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INQUIRY INTO THE MATTER OF BILLY CARTER AND LIBYA

GOVERNMENT
Storage

DOCUMENTS

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HEARINGS

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THE
COMMITTEE TO INVESTIGATE THE
ACTS OF INDIVIDUALS REPRESENTING
THE INTERESTS OF FOREIGN GOVERNMENTS
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

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NINETY-SIXTH CONGRESS
SECOND SESSION

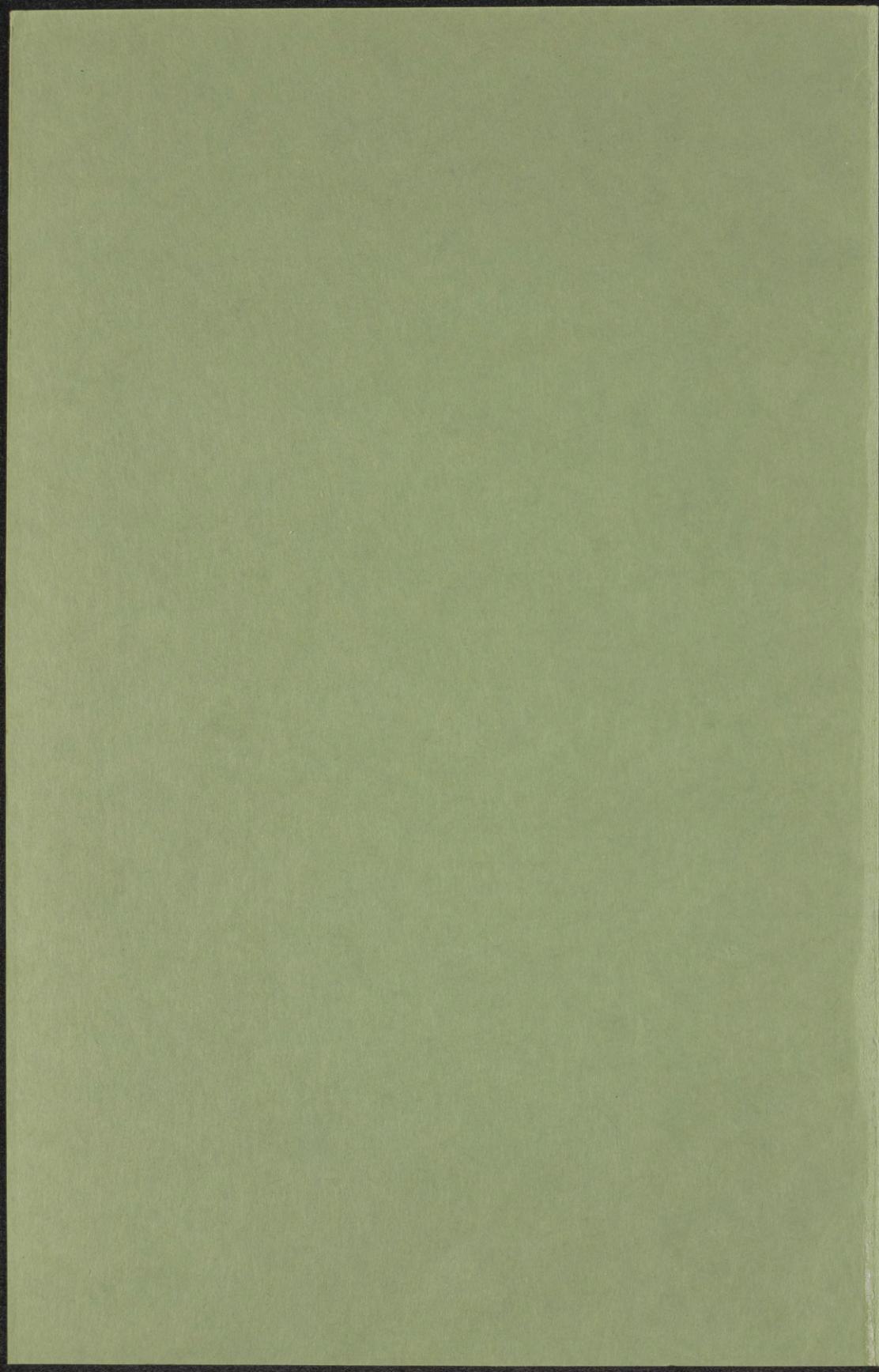
VOLUME III—APPENDIX

Serial No. 96-85

AUGUST 4, 6, 19, 20, 21, 22; SEPTEMBER 4, 5, 9, 10, 16,
17, AND OCTOBER 2, 1980

Printed for the use of the Committee on the Judiciary





INQUIRY INTO THE MATTER OF BILLY CARTER AND LIBYA

HEARINGS

BEFORE THE

SUBCOMMITTEE TO INVESTIGATE THE
ACTIVITIES OF INDIVIDUALS REPRESENTING
THE INTERESTS OF FOREIGN GOVERNMENTS

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

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17, AND OCTOBER 2, 1980

Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1981

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[96th Congress]

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MICHAEL DAVIDSON, *Senate Legal Counsel*

ROBERT K. KELLEY, *Deputy Senate Legal Counsel*

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APPENDIX

PART I.—REPORT OF THE PRESIDENT AND RELATED DOCUMENTS

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, D.C. 20510

July 29, 1980

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

On July 24, 1980, the Senate established a subcommittee of the Judiciary Committee to conduct an investigation of activities relating to individuals representing the interests of foreign governments. We appreciate your desire to provide the Subcommittee with the information it needs for a just and early determination of this matter.

We are aware that you will soon be submitting a report to the House and will, of course, appreciate receiving all the information which you may provide to it.

The Subcommittee's inquiry involves a number of issues: (a) Libya's effort to exert influence and promote its interests in this country, (b) the relationship between Billy Carter and the Government of Libya, (c) the Department of Justice's investigation of that relationship, and (d) all contacts by White House officials with officials of the Department of Justice, Billy Carter, or officials of Libya concerning any of the above matters. Other topics which shed light on the above issues include the possibility of Libyan Government support in urging the release of the American hostages in Iran, the question of a change in U.S. policy towards Libya, and the question of plane sales to Libya.

To enable the Subcommittee to conduct its inquiry, we request a report concerning the above matters, accompanied by all documents (as defined in the attachment to this letter) which relate, directly or indirectly, to the above matters. In the report, please identify the individuals and records which are the sources of the information presented. While preparing the report, please designate someone on the White House staff who can work with the staff of the Subcommittee to coordinate and discuss any issues that arise over what documents are to be provided, consistent with the time for response and the responsibilities of the Executive Branch.

The President
July 29, 1980
Page Two

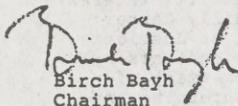
Please submit the requested documents and report to us or to Michael Davidson and Robert K. Kelley, the Senate Legal Counsel and Deputy Senate Legal Counsel, by the close of business on August 1, 1980.

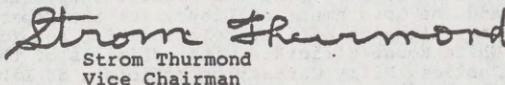
To the extent that the requested report or documents contain classified information, they should be provided to Mr. William Miller, Staff Director of the Senate Intelligence Committee, for storing in the approved secure files of that Committee. Members of this Subcommittee and designated staff with appropriate clearances will review the documents in accordance with procedures of the Senate Intelligence Committee. To fulfill its responsibility to the Senate and to clear up the questions that have arisen in the public mind, the Subcommittee will necessarily make public all or some of the findings and results of its inquiry. To assist us in meeting this responsibility, we ask that the White House begin now to declassify, where possible, the documents requested above. Declassification should be completed as soon as possible and no later than August 15, 1980.

We are today, requesting documents relating to the Subcommittee's inquiry from the Departments of State, Justice, Energy, Commerce, and the Central Intelligence Agency, the National Security Agency and the Federal Bureau of Investigation. We believe you share our conviction that the White House and the Executive Departments not limit their responses to direct questions, but step forward with information which may assist the Subcommittee in a just and early resolution of the matter before it.

We look forward to the cooperation of the White House in the Subcommittee's work and wish to express in advance our appreciation for your assistance and that of the White House staff.

Sincerely,


Birch Bayh
Chairman


Strom Thurmond
Vice Chairman

1467

THE WHITE HOUSE

WASHINGTON

July 29, 1980

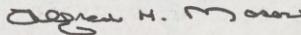
Dear Messrs. Chairman and Vice Chairman:

I am responding to your letter to the President of this date requesting that the President supply a report and related documents to the Subcommittee.

In our meeting this morning with your counsel, Messrs. Davidson, Kelly and Ms. Sweeney, we discussed the substance of your letter before the actual text was available. It was agreed that we would submit to the Subcommittee early next week a report concerning the issues and matters set forth in your letter, together with those documents relied upon in its preparation.

We are ready to discuss with your counsel a procedure for the orderly and timely production of additional material relative to the scope of the Subcommittee's inquiry and consistent with the President's directive to the White House staff to cooperate fully with the Subcommittee.

Sincerely yours,



Alfred M. Moses
Special Counsel

The Honorable Strom Thurmond
Vice Chairman
Subcommittee of the
Committee on the Judiciary
Washington, D.C. 20510

copies to: Michael Davidson
Robert Kelly

UNCLASSIFIED WITH
TOP SECRET ATTACHMENTS

THE WHITE HOUSE

WASHINGTON

August 4, 1980

Dear Mr. Miller:

The President has today submitted the attached letter and Report to Chairman Bayh and Vice Chairman Thurmond of the Subcommittee of the Committee on the Judiciary of the United States Senate.

