

THE WHITE HOUSE
WASHINGTON

September 2, 1975

~~TOP SECRET~~

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SECURITY CLASSIFICATION APPEALS PANEL.
E.O. 13526, SECTION 5.3(b)(3)
ISCAP No. 2610-009, document 1

MEMORANDUM FOR THE PRESIDENT

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

SUBJECT: Documents Subpoenaed by the Senate Select
Committee on Intelligence Activities

I. 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;



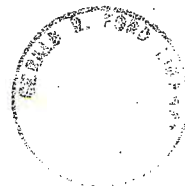
- B. You on the morning of August 27, when Brent and I met with you, concurred that I should refuse to provide such documents.

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 advice 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).

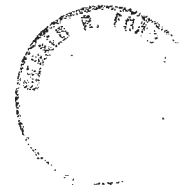
IV. MATTERS FOR YOUR DECISION

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

