

THE WHITE HOUSE  
WASHINGTON

ER 75-12578

November 19, 1975

Dear Mr. Chairman:

I want you to know of my deep concern because the Select Committee found it necessary on November 14 to vote in favor of three resolutions which could lead to a finding by the House of Representatives that Secretary of State Henry Kissinger is in contempt for failure to comply with three Committee subpoenas. This issue involves grave matters affecting our conduct of foreign policy and raises questions which go to the ability of our Republic to govern itself effectively. I know that you, Mr. Chairman, share my deep respect for the rights and powers of the House of Representatives -- where our cumulative service spans nearly four decades -- and for the obligations and responsibilities of the President. The two branches of government have an extremely serious responsibility to consider the issues raised in the ongoing foreign intelligence investigations dispassionately and with mutual respect.

Former Chief Justice Warren pointed out twenty years ago that there can be no doubt as to the power of Congress and its committees to investigate fully matters relating to contemplated legislation. Without this power, which includes the authority to compel testimony and the production of documents, the Congress could not exercise its responsibilities under Article I of our Constitution. However, this power, as broad as it is, is subject to recognized limitations. Not only is it limited by powers given to the other two branches, but it also must respect requirements of procedural due process as they affect individuals.

The action of your Committee concerning the November 14th resolutions raises, in my mind, three principal issues: the extent to which the Committee needs access to additional Executive Branch documents to carry out its legislative functions; the importance of maintaining the separation of powers between the branches and the ability of the Executive to function; and the individual rights of officials involved in this matter. I am not interested in recriminations and collateral issues which only serve to cloud the significant questions before us.

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From the beginning of the investigations of the intelligence agencies, I have taken action to stop any possible abuses and to make certain that they do not recur as long as I am President. I have also endeavored to make available relevant information in a responsible manner to the appropriate committees of Congress.

I have given great weight to my responsibility to maintain the integrity of our intelligence community and the ability of this Nation to develop and use foreign intelligence. This is one reason why I have insisted that much of the information I have made available to Congress be kept secret, so that current foreign intelligence operations, which are critical for the national security, can continue effectively. In accordance with these principles, your Committee and the Senate Select Committee have received unprecedented access to Executive Branch documents and information.

Your Committee's November 6th votes on seven subpoenas for additional Executive Branch documents came in the context of several months of working together on this very difficult subject and a record of cooperation on both sides. They were served on November 7. The documents were due on the morning of November 11, and the appropriate Administration officials immediately went to work collecting the information. Four of the subpoenas were complied with fully. However, problems arose as to the remaining three issued to:

- "Henry A. Kissinger, Secretary of State, or any subordinate officer, official or employee with custody or control of ... all documents relating to State Department recommending covert action made to the National Security Council and its predecessor committees from January 30, 1961 to present."
- "the Assistant to the President for National Security Affairs, or any subordinate officer, official or employee with custody or control of ... all 40 Committee and predecessor Committee records of decisions taken since January 20, 1965 reflecting approvals of covert action projects. [separate subpoena] ... All documents furnished by the Arms Control and Disarmament Agency's Standing Consultative Commission, and the Central Intelligence Agency, the National Security Agency, the Department of Defense, and the Intelligence Community staff, since May, 1972 relating to adherence to the provisions of the Strategic Arms Limitation Treaty of 1972 and the Vladivostok agreement of 1972."

These three subpoenas are the basis of the Committee resolutions of November 14.

The subpoena directed to the Secretary of State requests documents containing the recommendation of State Department officials to former Presidents concerning highly sensitive matters involving foreign intelligence activities of the United States. The appropriate State Department officials identified and referred to the White House documents which apparently fall within the subpoena. None of these documents are from my Administration. These were carefully reviewed and, after I received the opinion of the Attorney General that these documents are of the type for which Executive privilege may appropriately be asserted, I directed Secretary Kissinger not to comply with the subpoena on the grounds of Executive privilege. I made a finding that, in addition to disclosing highly sensitive military and foreign affairs assessments and evaluations, the documents revealed to an unacceptable degree the consultation process involving advice and recommendations to Presidents Kennedy, Johnson and Nixon, made to them directly or to committees composed of their closest aides and counselors. Thus, in declining to comply with the subpoena, Secretary of State Kissinger was acting on my instructions as President of the United States.

With respect to the two subpoenas directed to "...the Assistant to the President for National Security Affairs, or any subordinate officer, official or employee with custody of control...", the really important point here is that the NSC staff has made a major effort to deliver the documents requested. As you know, additional documents were made available to the Committee after the deadline of the subpoenas and indeed after the Committee voted on the November 14th resolutions. There has been and continues to be an effort on the part of the NSC staff to provide the Committee with the information and documentation it needs. In fact, a very comprehensive volume of information has been made available which provides the Committee a substantial basis for its investigation.

This effort was undertaken, notwithstanding the fact that the subpoenas themselves were served on November 7, made returnable only four days later, and called for a broad class of documents, going back in one subpoena to 1965, and in the other to 1972. Substantial efforts were required to search files, identify items covered, and to review them for foreign policy and national security reasons in accordance with procedures which have been previously used with information requested by the Select Committee.

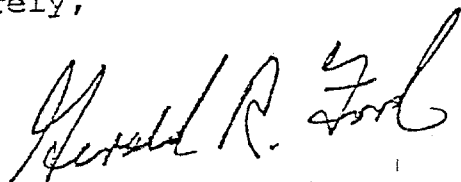
In addition to our efforts to substantially comply with these two subpoenas, I have been advised that there are serious and substantial legal and factual questions as to the basis on which the Committee seeks to find Secretary Kissinger to be in contempt. The subpoenas were directed to "...the Assistant to the President for National Security Affairs, or any subordinate officer..." and were in fact served on the Staff Secretary of the NSC. Secretary Kissinger had no responsibility for responding to these subpoenas nor for supervising the response to them. After November 3, he was no longer my Assistant for National Security Affairs, and he was neither named in the subpoenas nor were they served upon him. Thus there is no basis for the resolutions addressed to Secretary Kissinger on these subpoenas.

In summary, I believe that if the Committee were to reconsider the three resolutions of November 14, it would conclude that my claim of Executive privilege is a proper exercise of my Constitutional right and responsibility. As to the two subpoenas directed to the Assistant for National Security Affairs, they do not involve Secretary Kissinger, and there has been a substantial effort by the NSC staff to provide these documents. Furthermore, they will continue to work with you and your Committee to resolve any remaining problems.

It is my hope that the Select Committee will permit Executive Branch officials to appear at tomorrow's hearing to discuss the points I have raised in this letter.

It is my desire that we continue forward, working together on the foreign intelligence investigation. I believe that the national interest is best served through our cooperation and adoption of a spirit of mutual trust and respect.

Sincerely,



The Honorable Otis G. Pike  
Chairman  
House Select Committee  
on Intelligence  
House of Representatives  
Washington, D.C. 20515