The Subcommittee's letter of July 29, 1980, requested that documents which contain classified information be submitted to you for appropriate storage and handling. Pursuant to that request, I am transmitting the following classified documents to you:

- o classified materials relied upon in the preparation of Dr. Zbigniew Brzezinski's statement:
 1. Memorandum of Conversation, dated December 6, 1979;
 2. Memorandum of Conversation, dated December 12, 1979; and
 3. Intelligence Report.
- o classified documents relied upon in the Report of Counsel:
 1. Cable from American Embassy Niamey to the Department of State, dated August 2, 1980;
 2. Letter from William L. Eagleton to W. Alan Roy, dated September 12, 1979; and

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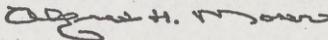
UNCLASSIFIED WITH
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-2-

3. Memorandum from Seymour Goodman to
Lawrence J. Brady, dated April 5, 1979.

Thank you for your attention to this matter.

Sincerely,



Alfred H. Moses
Special Counsel

Mr. William Miller
Staff Director
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

Attachments

cc: Chairman Birch Bayh
Vice Chairman Strom Thurmond

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1470

REPORT OF THE PRESIDENT

To the Subcommittee of
The Committee on the Judiciary
United States Senate

Embargoed for release until the conclusion
of the President's news conference.

August 4, 1980

1471

REPORT OF THE PRESIDENT

To the Subcommittee of
The Committee on the Judiciary
United States Senate

As corrected for typographical errors

5:00 p.m.
August 5, 1980

REPORT OF THE PRESIDENT

to the Subcommittee of

The Committee on the Judiciary

United States Senate

Letter of Transmittal

Report of the President

Statement of Mr. Lloyd N. Cutler

Statement of Dr. Zbigniew Brzezinski

Report of Counsel

August 4, 1980

1473

THE WHITE HOUSE

WASHINGTON

August 4, 1980

Dear Mr. Chairman:

By letter dated July 29, 1980, you advised me of the establishment of a Subcommittee of the Committee on the Judiciary to investigate activities relating to individuals representing the interests of foreign governments. Your letter stated that the Subcommittee's inquiry involves a number of issues: Libya's efforts to exert influence in this country; the relationship between Billy Carter and Libya; the Justice Department's investigation of that relationship; and contacts between White House officials and officials of the Department of Justice, Billy Carter, or officials of Libya concerning any of those matters. On July 29, you were advised that I would submit a report to the Subcommittee early the following week on the above matters, along with copies of the documents relied on in preparing the report.

I hereby submit my report on this matter. I have attached copies of the unclassified documents relied upon in its preparation. Classified documents relied upon have been submitted to Mr. William G. Miller, Staff Director of the Senate Select Committee on Intelligence, in accordance with your request.

Many of the documents attached to my report or submitted to the Senate Select Committee on Intelligence would normally be subject to a valid claim of executive privilege. As I have previously stated, it is not my intention to assert such a claim with respect to these documents and other documents to be submitted to your Committee or the Senate Select Committee on Intelligence that are relevant to the subject matter of your inquiry. In so doing, I do not waive and I expressly reserve the right to assert any available privilege with respect to other documents not relevant to the scope of your inquiry.

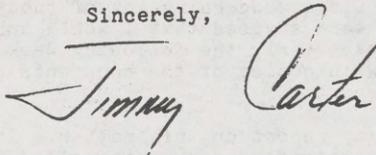
My report sets forth my personal knowledge of the matters identified in your letter. I have asked Lloyd Cutler, Counsel to the President and Zbigniew Brzezinski, Assistant to the President for National Security Affairs, to prepare statements based on their personal knowledge of these matters as well, and these statements are attached to my report. I have also asked my Counsel's office to prepare a report as to various other questions, and their report is also attached.

As for the first issue mentioned in your letter -- Libya's efforts to exert influence in this country -- I and the White House staff have no knowledge beyond what is set forth in the report and its attachments, and in that portion of the information submitted to the Senate Select Committee on Intelligence by other Executive Branch agencies which had previously been circulated to the White House.

I assure you of my willingness to cooperate fully with the Subcommittee in its investigation of these matters. My counsel are prepared to respond to the Subcommittee's request for other documents and to assist the Subcommittee in any other way in its inquiry.

As I have previously stated, I am eager to respond to the Subcommittee's questions on all matters covered in my report and any other questions as to the issues within the scope of your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Jimmy Carter". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

The Honorable Birch Bayh
Chairman
Subcommittee of the
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

THE WHITE HOUSE

WASHINGTON

August 4, 1980

Dear Mr. Vice Chairman:

By letter dated July 29, 1980, you advised me of the establishment of a Subcommittee of the Committee on the Judiciary to investigate activities relating to individuals representing the interests of foreign governments. Your letter stated that the Subcommittee's inquiry involves a number of issues: Libya's efforts to exert influence in this country; the relationship between Billy Carter and Libya; the Justice Department's investigation of that relationship; and contacts between White House officials and officials of the Department of Justice, Billy Carter, or officials of Libya concerning any of those matters. On July 29, you were advised that I would submit a report to the Subcommittee early the following week on the above matters, along with copies of the documents relied on in preparing the report.

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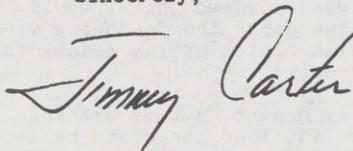
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Sincerely,

A handwritten signature in cursive script that reads "Jimmy Carter". The signature is written in dark ink and is positioned below the typed name "Jimmy Carter".

The Honorable Strom Thurmond
Vice Chairman
Subcommittee of the
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

PRESIDENT CARTER'S REPORT
TO THE SENATE JUDICIARY SUBCOMMITTEE

I. INTRODUCTION

From the founding of this Republic, questions of propriety have been raised about actions of Presidents, Cabinet officers, and Members of Congress. It is an important part of our tradition that the people know the truth as quickly as possible, and that all the facts be disclosed.

The Watergate tragedy intensified public scrutiny of the President. As the first President elected since Watergate, it has been my policy to be open with the public and to cooperate fully with the Justice Department and all other investigative bodies.

My own personal and business affairs and those of members of my staff have been intensely examined. Despite the inconvenience and expense, the investigation of every charge has served the public's right to know, and has enhanced public confidence in the integrity of our Government.

- 2 -

Questions have now been raised concerning my actions and those of my Administration regarding the relationship between my brother Billy Carter and the Government of Libya.

We have made as thorough an investigation as possible. The facts are available for the Committees of Congress and the public to examine. They will show that neither I nor any member of my Administration has violated any law or committed any impropriety.

II. U.S. POLICY TOWARD LIBYA

- A. There are few governments in the world with which we have more sharp and frequent policy differences than Libya. Libya has steadfastly opposed our efforts to reach and carry out the Camp David Accords. We have strongly differing attitudes toward the PLO and the support of terrorism. Within OPEC, Libya has promoted sharply higher prices and the interruption of oil shipments to the United States and other Western nations.
- B. On the other hand Libya illustrates the principle that our relationships with other nations can never be cast in absolute terms. Libya is a major oil supplier, and its high quality crude oil is important to the mix of our East Coast refineries. Libya has publicly and privately opposed Iran's seizure of our hostages and for a time joined other Muslim states in opposing the Soviet invasion of Afghanistan.
- C. Our policies and actions toward Libya have therefore mixed firmness with caution. Although we maintain mutual diplomatic recognition, we do not now exchange ambassadors. We firmly oppose Libya's military adventurism and any terrorist activities. At the same time, and while staying firm on these principles, we recognize the mutual advantages of existing trade relationships.

III. BILLY CARTER'S RELATIONS WITH LIBYA

A. Like members of other Presidents' families, Billy Carter was thrust into the public limelight when I was elected. As all of you know by now, he is a colorful personality. Media attention made him an instant celebrity. He was asked to make a number of television and speaking appearances, and he put his name on a new brand of beer.

B. In the summer of 1978 Billy was invited to visit Libya and he agreed to go there with a group of businessmen and state officials from Georgia. This trip occurred late in September 1978. I was not aware that he was planning the trip until shortly before his arrival. At the request of my staff, the State Department instructed our Embassy in Libya to alert the visitors to the sensitive nature of U.S.-Libyan relations.

Shortly after Billy returned from Libya in October 1978 I saw a copy of a cable from our Embassy in Tripoli reporting on the positive effect of his trip. I was relieved to hear this. I wrote a personal note on the cable and asked my secretary to send it to Billy. Two other cables from our Embassy in Tripoli commenting on Billy's trip were in my files. All three cables were furnished by the State Department to a nationally syndicated columnist in May 1979 in

- 5 -

response to a Freedom of Information Act request. All of these cables had been originally transmitted in plain text and were not encoded.

C. A Libyan trade mission subsequently came to the United States early in 1979. Billy visited with the Libyans and made a number of controversial statements. Since so many policies and actions of the Libyan Government are widely disapproved by our own Government and the majority of our people, Billy's remarks received wide attention and were roundly criticized by the American press and public. I publicly deplored some of these comments myself.

D. As a result of Billy's remarks and new association with the Libyans, his other activities were severely curtailed. Almost all of his scheduled television and other appearances were cancelled. Billy's sources of income from these public appearances disappeared, while his financial obligations continued to mount.

E. So far as I know, Billy had no other significant source of income. Although he had been a minority partner and the manager of Carter's Warehouse, my majority interest had been turned over to a Trustee when I became President, and by late 1977 the warehouses were being managed under

the control of the Trustee. Moreover, the business at the time was producing no cash income to be distributed to the partners.

