behalf of the President which are from foreign sources.
- (4) Page 4 of the Standards of Conduct for the White House staff with possibly relevant subparagraphs marked.

If the gifts in question were from an "official agent or representative" of a foreign government, the statute and the regulations would apply and the use or the disposition thereof would be controlled by Section 3.6 of the regulation. If the gifts are not from such an official agent or representative, they are then subject to the Standards of Conduct for the White House staff as shown in the attached excerpt.



This excerpt comes from the current Standards of Conduct, but the same provisions appeared in the Standards of Conduct which were in effect under President Nixon. I do not have copies of the State Department's standards of conduct, but I assume they contain similar provisions.

I am very fearful that unless there is compliance with the procedural requirements imposed by either the foreign gifts regulation or the standards of conduct, the Committee may use the information supplied to make telling charges of non-compliance. It is also likely that the Committee may use this opportunity to investigate the whole story of gifts involving persons in the service of the State Department, CIA, and the White House insofar as gifts or other favors have come from governments, organizations, or persons benefiting from covert activities or other intelligence related functions of the U. S. government.

The urgency of this situation, I believe, requires that a meeting be held promptly which should include Jack Marsh and Don Rumsfeld or someone from Don's office.

Attachments

cc: Jack Marsh  
Don Rumsfeld

THE WHITE HOUSE  
WASHINGTON

*Class  
Chen*

October 25, 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: PHILIP BUCHEN *P.*

When I talked to you Thursday evening about the Judge's action in the Fromme case to authorize your being subpoenaed for a deposition, I indicated that the Justice Department was concerned that the Judge had not properly addressed the various legal issues raised by the defendant's request to have you be a witness. However, the next day the Judge did issue an opinion, copy of which is attached.

As you can see from the opinion, the Judge now has carefully addressed the various legal issues and although one might argue against certain of his conclusions, he appears not to have misused his discretionary authority in your matter.

Of further interest to you may be the attached article which appeared recently in the University of Illinois Law Forum and which has just come to my attention.

Attachments

*[Faint circular stamp]*

ADMINISTRATIVELY CONFIDENTIAL

THE WHITE HOUSE

WASHINGTON

SCHEDULE REQUEST

Date: October 25, 1975

From: Philip W. Buchen *PLW*

Via : Jerry Jones:?

MEETING: Deposition of the President by John E. Verga, Attorney for Lynette Alice Fromme.

DATE: On or before October 31, 1975 (although it could be slipped to November 1, 1975, provided I know by Tuesday, October 28).

PURPOSE: To comply with the attached subpoena, issued pursuant to opinion of the U. S. District Court for the Eastern District of California on October 24, 1975.

FORMAT:

- location: Counsel's Office (West Wing)  
(subject to approval by WHCA that facilities here would be appropriate)
- participants: The President; a Judge of the U. S. District Court for the District of Columbia (to be designated); Dwayne Keyes, a U.S. Attorney for the Eastern District of California; an attorney from the Department of Justice in Washington; Philip W. Buchen; a court reporter (to be designated); and WHCA personnel as needed for video taping.
- expected length of participation: Probably not more than one-half hour but allowance should be made for possible extension.



OTHER  
PARTICIPATION:

None

PREPARATORY  
MATERIAL:

Copy of President's written  
statement to the FBI which he  
gave on October 2, 1975.

PRESS  
COVERAGE:

None (except that the Press Office  
on the day of the event should  
probably make an announcement that  
the deposition is to be taken).

STAFF:

Philip W. Buchen

APPROVAL \_\_\_\_\_ FOR \_\_\_\_\_ AT \_\_\_\_\_ O'clock



10/24/75

District Court of the United States

Eastern DISTRICT OF California

Gerald R. Ford, President of The United States Washington, D.C.

To

BY VIRTUE OF A SUBPOENA issued out of the District Court of the United States, you are required to be and appear before the said Court at

at o'clock m., on the day of 19

then and there to testify on behalf of the United States of America vs. Lynette Alice Fromme CR. No. S-75-451

~~Witnessing and the~~

YOU ARE HEREBY REQUIRED TO APPEAR AT A LOCATION TO BE

DETERMINED BY YOU AT ANY TIME CONVENIENT TO YOU ON OR BEFORE

OCTOBER 31, 1975, TO TESTIFY IN THE ABOVE ENTITLED CASE BY WAY

OF A VIDEO-TAPED DEPOSITION.

and not to depart without leave. If you fail to obey such subpoena, you may be fined and imprisoned, as the Court may direct.

George K. McKinney U.S. Marshal

John E. Virga Attorney for defendant Sacramento, California 95814 Tel: (916) 444-6595



THE WHITE HOUSE

WASHINGTON

October 31, 1975

THE PRESIDENT'S DEPOSITION  
Saturday, November 1, 1975  
10:00 a.m. (30 minutes)  
Room 345-EOB

From: Philip W. Buchen *P.W.B.*

I. PURPOSE

To comply with the subpoena issued by the District Court of the United States for the Eastern District of California in the case of United States of America v. Lynette Alice Fromme.

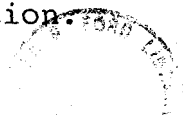
II. BACKGROUND, PARTICIPANTS AND PRESS PLAN

- A. Background: A subpoena was issued on October 24, 1975, requesting you to testify by way of a video taped deposition in lieu of your appearing as a witness called by the defense in the Fromme case which is to be tried starting November 4.

Background paper prepared by the Justice Department is attached at TAB A.

In addition, U. S. Attorney Dwayne Keyes will meet with you late on Friday, October 31 for approximately 15 minutes to provide further background.

- B. Participants: (See attached list, TAB B.)
- C. Press Plan: Event is to be announced, but there is to be no press coverage. If Judge MacBride agrees, we will have Dave Kennerly take photographs of the setting and the participants in place prior to the start of the deposition. These photographs would be for Archival purposes only and would not be released for publication.





UNITED STATES GOVERNMENT

# Memorandum

TO : Richard L. Thornburgh  
Assistant Attorney General  
Criminal Division

FROM : *AK* D. Dwayne Keyes  
United States Attorney  
Eastern District of California

SUBJECT: LYNETTE ALICE FROMME

DATE: OCT 31 1975

The defendant, Lynette Alice Fromme, has been indicted for attempting to assassinate Gerald R. Ford, President of the United States.

Her trial is presently scheduled to commence on November 4, 1975, before the Honorable Thomas J. MacBride, Chief Judge, United States District Court for the Eastern District of California.

There were 20 to 25 known persons at the scene who saw various portions of the alleged attempt on the life of the President or who heard various statements attributed to the defendant.

There were numerous others in the immediate vicinity who neither saw nor heard anything.

The defense has stated they wish to inquire further into the President's recollection concerning the click of the handgun and statements attributed to the defendant. It can also be expected that the President will be asked about the appearance or demeanor of the defendant when she pointed the gun at him.



PARTICIPANTS

Judge Thomas J. MacBride  
District Court of the United States  
for the Eastern District of California

Mr. Richard Thornburgh  
Assistant Attorney General  
Criminal Division  
Department of Justice  
Washington, D. C.

Mr. Dwayne Keyes  
U. S. Attorney for the Eastern District  
of California

Mr. John E. Virga  
Attorney for Lynette S. Fromme (The Defendant)

Mr. Richard Fong  
Court Reporter from Judge MacBride's  
Court

Technical personnel from the Navy  
Photo Center and from White House  
Communications Agency