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THE WHITE HOUSE
WASHINGTON

September 24, 1975

MEMORANDUM FOR: THE PRESIDENT
FROM: JACK MARSH

Attached is the decision paper concerning release of classified materials to the Senate and House Select Committees.

Attachment

Ford Papers: Free Handwriting File: Natl Security Series, b. 3, f. "Incl (3)."
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BACKGROUND

From the outset of the House and Senate Select Committees on Intelligence, you have directed the entire Executive branch to cooperate and provide materials requested by the Committee, subject to a narrow exception in the case of certain materials such as references to techniques, agents and sources. You specifically stated that under no circumstances would you permit the Executive branch to cover up evidence of illegal actions or failures by the intelligence community.

On September 10, the House Committee, chaired by Representative Otis Pike, unilaterally declassified a document containing a passage objected to by Executive branch intelligence officials. The passage contained the four words referring to a communications security.

Two days later, Assistant Attorney General Lee read to the Pike Committee a statement authorized by you, to the effect that the Executive branch would decline to provide additional classified materials until the Committee satisfactorily altered its position concerning declassification.

Although the Church Committee in the Senate has subpoenaed certain documents concerning Cyprus, we generally have a good working relationship with them as to procedure for transmitting classified information.



It is important to note that our arrangement with the Senate Committee has never been clearly defined, but relies on comity and a "gentleman's agreement". For these reasons, it is felt you should not publicly ratify or endorse the Senate arrangement.

As indicated at the Republican Leadership meeting this morning, we appear to be on a collision course with Congress on the question of release of classified materials to these two Committees.

Attached at Tab, Tab C and Tab D respectively are general comments of Secretary Kissinger, Attorney General Levi and Secretary Schlesinger. These comments present in a general way their views on this subject.

At Tab D is a statement by the Republican Members on the House Select Committee setting forth their position.

It should be pointed out that the option paper attached focuses principally on classified, written documents and the question of guidance for witnesses in testimony before the Committee remains to be addressed.



ISSUE FOR DECISION

First, what should your decision be concerning the procedures which will be acceptable for release of classified materials to the two Select Committees?

Two, how should your position on this issue be stated publicly, and what negotiating strategy should the Administration adopt for dealing with the Committees?

OPTIONS

Your advisors have concluded that there are two basic approaches you can take concerning how declassified materials should be provided to the Committees and how they should be declassified.

Option 1 (Compromise)

Materials to be supplied

Provided the Committee agrees to declassification procedures set out below, supply all materials with the narrow exception of:

-- source, agents and methods

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Verification procedures through Congressional Leadership would be available in case of Committee disagreement with the sensitivity of withheld portions of documents.

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Declassification

Once the Committee decided to declassify (publish) something and the appropriate Executive agency objected, the following procedure would apply:

1. These documents, or portions thereof, will be considered to have been loaned to the Committee.
2. The Executive will have reasonable opportunity to make its case (to the Committee) why it should not be declassified.
3. If agreement is impossible, then the Committee submits the materials to the President (or first to the Leadership and then from them to the President).
4. The President makes the final (and personal) determination.

Note: At this point, the Congress can still exercise its right to subpoena the materials and litigate the issue in Court.

Option 2 (President retains maximum control)

Provide only those documents which we are willing to let Congress make the final determination concerning publication.

The Executive would provide all materials except:



- Source, methods and procedures.
- Information from foreign intelligence sources or governments.
- Information on the decision process of the Executive agencies.

Sensitive matters which we are willing to provide so long as they retain their classified status would be withheld until the Committee-Executive agreement is reached.

A verification system for audit of the deleted materials could be offered to assure the Committee that the deletions were in fact sensitive.

It should be noted that Options 1 and 2 address the great bulk of classified materials that might be requested. However, questions relating to executive privilege are not addressed in either of them.

Concerning the strategy of your public position and how this should be negotiated with the Hill, the following options exist:

Option A: At the Leadership meeting tomorrow morning, offer to have your representatives work out the procedures with the Committees directly under the guidelines set down by you. A public statement to this effect would be issued along the lines of that contained in Tab A.

Option B: Present a specific procedure to the Leadership



and release it publicly following the meeting. This procedure would be in accordance with your decision in the preceding paragraphs.

Option C: Regardless of the options you select above, your Advisors recommend that you immediately make available to the Committees that information which can be declassified or that you are unwilling to submit to the Pike Committee under their newly adopted rules for unilateral declassification.

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DECISION

OPTION 1: (Compromise)

Favor: CIA, Justice, OMB, Defense

Oppose:

Approve WCM

Disapprove _____

OPTION 2: (President Retains Maximum Control)

if not successful

Favor: Defense (only if unable to get agreement on Option 1)

Oppose:

Approve WCM

Disapprove _____

Option A: (Issue general statement and offer to work with Congress)

Favor: CIA, Justice, Defense

Oppose:

Approve WCM

Disapprove _____

Option B: (Issue statement containing a specific procedure)

Favor:

Oppose:

Approve WCM

Disapprove _____

Option C: (Release unclassified and non-critical materials)

Favor: CIA, Justice, Defense, OMB

Oppose:

Approve WCM

Disapprove _____

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WH: John O. Marsh (counselor to the prez) - President Ford

Sept. 24, 1975

Decision document in dispute w/HSC over document declassification.
(Pres Ford's approvals are initialed)

SOURCE: front



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