F. I shared the general public concern about Billy's relationship with Libya. The members of our family were also concerned about some of his personal problems.

G. During this period Billy entered the hospital for medical treatment. In a telephone conversation while he was hospitalized, he discussed with me another possible trip to Libya and I advised against it, partly because of his health and because of the adverse effect it could have on our Middle East peace negotiations, in the light of Libya's open hostility to both Egypt and Israel.

H. For some time I have made it a habit to dictate private notes, mostly about the issues that come before me as President but occasionally about personal matters as well. These records have been searched by my personal secretary, and I have attached to this report all of these notes, as they were originally dictated, that describe conversations with Billy about Libya and discussions with others about Billy's relations with Libya. I have also attached a copy of a letter I wrote to Billy while he was in the hospital, urging him to put off a second trip to Libya and giving my reasons.

- 7 -

I. By the summer of 1979 Billy had successfully completed his medical treatment, and despite my advice to the contrary he made his second trip to Libya in September. Before Billy left, my National Security Advisor, Dr. Brzezinski, wrote a memorandum to the Secretary of State to advise him that any such trip would be entirely private, with no official purpose or connection whatever, and the Department treated it accordingly.

J. While I was aware of Billy's highly publicized participation in the visit of the Libyan delegation to Georgia, his two trips to Libya and his public statements about Libya, I am not aware of any effort by Billy to affect this Government's specific policies or actions concerning Libya. I am certain that he made no such effort with me. The only occasion on which Billy was involved to my knowledge in any matter between Libya and the United States was his participation, with my approval, in our efforts to seek Libyan help for the return of our hostages from Iran.

- 8 -

IV. THE REQUEST FOR LIBYAN HELP TO RETURN THE HOSTAGES

A. On November 4, 1979, our hostages were seized in Teheran. In the weeks that followed we explored many avenues to bring about their release. We increased our military presence in the Persian Gulf. We stopped all oil imports from Iran and we imposed a freeze on Iranian assets. We appealed to the United Nations Security Council. We asked other governments, especially Muslim governments such as Libya, to support our position. We explored every official and unofficial avenue of contact we could find to encourage the Iranians to release the American hostages.

B. During the third week in November my wife and I were at Camp David. As Rosalynn recalls, it occurred to her that Billy might be able to get Libyan help to induce the Iranians to release the American hostages. She recalls that she called him and that he agreed the Libyans might help. She informed me of this conversation, and on November 20 I asked Dr. Brzezinski to explore this idea further with Billy. As described more fully in the attached statement of Dr. Brzezinski, he called Billy and asked him to arrange a meeting between Dr. Brzezinski and Ali El-Houdari, Chief of the Peoples Bureau of Libya in Washington.

- 9 -

C. Later that day Billy came to Washington, spoke with Dr. Brzezinski, and arranged a meeting with Mr. El-Houdari for November 27. That same day I flew by helicopter to Washington for a meeting with the National Security Council on the hostage situation. Before returning to Camp David I spoke briefly with Billy and learned that he was in the process of arranging the meeting.

As Dr. Brzezinski's statement notes, although there had been some private indications of Libyan support, the public statements coming out of Libya were not supportive and indicated that our diplomatic efforts to secure their assistance had not yet been successful. On November 22, two days after the meeting for November 27 was arranged, the Libyan Foreign Secretariat issued a formal public statement saying that "in our view the hostages should be released."

D. The meeting Billy arranged was held on November 27 and is described in Dr. Brzezinski's statement. I did not attend it.

So far as I am aware, Billy played no further role in these discussions with the Libyans. I took no part myself, except when I summoned Mr. El-Houdari to my office on December 6, shortly after our Embassy in Tripoli had been attacked by a Libyan mob. The principal purpose of this

- 10 -

meeting was to underscore the official protest which the United States had made about the attack on the Embassy and to insist that American citizens in Libya be protected. During the meeting I also thanked the Libyans for their help with the hostages.

In addition to Dr. Brzezinski's statement, I have attached to this report all the items from my notes describing my conversations with Dr. Brzezinski, Billy Carter and Mr. El-Houdari about the matter.

E. At that time my major preoccupation was the release of the hostages, and I was ready to try any channel that could help us reach this goal. The Muslim community places great importance on family ties, and I believed that a request arranged with Billy's participation would be regarded as coming more directly from the President and might supplement the efforts already being made through normal State Department channels. I recognized there was a risk of criticism in asking Billy to help but I decided to take the risk.

F. As matters turned out, the leader of Libya did make the direct private appeal to Ayatollah Khomeini that we requested. And in this respect the approach to the Libyans was successful. Whether it would have been successful if

- 11 -

Billy had not participated is a question no one can answer with certainty. I made this decision in good faith, with the best interest of the hostages and this nation in mind. Billy merely responded to our request for assistance and I believe his only motive in this effort was to seek release of the hostages.

- 12 -

V. BILLY'S ALLEGED GOVERNMENT CONTACTS ON BEHALF OF LIBYA

A. I can state categorically that my brother Billy has had no influence on my decisions or on any U.S. Government policy or action concerning Libya. I can also state that Billy has never asked me to take any step that would affect any of these actions or policies. So far as my counsel have been able to determine, Billy has not made any such effort with others in my Administration.

B. There have been press reports that Billy may have been asked, and that he may have tried to affect U.S. policy on licensing aircraft to Libya. If so, the effort did not succeed. So far as we have been able to determine, no such effort was made. My counsel's report covering this and other subjects is attached.

C. In March 1980 Dr. Brzezinski noted an intelligence report that Billy Carter was representing an American oil company in seeking an increased allocation of Libyan oil, and he telephoned Billy to advise him that he should not engage in any such activity that could embarrass me and the country. Dr. Brzezinski subsequently informed me, and I told him he had been right to caution Billy. Dr. Brzezinski's attached statement provides further particulars about this occurrence.

- 13 -

VI. THE DEPARTMENT OF JUSTICE INVESTIGATION
UNDER THE FOREIGN AGENTS REGISTRATION ACT

A. The President has the constitutional responsibility for executing the laws. That responsibility includes the enforcement of the laws. Enforcement responsibility is delegated by law and directive to the Attorney General, subject to the same supervision the President exercises over other Cabinet officers.

The President's power of supervision was abused in the Watergate scandal, as none of us can ever forget. When I took office I instructed Attorney General Griffin Bell that in this Administration neither I nor the White House staff would attempt to influence or supervise Department of Justice investigations concerning charges of law violation. In accordance with my instructions, the Department has full prosecutorial discretion. When possible conflict of interest issues do arise -- as in the case of a member of the President's official or personal family -- we take an extra precaution. To avoid inadvertent actions or statements by the President which might jeopardize the proper administration of justice, the Department of Justice may in its discretion inform the White House that a particular investigation is under way. If the Department needs information from the White House, we supply it. But no Department information about the conduct of any such

- 14 -

investigation may be disclosed to me or the White House staff.

This policy is still in effect, and was followed strictly in the present case. When the Department commenced its investigation as to whether Billy Carter was in violation of the Foreign Agents Registration Act for failing to register and disclose his relationships with Libya, the Department did not inform me, presumably because the investigation was fully and currently publicized in the press. From the time the investigation began until the registration statement and consent judgment were filed on July 14 there was no contact in either direction between the Department of Justice and the White House concerning the conduct of the investigation, except for the routine investigative inquiries described in my counsel's report.

B. On July 22 the White House issued a public statement to this effect. The statement that there had been no contact concerning the conduct of the investigation had been previously checked and approved by me and Attorney General Civiletti. Subsequently, my secretary, Susan Clough, completed typing some of the daily notes that I had dictated during June and July. She then reviewed all of my notes dictated after March 1, 1978, and extracted those with

- 15 -

references to Billy and Libya. She then delivered these notes to me and I completed reviewing them during the early evening of July 24. In them I found a reference to a brief June 17 conversation with Attorney General Civiletti which I had not remembered. The text of this note is attached. It was clear to me that this conversation should be made public as an amplification of the July 22nd statement. I immediately telephoned Lloyd Cutler, my counsel, who had not previously known about this conversation, and informed him. I asked him to read all the extracted notes the next morning and to discuss this particular note with the Attorney General. The Attorney General promptly disclosed the conversation the following morning. His account of the conversation corresponded closely with my contemporary notes.

C. The Attorney General did not inform me of any detail as to the conduct of the investigation. What he told me about the Department's insistence that Billy file a registration statement and the Department's standard enforcement policy was essentially the same as what the Department's lawyers were saying to Billy's lawyers, as Mr. Cutler's attached statement shows.

- 16 -

D. As more fully described in Mr. Cutler's statement, he had informed me that on his advice Billy had retained qualified Washington counsel on June 11th to represent him before the Department. On June 26, when I returned to the United States from my trip to the Venice Summit, Mr. Cutler sent me a memorandum describing his understanding from Billy's lawyers that they hoped to resolve the matter by the filing of a registration statement under the Foreign Agents Registration Act.

E. After reading this memorandum I called Billy on June 28 to encourage him to cooperate with his lawyers. He said that his counsel were in negotiations with the Department but that he personally did not think that he needed to file a registration statement. On July 1, I received a further note from Mr. Cutler informing me that according to Billy's counsel, the Department was setting an early deadline for Billy to decide whether he would agree to file a registration statement. The note suggested that if I thought it would be useful I should call Billy to urge him to accede to the Department's request and the advice of his lawyers and make a full disclosure. I did call Billy that day and urged him to file a registration statement and make a full disclosure of his relationship. My notes of these conversations are attached. I have had no conversations with Billy about the Department of Justice proceeding since that time.

- 17 -

F. On Friday, July 11, I was on Sapelo Island off the coast of Georgia. During the afternoon I received a call from Mr. Cutler about the status of Billy's case, which is correctly reported in his statement.

I had no knowledge of the two large payments or loans of money from Libya to my brother Billy Carter until July 15, 1980, the day after the court documents were filed and when this information was widely publicized in the news media. On the same morning, while still on Sapelo Island, I read a copy of the court documents which had been sent to me by Mr. Cutler.

G. As far as we have been able to determine after diligent inquiry, no one in the White House had any information about the payments or about any evidence in the possession of the Department of Justice relating to such payments until Billy Carter's lawyers informed Mr. Cutler of them on July 11th, when the court papers were about to be filed. No one in the White House furnished information about the investigation to Billy or anyone associated with him at any time.

H. Finally, there is one other rumor I want to lay to rest. No payments or transfers of this money have been made to me. My Trustees assure me that no such payments or transfers have been made to Carter's Warehouse or to the Trust. My Trustees and I will see to it that no direct or indirect benefit will flow to me in the future.

- 18 -

I. To summarize:

-- Billy has had no influence or effect on my decisions or on any U.S. Government policy or actions concerning Libya.

-- Neither I nor anyone in the White House knew any details about the conduct of the investigation under the Foreign Agents Registration Act or tried to influence or affect the Department's actions or decisions.

-- Neither I nor anyone else in the White House informed Billy of any leads or evidence obtained by the Department.

-- Everything that I and the White House staff did with respect to this case was designed to serve the interests of law enforcement and justice.

- 19 -

VII. THE FUTURE

Our political history is full of stories about Presidential relatives whom other people tried to use in order to gain favor with incumbent Administrations. In most such cases, the appearance of favoritism has been much worse than the reality. My brother Billy's case is one of many such examples.

To keep this problem from recurring, I have asked my counsel to draft a rule that will bar any employee of the Executive Branch from dealing with any member of the President's family under circumstances that create either the reality or the appearance of improper favor or influence.

I am deeply concerned that Billy has received funds from Libya and that he may be under obligation to Libya. These facts will govern my relationships with Billy so long as I am President. Billy has had no influence on U.S. policies or actions concerning Libya in the past and he will have no influence in the future.

UNCLASSIFIED DOCUMENTS

RELIED UPON

IN THE

REPORT OF THE PRESIDENT

UNCLASSIFIED

***** C O N F I D E N T I A L ***** COPY

ROUTING
DC BUENOS AIRES 277187
T ORONTO OCT 78
FM SECRETARY WASHDC

To Billy
You did a
good job
under the
"dry" circumstances!
Jimmy

INFO NSC, NSHRG 0618
C O N F I D E N T I A L STATE 251274

VNS TCH BOARD
FOLLOWING REF: AT TRIPOLI 1387 ACTION SECRETATE INFO ALIENS
AMMAN 244920 (NOVAL) DAMASCUS 11000 (LIBYA)
MUSC 0 0 N F I D E N T I A L TRIPOLI 1387
INFO 116521 60S
INFO 0744

SUBJECT: BILLY CARTER'S VISIT TO TRIPOLI
REF: STATE 244920 (NOVAL), TRIPOLI 1388 (NOVAL)

BILLY CARTER AND THE GEORGIA DELEGATION, INCLUDING
STATE SENATORS HUTCHINS AND RUSSELL, LEFT TRIPOLI FOR
THE 1300 HOURS OCT 1, WITH THE DISAPPEARANCE OF THE
FRANZ-JUHA IL-SAAD FREESHLY IN MIND, HE ACCOMPANIED THE
GEORGIA DELEGATION FROM THE VIP LOUNGE TO THE DOOR OF
THE AIRCRAFT, ONE OF THE GEORGIANS, LEONARD LUNA,
HAS REMAINED BEHIND PRESUMABLY TO LOOK INTO BUSINESS
OPPORTUNITIES.

LIBYAN MEDIA COVERAGE OF THE VISIT REMAINED ROUTINE
THROUGHOUT, THOUGH WE HAVE NOT SEEN THEIR FINAL REPORTS.
COLONEL QADHAFI HAS NOT RETURNED TO TRIPOLI SINCE THE
STEADFASTNESS SUMMIT IN DAMASCUS. PRESS REPORTS HAVE
MIXED BENGHAZI, BUT RUMORS CIRCULATING IN THE FOREIGN
MINISTRY SUGGEST HE MIGHT BE IN WEST GERMANY. IN ANY
CASE, THE DELEGATION LIBYA'S NUMBER TWO, MAJOR JALLUD,
TO REPORT THE DELEGATION ON HIS BEHALF OCT 1.

IT SEEMS THAT WE WERE ABLE TO PUT TOGETHER FROM REPORTS
OF DELEGATION MEMBERS, JALLUD'S COMMENTS DURING THE
12-HOUR MEETING WERE MODERATE, THOUGH THEY IMPLIED
REFERENCE TO DISAGREEMENTS BETWEEN LIBYA AND U.S. IN
THE MIDDLE EAST. WE ALSO APPARENTLY HAVE THE POINT
THAT LIBYA'S EFFORTS TO IMPROVE RELATIONS WITH U.S.
HAD NOT BEEN APPRECIATED.

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***** C O N F I D E N T I A L ***** COPY
TOP: 277/121042 DTG: 824632 OCT 78

UNCLASSIFIED

***** D E F I C I E N T I A L ***** COPY

THE BIGGEST IMPACT OF BILLY CARTER'S VISIT WAS
 THE MASSIVE GATHERING OF THE AMERICAN COMMUNITY, SOME OF
 WHICH TOOK PLACE ON SHORT NOTICE AT A GARDEN RECEPTION
 AT THE EMBASSY RECEPTION DEPT. THIS WAS FOLLOWED
 BY BILLY CARTER'S VISIT TO THE ALL COMPANY
 SCHOOL WHERE HE SPoke TO THE 700 STUDENTS, ABOUT A
 THIRD OF WHOM ARE AMERICANS. MANY OF THE GUESTS AT
 THE EMBASSY RECEPTION WENT ON TO A DINNER HOSTED BY
 THE LIBYAN-AMERICAN FRIENDSHIP SOCIETY, AFTER WHICH,
 FOR THE FIRST TIME AT ANY OF THE SOCIAL FUNCTIONS,
 BILLY RESPONDED TO WELCOMING REMARKS BY HEAD OF THE
 LIAISON BUREAU, AHMAD SMAHATI. IN HIS SHORT STATEMENT,
 HE REFERRED TO EVIDENCE OF RAPID PROGRESS, PARTICULARLY
 IN THE AGRICULTURAL FIELD, THAT HE HAD WITNESSED,
 HE DID NOT, HOWEVER, MENTION HIS MOST, REFER TO ANY
 POLITICAL ISSUES.

AS FAR AS WE CAN TELL, THERE HAS BEEN NO NEGATIVE
 FEELING FROM BILLY CARTER'S VISIT TO TRIPOLI. IN FACT,
 IN THE LOCAL SCENE, IT WOULD RATE IT A VERY POSITIVE
 EVENT WHICH HAS OPENED SOME DOORS FOR THIS EMBASSY
 TO RAISE THE PROFILE OF THE AMERICAN COMMUNITY.
 FURTHERMORE, IT HAS BROUGHT THE EMBASSY, THE AMERICAN
 COMMUNITY, AND AN IMPORTANT ELEMENT OF THE LIBYAN
 GOVERNMENT (THE LIAISON BUREAU) TOGETHER IN A WAY
 WHICH SHOULD BE KEPT IN THE MINDS OF EARLY
 INQUIRY CHECKS.

UNCLASSIFIED

FORM 14110 PAGE 02 OF 02 TOP SECRET DTG: 132637Z OCT 78

***** D E F I C I E N T I A L ***** COPY

1499

THE WHITE HOUSE

Personal

Mr. Billy Carter
Post Office Box 278
Plains, Georgia 31780



1500

P-4

THE WHITE HOUSE
WASHINGTON

10/11/78

Billy & Sybil --

I don't have a mailing
address for you since your
new home was built....would
you mind sending me one?

Thanks -- Susan Clough

LIMITED OFFICIAL USE
Department of State

ROUTING P-5
TELEGRAM RF
3289

PAGE 01
SECTION 01-11

TRIPOLI 21233 292342Z

INFO OCT-2: ISO-99 CNY-98 SS-15 /027 W
R 271330Z SEP 78 -----317195 292349Z /31-R
FM AMEMBASSY TRIPOLI
TO SECSTATE WASH-DC 8390

LIMITED OFFICIAL USE TRIPOLI 1358

STADIS////////////////////////////////////

E. O. 11552: N/A
TAGS: OTRA, LY
SUBJECT: GEORGIA DELEGATION TO TRIPOLI

REF: STATE 244999

1. LIAISON BUREAU OF GENERAL PEOPLE'S CONGRESS HAS GIVEN US LIST OF SEVEN PERSONS ACCOMPANYING BILLY CARTER WHEN HE ARRIVES FROM ROME AT 1900 SEPT 27. THEY ARE: FLOYD HUGGINS AND HENRY RUSSELL, WHO ARE GEORGIA STATE SENATORS; RANDY COLEMAN, "AIDE TO BILLY CARTER"; LEONARD LONG AND G. C. LONG, HIS SON; MARIO LENZA AND T. L. GORDON.

2. LIAISON BUREAU HAS ARRANGED A RATHER LOOSE SCHEDULE FOR A FOUR-DAY VISIT WHICH INCLUDES DINNERS HOSTED BY HEAD OF LIAISON BUREAU SHAHATI, ASSISTANT HEAD MUHAMMAD BOUCETTA, AND "FOUNDER OF THE ARAB-AMERICAN FRIENDSHIP SOCIETY" WHOSE IDENTITY WE DO NOT YET KNOW. DELEGATION HAS APPOINTMENTS SLATED WITH TRIPOLI MUNICIPALITY, SECRETARY OF COMMERCE AND SECRETARY OF AGRICULTURE. A MEETING WITH QADHAFI IS LIKELY BUT NOT YET ON SCHEDULE. ONE DAY IS FOR OUT-OF-TOWN TOURISM AND HALF DAY FOR TRIPOLI MUSEUM, ETC. SCHEDULE SEEMS TO LEAVE CONSIDERABLE FREE TIME. IT INCLUDES "A VISIT TO AMERICAN EMBASSY" ON LAST DAY, OCT 1.

3. I HAVE AGREED WITH LIAISON BUREAU OFFICIALS THAT WE WILL DISCUSS SCHEDULE AT AIRPORT, AND I WILL TRY TO WORK IN A PRIVATE MEETING OR LUNCHEON EARLY IN DELEGATION'S VISIT TO BRIEF THEM ON U. S. POSITIONS EFFECTING U. S. -LIBYAN RELATIONS.
EAGLETON

TOP

LIMITED OFFICIAL USE

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Department

TEL

P-6

PAGE 01 01375 291123Z

ACTION

INFO OCT-01 ISC-00 SS-15 SSO-00 /027 W
-----022845 291127Z /23RO 291835Z SEP 78
FM AMEMBASSY TRIPOLI
TO SECSTATE WASHDC IMMEDIATE 5898

LIMITED OFFICIAL USE TRIPOLI 1375

STADIS////////////////////////////////

E. O. 11652: N/A

TAGS: OTRA, LY

SUBJECT: BILLY CARTER AND TRIPOLI

REF: STATE 244909, TRIPOLI 1358

1. SINCE BILLY CARTER'S ARRIVAL SEPT 27, WE HAVE SEEN HIM AND MEMBERS OF GROUP ON A NUMBER OF OCCASIONS, INCLUDING PRIVATE LUNCHEON SEPT 28 AT RESIDENCE. I HAVE BRIEFED HIM ON SENSITIVE NATURE OF U.S.-LIBYAN RELATIONS ABOUT WHICH HE ALREADY HAD SOME BACKGROUND. HE HAS SCRUPULOUSLY AVOIDED POLITICAL COMMENTS OF ANY KIND IN FRONT OF LIBYANS TO THE EXTENT OF NOT REPLYING TO AHMAD SHAHATI'S SEPT 28 AFTER-DINNER WELCOMING SPEECH (WHICH CRITICIZED USG SUPPORT OF ISRAEL). LIBYAN COVERAGE OF VISIT REMAINS ROUTINE WITH MOST REFERENCES TO "AMERICAN PEOPLE'S DELEGATION" RATHER THAN TO BILLY CARTER BY NAME.

2. SOME MEMBERS OF GEORGIA DELEGATION OBVIOUSLY ARE INTERESTED IN RELIEVING LIBYA OF SOME OF ITS PETRO DOLLARS, THOUGH THEY DO NOT SEEM TO HAVE MADE MUCH PROGRESS YET. THE GROUP IS SPENDING TODAY, SEPT 29, ON MOTOR TRIP TO LEPTIS MAGNUS. A MEETING WITH QADHAFI IS NOT YET SCHEDULED. WE WILL BE GIVING LARGE RECEPTION EVENING SEPT 30 FOR THE AMERICAN COMMUNITY, WHERE EXCITEMENT IS RUNNING HIGH ON NEWS OF BILLY CARTER'S PRESENCE, AND HE HAS AGREED TO VISIT AMERICAN OIL COMPANY SCHOOL OCT 1. DELEGATION WILL PROBABLY LEAVE FOR ROME AND U.S. LATER OCT 1, OR POSSIBLY OCT 2.
EAGLETON

EXTRACTS FROM PRESIDENT CARTER'S
PERSONAL NOTES REFERRING TO
BILLY CARTER AND LIBYA

Dictated for Thursday, February 22, 1979

"Ham came in to talk over with me the problems with Billy -- his health and his prospective additional visit to Libya."

Dictated for Friday, February 23, 1979

"I talked to Billy, who's in the hospital. [Further discussion of his health problems.]

"We're also trying to work out some resolution of his financial problems. I told Kirbo to protect Billy's interests in any negotiations concerning the warehouse or Billy's land. And I encouraged Sybil and Randy to discourage Billy from making any other trip to Libya; to try to keep him out of the newspapers for a few weeks; but let him regain his equilibrium."

(Note: The President called Billy Carter at 4:29 p.m. The conversation ended 4:33 p.m. Billy Carter was in the Americus Hospital.)

Dictated for Saturday, February 24, 1979

"I talked to Bert Lance this morning. He's to visit Billy this coming week, to encourage him to take care of his health, his finances, and to stay away from Libya for a while."

Dictated for Thursday, March 22, 1979

"Billy called from the hospital in Long Beach. He's very happy. Seemed to be getting along well. Wants to know how a possible future trip to Libya might affect me with Sadat and the Israelis."

(Note: Billy Carter called at 2:50 p.m. Call was returned at 3:37 p.m. Conversation ended 3:47 p.m.)

Dictated for Tuesday, April 3, 1979

"In the afternoon I . . . also talked to Billy. Told him it would be a mistake and embarrassment for him to go to Libya anytime soon. He said he was getting along fine, and it would take awhile to plan a trip even when he does want to go. That he would clear it with me before he made that decision."

(Note: The President called Billy Carter at 3:38 p.m. Conversation ended 3:43 p.m. Billy Carter in the Long Beach Naval Hospital, California.)

THE WHITE HOUSE
WASHINGTON

4-3-79

To Billy

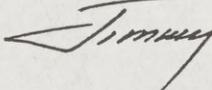
I'll call you also, but wanted to give you my response to your question regarding a visit to Libya in the near future. It would create severe problems for us because of their threats against Sadat and because they are fighting in Uganda for Idi Amin.

I just got you on the phone and am glad to know that you're still doing so well.

I'll see Jack Mc Gregor when he comes to the White House this week.

All of us are very proud of you, & particularly your brother! You've had a rough time lately, I know, but you've really come through it with a lot of courage. Call me whenever I can help. I love you.

Mr. Billy Carter
c/o The Navy Alcohol
Rehabilitation Unit
National Naval Medical Center
Long Beach, California 90801



Dictated for Tuesday, November 20, 1979

"I told Zbig to call Billy to follow up on his report that the Libyans might be willing to help us with the Iranian situation."

"Billy was at the White House, having come up at Zbig's invitation. I told him and Zbig to get together to discuss what message we might pass on to the Libyans."

Dictated for Tuesday, November 27, 1979

"Lunch with Rosalynn. Billy came in, having talked to the Libyans. They are quite eager to help us. Proud of the fact that they condemned the taking of hostages. And I arranged for Zbig to see the Charge at 4:30 this afternoon."

"Billy had the Libyans' Charge come over to meet with Zbig. The meeting was a very good one. I think for the first time the Libyans have ever been in the White House since I've been here. They promised to do everything possible with the students and with Khomeini to get the hostages released. We told them that we would like to have better relationships with the Libyans and with the government itself."

Dictated for Thursday, December 6, 1979

"At the staff meeting we discussed . . . our altercation with Libya"

"I instructed Zbig to have the Libyan Charge come in, Ali El-Houdari. I had a good discussion with him, thanking Quadhafi for helping with the hostages. Telling him that the attack on our Embassy was inexcusable and very serious to us. That if it was resolved successfully with an apology, a commitment to replace or repair the Embassy, and his assurance that our diplomatic personnel would be protected -- under those circumstances that we would try in every way to improve consultations with Libya and long-range relations with them."

Dictated for Tuesday, June 17, 1980

[The first paragraph of the note dealt with nominations for the judiciary and the Department of Justice.]

"He (Attorney General Civiletti) told me that Billy ought to acknowledge if he was an agent of Iraq (sic). There would be no punishment for him. But that Billy was unwilling to do so because he claims he was not an agent of that country."

[The balance of the note mentioned the Attorney General's comment on the veracity and character of several of Hamilton Jordan's accusers in the Studio 54 cocaine charge.]

Dictated for Saturday, June 28, 1980

"I talked to Billy about his helping Libya and his refusal to sign the foreign agents permit. He has the same lawyer that represented Hamilton recently, and doesn't believe that he needs to file. This can become an embarrassing incident later on, particularly with American Jews."

(Note: The President places call to Billy Carter at 6:54 a.m. Billy Carter returns call at 12:10 p.m. from pay phone in Washington, D.C. Conversation ends at 12:13 p.m. President Carter is at Camp David.)

Dictated for Tuesday, July 1, 1980

"I called Billy on the phone, and urged him to sign the Foreign Agent Certification concerning Libya. I don't know if he'll do it or not. He has been acting as their agent apparently. But considers himself to be singled out, especially by Jack Anderson and Safire -- which is probably true. His lawyer's also advocating that he register and disavow any improper actions."

(Note: The President places call to Billy Carter at 9:56 a.m. Billy Carter returns call at 10:02 a.m. from his residence in Georgia. Phone conversation ends at 10:09 a.m. President Carter is in Washington, D.C.)

Dictated for Monday, July 7, 1980

"Billy seems to be feeling very good. Not drinking. Tanned. Plays golf. Harassed by the government on the Libya deal."

(Note: President Carter is in Plains, Georgia. Entry is after brief remarks about playing afternoon softball game.)

Dictated for Friday, July 11, 1980

"Lloyd Cutler called to say that Billy had agreed to sign the Justice Department Consent Order on revealing his relationship with Libya, which is good news I think."

(Note: President Carter is at Sapelo Island, Georgia.)

Dictated for Sunday, July 20, 1980

"Lloyd and Zbig called concerning Billy's relationship with Libya, and his contacts with the White House. I told them to research very carefully the telephone logs and their records, and prepare a complete report on what had been done. So far as I could see, nothing improper has occurred."

(Note: President Carter is in Washington, D.C.)

Dictated for Tuesday, July 22, 1980

"Lloyd and Jody and Zbig worked on a statement to be issued today about Billy's relationship with Libya. We've tried to reconstruct all the contacts we've had with Billy during the last eight months. It's difficult to remember when the phone calls were made and when the meetings took place. But I think we've done an accurate job of it."

(Note: President Carter is in Washington, D.C.)

STATEMENT OF LLOYD N. CUTLER

1. I have been Counsel to the President since October 1, 1979. This statement covers my activities with respect to the Department of Justice investigation concerning Billy Carter's status under the Foreign Agents Registration Act. I was aware of, but did not play a significant part in, the processing of certain routine investigating inquiries that were addressed to the Counsel's office and are described in the separate report of Counsel. My own activities began on June 11, 1980.

2. Until June 11, 1980, I had not met with or talked to Billy Carter, although we may have been introduced to one another at a State dinner in December 1979.

3. On the afternoon of June 11 I received a telephone message from Dr. Brzezinski asking if I could come to his office. When I arrived he was meeting with Billy Carter and he introduced me. I cannot recall everything that was said, but the substance was as follows. Dr. Brzezinski said he had asked me to join the meeting as soon as he had heard from Billy Carter about its subject. Billy Carter said he had been interviewed that morning by a Justice Department lawyer or lawyers conducting an investigation under the Foreign Agents Registration Act. He said he had been asked to describe every contact he had had with anyone in the White House concerning Libya. He said that before giving a full answer he wanted to consult Dr. Brzezinski about whether there was any national security objection to describing

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to the Justice Department his efforts to arrange a November 1979 meeting at Dr. Brzezinski's request with Ali El Houdari, the highest Libyan official in Washington, for the purpose of requesting the Government of Libya to urge the authorities in Iran to release the hostages. This meeting and its aftermath are described in Dr. Brzezinski's statement.

4. This was my first knowledge of these events. I asked Dr. Brzezinski whether he saw any national security objection to Billy Carter's disclosure to the Department of his role in this meeting and the arrangements preceding it. He said he saw no objection. I agreed. We then advised Billy Carter that he could inform the Department. I added that, as his lawyer had probably informed him, he had a legal obligation to respond fully to the Department's questions. At that point he said he did not have a lawyer advising him on this matter. I expressed surprise, and stated my opinion that it was of critical importance for anyone being interrogated by law enforcement officials about a possible violation of law to retain his own lawyer to advise him as to his rights and duties and to represent him in the matter. I asked if he had a regular lawyer whom he might consult in this matter. He said his regular lawyer practiced in Americus, Georgia, and would not be experienced in matters of this type. He asked if I had any suggestions. I recommended four or five lawyers in Washington, including Steven Pollak and Henry Ruth of the firm of Shea & Gardner.

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I mentioned that Mr. Pollak and Mr. Ruth had advised Hamilton Jordan on the cocaine-use charge last fall. Billy Carter indicated a preference for Mr. Pollak and Mr. Ruth and asked if I could introduce him. I then took him upstairs to my office and put in a call to Mr. Pollak. He was out of his office, but his secretary said she could find him. Within a few minutes he called back and after a brief explanation I introduced him over the telephone to Billy Carter. They made an appointment to meet later that afternoon, and immediately thereafter Billy Carter left my office. I have not seen or talked to him since.

5. At no time until after the complaint and consent judgment were filed in Court did I have any contact or communication with the Attorney General or anyone else in the Department of Justice concerning its investigation of Billy Carter or the disposition of the matter.

On June 12 I telephoned Mr. Pollak to inquire whether he was representing Billy Carter. He said he was. I asked whether he or Mr. Ruth or Billy Carter had advised the Justice Department of the November 1979 meeting with Dr. Brzezinski and a Libyan official. Mr. Pollak said he was not certain but would check. I recounted to him Dr. Brzezinski's and my statements to Billy Carter that there was no national security objection to disclosure. My reason for raising this matter with Mr. Pollak was that, having heard from Billy Carter on June 11 that the Department of Justice was inquiring into any contact between Billy Carter and the

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White House about Libya, I wanted to be sure that Justice was informed about the November 1979 meeting.

7. At some time on June 12 or 13, at the close of a larger meeting on another subject, I informed the President of my meeting with Dr. Brzezinski and Billy Carter on June 11, my recommendation to Billy Carter that he obtain counsel, and the fact that he had retained Mr. Pollak and Mr. Ruth. I had no further communication with the President concerning Billy Carter until June 26.

8. On June 17, 1980, I met with the President and the Attorney General to discuss a number of proposed judicial appointments. At the end of this discussion, the Attorney General said he had some other matters to take up privately with the President and I left. I did not learn of the subject matter of this conversation until the evening of July 24th, when, as stated in paragraph 18, the President read me his note of it.

9. On June 19 I went with the President on his trip to Rome and the Venice Summit. I left the President's party in Venice and returned to Washington on the evening of June 24. On June 25 I spoke at a luncheon of the Annual Meeting of the District of Columbia Bar. Mr. Pollak, the incoming next President of the Bar, was also at the head table. After the luncheon we had a brief discussion. He said he thought Billy Carter's matter was a serious one. He asked me to reconfirm that Dr. Brzezinski and I had authorized Billy Carter to disclose his participation in the November 1979 meeting, saying that Billy Carter was not sure he had

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understood fully. I confirmed that we had authorized and encouraged Billy Carter to disclose the meeting, and again asked Mr. Pollak to advise me when this had been done.

10. On June 26 I called Mr. Pollak. I could not reach him, but I did speak to Mr. Ruth. The President was returning that evening from his trip to Europe, and I wanted to know whether some public action in the matter was imminent, so that I could advise the President and prepare for whatever White House comment the press would then request. Mr. Ruth told me that the Department was insisting that Billy Carter file a registration statement and was setting a deadline at close of business on June 27. He also told me that the Department had been informed of the November 1979 meeting and had expressed no interest. Based on this conversation, I wrote the attached memorandum which I sent to the President that evening.

11. On Monday, June 30, I called Mr. Ruth to inquire what had happened to the deadline. He replied that the deadline had been extended to the close of business on Tuesday, July 1. He told me that Billy Carter was still considering whether or not to file a registration statement. Mr. Ruth said he was unwilling to predict whether Billy Carter would. I said I was reflecting on whether to suggest to the President that, if he thought it would be useful, he might call his brother and urge him to register in his own interest and make a full disclosure as the Department was insisting. Mr. Ruth said he had no advice on whether such a call should be made. On the basis of this conversation I wrote the

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attached handwritten note to the President on the morning of July 1.

12. Later that morning the President informed me that he had called his brother, who seemed to be receptive, and that the call may have done some good.

13. On the afternoon of July 1, I called Mr. Pollak and Mr. Ruth. I told them the call had been made. They said the deadline had been extended until noon on July 2 and that Billy Carter was meeting with them that morning to make his final decision. On July 2, I sent the attached note to the President summarizing this call.

14. On July 8 I traveled with the President to Tokyo where he attended the memorial service for Prime Minister Ohira. On the return trip the President's party left Anchorage, Alaska on July 10 for Sapelo Island, Georgia. I remained in Anchorage to visit my two daughters who live in Alaska and a new grandchild. On the morning of July 11 Anchorage time (five hours behind Washington time) I called my office and found that Mr. Pollak and Mr. Ruth were trying to reach me. When I telephoned them they told me they were in the final stages of negotiations with the Department concerning the filing of a complaint, consent judgment, and registration statement. They said that before filing the registration statement they wanted to corroborate Billy Carter's statement to them that he had never discussed any specific U.S. policy or action toward Libya with the President. They asked if I had checked or could check this point with the President. I

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said that from my earlier conversations with the President I felt sure this was correct, but that I would try to check again. They also told me that if agreement on the consent judgment was not reached that day, the Department of Justice still intended to file its complaint. I then talked with the President on Sapelo Island. He confirmed to me that Billy Carter had never discussed with him any specific U.S. policy or action toward Libya. I then called back Mr. Ruth and confirmed my earlier statement. He said he could not yet be certain, but that it was now likely no public filing would be made that day, and the negotiations might continue into Saturday or the following Monday. He also said that the court papers would include a disclosure of two substantial payments to Billy Carter, one in January 1980 of \$20,000 and one in April 1980 of \$200,000. He said the payments were loans, but that there was no documentation for the loans. Before making this call to Mr. Ruth, I had put in a call to Mr. Jody Powell, who was on Jekyll Island, next to Sapelo, so that he would be prepared for any requested White House comments if the public filing occurred that day. The call to Mr. Powell was not completed until after my second talk with Mr. Ruth. I then informed Mr. Powell of the above developments, including what Mr. Ruth had told me about the large payments. I said this was the first I had known of any such payments. I said I felt sure the President had not known about them. I asked Mr. Powell to inform him by the time the court papers were actually filed and a White House comment might be requested.

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15. I returned to Washington on July 13. On Monday, July 14 Mr. Ruth called me to advise that the consent judgment had now been agreed and that the complaint, consent judgment and registration statement had been filed. He then sent me copies of the court documents as filed. I telephoned the President's secretary, Susan Clough, on Sapelo Island to ask if the President was available. He was out fishing. I asked her to inform the President of these developments, including the large payments, when he returned. I then arranged to have a copy of the court documents sent to Ms. Clough in the next delivery of White House mail.

16. Later on the 14th, I had occasion to call the Attorney General on an unrelated matter. I found that he was in San Francisco attending the Ninth Circuit Conference. I asked for the Deputy Attorney General, Judge Renfrew, and found that he was also in San Francisco. I asked my secretary to leave word for either one to call. Later that day the Attorney General returned my call. After we disposed of our other business, I mentioned to him that the complaint and judgment in the Billy Carter case had been filed that morning. I said that I had just advised the White House press office, if it were questioned on the point, that I believed there had been no contact between the Justice Department and the White House in either direction concerning the conduct of the investigation. He confirmed that this was correct.

-9-

17. During the week of July 14 numerous questions were raised as to White House knowledge of various aspects of Billy Carter's alleged activities, and as to contacts between the White House and the Justice Department about the Department's investigation. By the end of that week, after consulting with Jody Powell and me, the President concluded that it would be desirable to prepare a press statement responding to all these questions. Such a statement was issued on Tuesday, July 22. Before its issuance, I checked the point that there had been no contact in either direction between the Justice Department and the White House concerning the conduct of the investigation with the Attorney General. He again confirmed that this was correct. The statement was also reviewed and approved by the President.

18. The circumstances under which I learned of the June 17 conversation between the President and the Attorney General are as follows. In preparation for the July 22 statement, I had asked Susan Clough to check the President's personal files and telephone logs to look for any items relating to telephone conversations with Billy Carter about Libya. After seeing the logs, I also asked her to review the President's files and his personal notes -- which he dictates into a machine for later transcription and to which only Ms. Clough and the President have access -- with priority emphasis on any notes she might find of the telephone conversations between the President and Billy Carter that were identified in the logs as having occurred on June 28 and July 1.

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Ms. Clough had not yet transcribed the dictation from the dates on which those conversations were logged. She did so and, with the President's approval gave the transcriptions of notes for these conversations to me on July 21 or 22, before the July 22 statement was issued. She then completed transcribing the backlog of other untranscribed notes for June and July 1980. After completing this transcription, she reviewed all the President's personal notes from March 1978 through July 21, 1980 and typed extracts of any entries relating to Billy Carter and Libya. She completed this compilation on Thursday, July 24, and delivered it to the President for review. On the evening of the 24th, the President called me and said he had just been through the notes and wanted to read some of them to me. He read several to me and then came to one relating to a conversation he said he had completely forgotten. He then read to me the note of the Attorney General's June 17 conversation with him about Billy. He asked me to review this and the other notes the next morning and to show the June 17 note to the Attorney General, so that his recollection could be checked as well. It was implicit in our discussion that prompt disclosure of the conversation would be made.

19. Later that evening Mrs. Cutler and I attended a dinner at the Austrian Embassy. The Attorney General was present. During that evening I took the Attorney General aside and told him what the President had said to me about

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just having found and read a note of the June 17 conversation which the President had forgotten. The Attorney General immediately confirmed that there had been such a conversation and described it substantially as the President had in the note he read to me. I said that the fact of this conversation required amplification of our July 22 statement. I told the Attorney General I would read the notes the next morning and then call to review the June 17 item with him.

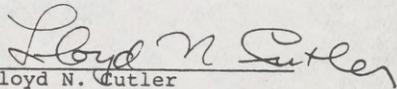
20. The next morning, July 25, I reviewed the notes. Before I could call Mr. Civiletti, Mr. Powell notified me that he had just been told the Attorney General had issued his own press statement about the conversation and was about to hold a press conference.

21. There have been suggestions in the press that my actions described in paragraphs 3 - 15 above tended to interfere with the Justice Department's efforts to enforce the law against Billy Carter. All of my actions were intended to be -- and I believe they were -- in the interest of law enforcement and in the institutional interest of the Presidency:

- ° It served these interests to urge Billy Carter to retain counsel to advise him of his rights and duties and represent him before the Department of Justice.
- ° It served these interests to respond to his request to suggest a suitable counsel and to give him a choice of competent, experienced and ethical lawyers.

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- It served these interests to urge Billy Carter and his lawyers to disclose his participation in the Iranian hostage meeting to the Department of Justice.
- It served these interests to recommend to the President that he urge his brother to file a registration statement making a full disclosure -- the very step the Justice Department lawyers were urging Billy and his lawyers to take.
- It served these interests to avoid and recommend against any contact by the White House with the Department of Justice concerning the investigation.
- It served these interests to ask Billy Carter's lawyers to advise me when final disposition of the case was imminent, so that the White House could respond to the inevitable media requests for immediate comment.


Lloyd N. Cutler

August 4, 1980

UNCLASSIFIED DOCUMENTS

RELIED UPON

IN THE

STATEMENT OF MR. LLOYD N. CUTLER

June 26, 1980

PERSONAL

MEMORANDUM FOR THE PRESIDENT

As you know, your brother Billy has consulted Steve Pollak and Henry Ruth - who were Hamilton's lawyers - for advice on the continuing Justice Department inquiry into Billy's failure to register under the Foreign Agents Registration Act in connection with his activities on behalf of the Government of Libya.

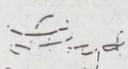
Pollak and Ruth met with the Justice Department attorneys last week. They were told that unless Billy agreed to register by Friday the 27th, they intended to recommend a Justice Department action. They would not specify the action, but Pollak and Ruth believe it will be either the convening of a grand jury to present charges of a criminal violation or the bringing of a civil injunction action to enjoin Billy from further activities unless he registers and makes the required disclosures.

Pollak and Ruth are trying to persuade Billy to register, but have so far not succeeded. They have asked for an extension of time until Monday, July 7. They have been promised an answer this afternoon on whether this extension will be granted. In the judgment of Pollak and Ruth the Justice Department lawyers in charge of the case would be satisfied with the filing of a registration. However, there is some risk that registration this late would not satisfy Phil Heymann, the Assistant Attorney General in charge of the Criminal Division.

The attached Safire column in today's New York Times complicates the situation still further.

Neither the Attorney General nor anyone else in Justice has discussed timing or any other aspect of the matter with me. I recommend against initiating any inquiry at this end.

If any action is taken tomorrow, I will prepare an appropriate draft statement for use in response to press inquiries and send it to you and Jody.



Lloyd

ESSAY

Igor
And Billy

By William Safire

WASHINGTON, June 25 — This is the tale of two Justice Departments, and how they responded to the suspicion of lawbreaking by a person close to the President.

In 1953, Igor Cassini was riding high. As "Cholly Knickerbocker," he was a powerful society columnist for The New York Journal-American. He was close to the Kennedy clan, especially friendly with Founding Father Joseph Kennedy; Igor's brother, Oleg, was Jackie Kennedy's favorite dress designer; and at one point in 1951, President Kennedy had dispatched diplomatic troubleshooter Robert Murphy, accompanied by Igor Cassini, to the Dominican Republic to avert the overthrow of Dictator Trujillo.

But then the Kennedy Justice Department was told that Igor Cassini's public relations firm was doing business with General Trujillo's regime. Helping to improve the image of a foreign government for pay is legitimate, but Mr. Cassini had neglected to make the relationship public, as required by the Foreign Agents Registration Act.

A grand jury was empaneled. Six months later, criminal indictments of Mr. Cassini and an associate were handed up. After expostulating that his failure to register was merely a "technical violation," the dapper society figure ultimately pleaded *nolo contendere*. He was fined \$10,000 and sentenced to six months' probation.

Igor Cassini was ruined. He lost his newspaper job and his business went down the drain. His wife committed suicide. He made a stab at starting a magazine, but that did not work out, and he now lives in Spain.

Turn now to the investigation conducted by the Carter Justice Department under the same law when the President's brother, Billy Carter, seemed to some of us to be representing Libya a couple of years ago.

From Sept. 27 to Oct. 1, 1978, the President's brother was in Libya with some business associates, telling reporters in Tripoli that "the Western mass media has distorted the image of Libya in the Western world." Dictator Muammar el-Qaddafi, the world's foremost employer of assassins, was at that time trying to get the Carter Administration to release to him a fleet of transport aircraft.

front man and resident celebrity welcoming newsmen and others to receptions for Libyans in Washington and New York. We do not know what, if any, gifts or fees or things of value passed hands.

Prodded in this space, Carter Justice Department officials announced in early January 1979 that Justice would seek to discover if the Foreign Agents Registration Act had been violated.

No grand jury was ever empaneled. Instead, a letter was mailed to Billy Carter in Plains, Ga. Months passed with no reply. Then Justice mailed another letter begging the courtesy of a response. More months passed. Then, on the eve of departing for Libya in September 1979 to participate in the celebrations marking the 10th anniversary of Colonel Qaddafi's seizure of power, Billy Carter dropped a note to the Justice Department saying only to send him the necessary forms for registration.

It is now 18 months since the "investigation" started. Recently, when a reporter asked Attorney General Benjamin Civiletti why it was taking so long, he received an unexpected reply: "Ask Paul Heymann that. It has certainly taken longer than I think appropriate."

Rarely does the head of the Justice Department publicly criticize the chief of his Criminal Division. I tried to reach Assistant Attorney General Heymann, that scourge of Georgians, who last month decided not to prosecute Senator Herman Talmadge and to drop the prosecution of Bert Lance. But Mr. Heymann's reaction to a phone call from me is similar to the apopleptic ratcheting exhibited by the Chief Inspector in a Peter Sellers movie whose Inspector Clouseau's name is mentioned.

Attorney General Civiletti, on the contrary, has the courage of his convictions (though "convictions" is hardly the word to use in connection with Georgians). He informs me: "I thought it might take three or four or five months, or, at the most, maybe a year, to determine whether somebody is or is not an agent."

Has his gentle chastisement of the foot-dragging Mr. Heymann produced any results? After praising the Criminal Division on other matters, the Attorney General concluded: "They advised me they think very soon — within two weeks — they'll be in a position to make a decision. If there is a case, then the Criminal Division will make a fair and honest decision on what to do."

A less elevated source says that an exclusionary clause has been found to let Billy off with a wrist-slap. That was pre-ordained when no grand jury was empaneled.

Perhaps, two decades ago, Kennedy Justice felt that the suspect Cassini

LNC-2

dated July 1, 1980

Handwritten note from Lloyd Cutler reads as follows:

PERSONAL

July 1

Mr. President:

I have talked again with Billy's lawyers. They are unwilling to predict what he will decide. His principal hang-up remains that registration as a "foreign agent" is an admission of bad conduct, that no one in his circle would understand his acting as a "foreign agent", and that he did not so regard himself.

They say their relationship with him seems good and trusting, but that he is very "down and out" and in need of a friend. They have no advice on whether you should call, but urge that if you do the talk should focus on his situation and what is in his best interest.

Registration as a foreign agent, of course, is the same as registering to lobby and filing personal financial data as a government employee. Lawfirms and public relations firms register as foreign agents all the time, usually with a disclaimer letter saying they do not feel their activities are covered but that they are filing in the interests of full disclosure.

From Billy's point of view, an agreement to register is obviously preferable to a grand jury investigation or more likely a civil injunction proceeding. Either would be more costly and involve more adverse publicity than a simple registration.

If you do call, your knowledge of the situation should be based on my advice to you, rather than any indication you know what Billy's lawyers are advising him.

Billy's lawyers must advise the Department by the close of business today.

Lloyd.

They are unwilling to conduct an investigation. The principal thing we maintain they regret after the fact is that they have no information of kind conduct that would be in the interests of understanding this act as a foreign agent and that he did not so regard himself.

They say their relationship with him was good and trusting but that he is very down out and in need of a friend. They have no advice on whether you should call, but in that if you do so acts should focus on the situation and what is in his best interests.

Registration as a foreign agent of course is the same as registering to lobby and file personal financial data as a government emp. Law firms and public relations firms register as foreign agents all the time, usually with a disclaimer letter saying they do not file the activities in covered but that they are files.

LNC-5

I have been thinking about you
 and how much I love you. I hope
 you are well and happy. I will
 be home soon. I love you
 and miss you very much.

If you can write your address
 at the moment, I would be glad to
 know it. I will write you as soon
 as I can. I love you and miss
 you very much.

I hope to see you in the
 near future. I love you
 and miss you very much.

A note from [redacted] reads as follows:

July 2

Mr. President:

Re Billy:

1. His lawyers asked Justice for additional time until noon today. Justice agreed.
2. Billy will meet this morning with his lawyers to decide.
3. Your talk yesterday was helpful.

Lloyd.

July 2 -

Mr. President

Re Bally:

1. Lawyers asked Justice for address this week noon today. Justice agreed.
2. Bally will meet this morning with lawyers to decide.
3. Your talk yesterday was helpful.

Lloyd

Statement by Dr. Zbigniew Brzezinski
Assistant to the President for National Security Affairs

I welcome this opportunity to review the contacts that I have had with Mr. Billy Carter in relationship to Libya. I believe that they will show (1) that such contacts were motivated by legitimate concerns for the national interest; (2) that they were entirely proper; and (3) that they were very limited. In fact, outside of the contacts that I will discuss in my testimony, I have had only sporadic and infrequent social contact with Billy Carter, maybe two or so times a year at social functions at the White House.

Some of the contacts that I will be discussing occurred many months ago and at the time they did not seem to be -- and, indeed, were not -- centrally significant. It is therefore impossible to reconstruct in every detail every word that was actually said. Nonetheless, after careful review of the available documents, I believe I can offer a reasonably complete and accurate reconstruction.

These contacts which I shall discuss more fully were the following:

- I. Telephone conversations on November 20, 1979;
- II. Meeting on November 27, 1979, involving Mr. Billy Carter and Mr. Ali el-Houdari, the Secretary of the People's Committee of the "Libyan People's Bureau" (i.e., the Libyan Embassy);
- III. My call to Mr. Billy Carter in March, 1980;
- IV. His call to me on June 10, 1980, and the visit to my office by Billy Carter on June 11.

Iranian action of holding hostages. A series of diplomatic initiatives was undertaken to persuade the Libyan government to take a public position opposing the hostage-taking. In the meantime, Tripoli radio was broadcasting expressions of solidarity with Iran. For example, on November 10 Tripoli radio carried a statement by the "General Union of Jamahiriya* Students" stressing "full support for the demands of the Iranian students for the extradition of the Shah," and urging students throughout the world to support their Iranian colleagues. The Jamahiriya News Agency the same day criticized the PLO efforts to mediate to obtain release of the American hostages. The Libyan press carried statements by Iranian figures supporting the hostage-taking. Libyan officials called on OPEC and the Arab League to undertake actions to support Iran against the United States. On November 18, the U.S. Charge met with Libyan officials to complain about Libya's increasingly open support for the Iranian position. The Charge recommended that Mr. Ali el-Houdari be called in "at a fairly high level" in Washington to be given a similar message.

On the morning of November 20, at 10:21 a.m., the President called me from Camp David and in the course of a conversation pertaining to that day's forthcoming NSC meeting on the Iran hostage issue mentioned to me that Mrs. Carter had asked Billy Carter if Libya could be helpful on the hostage issue, and

* Col. Qadhafi's term for the Libyan State.

I. The Telephone Conversations of November 20.

These conversations occurred approximately two weeks after the seizure of the hostages. In this connection I would like to refer briefly to the prevailing circumstances, to our efforts regarding Iran, as well as to the state of our relations with Libya.

Our intention at the time was to prevent the situation from becoming frozen and to that end we wanted to mobilize maximum pressure possible on Iran. We wished the various groupings in Iran, and particularly the radical kidnappers, to feel internationally as isolated as possible. We wanted every government in the world to express its disapproval of the Iranian action. We wished to make certain that the Iranians derived no moral support from any foreign source whatever. In brief, we wished the Iranians to feel totally alone. And we were all determined to leave no stone unturned in our efforts to generate the greatest possible international pressure on the Iranians. Those efforts have persisted to the present.

While Libya was by no means central to our strategy, it was still desirable that the Libyan government, particularly its head, Col. Qadhafi, not express support for the Iranian action. Throughout November, we had private indications from various Libyan officials at the United Nations and in Tripoli that, while they supported the Iranian revolution and opposed the U.S. freezing of Iranian assets, they did not support the

asked me to follow up with Billy. We all felt strongly that we owed it to the hostages to try every conventional and unconventional approach, even if there were only a slim possibility of success. Accordingly, I said that I would pursue this, and at 10:50 that morning I called Billy Carter to ask if he could somehow be helpful in getting Libya to take a more constructive posture on the hostage issue. I asked if he knew Houdari, and I said that I would be happy to meet Houdari personally to discuss the importance of Libya disassociating itself from the kidnapping. I either asked him if he could come to Washington or if he were coming to Washington anyway. I do not recall which. Later that day Billy Carter came to Washington, and I spoke to him again by telephone at 5:33 p.m. He called me back at 7:43 p.m.

In the 7:43 conversation, as I recall, Billy indicated that a meeting with Houdari could be set up for the following week. I called Secretary of State Vance immediately thereafter, at 7:44 p.m. Most probably in that conversation (because of its timing) or in any case at some point prior to November 27, I recall mentioning to Secretary Vance that a contact with the Libyans through Billy Carter was being explored. He replied with a remark to the effect that this might be worth it, or that there was no harm in trying, or something like that.

Because of the cool nature of U.S.-Libyan relations, it was not unreasonable for us to hope that an approach through

-5-

Billy Carter might dramatize and underline U.S. determination to forge an international consensus condemning Iran's illegal action. Given the somewhat unconventional style of Col. Qadhafi himself, there was reason to suppose that a more direct approach would have more impact, especially if it could be conveyed credibly as a personal appeal from the President himself, reinforcing the efforts of the State Department.

At this time I had no knowledge of any payments by the Libyan government to Billy Carter, and I did not learn of them until the court documents were published on July 14, 1980. There was general knowledge that the Department of Justice was investigating his relationship with the Libyan government, but I was not aware of any formal allegations of wrongdoing. The warm reception given him in Tripoli in the course of his last trip indicated that the Libyans might be somewhat more receptive to an approach initiated by him. At that time we felt we should use any means to influence constructively the resolution of the hostage issue.

It is worth remembering, in this context, that other events made this one of the most dangerous and tense periods of the entire hostage crisis. For some days before November 20, there had been mounting indications that Tehran was considering putting the American hostages on trial.

On November 19, 13 American hostages--women and blacks--were released by the Iranians in an effort to divide U.S.

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public opinion. On November 20 Ayatollah Khomeini made a major speech crudely vilifying President Carter. In it, he stated: "If Carter does not send the Shah, it is possible that the hostages may be tried, and if they are tried, Carter knows what will happen."

The Special Coordination Committee had met to discuss the Iranian situation that morning. After the speech, a second meeting of the SCC was convened to consider U.S. options. The President returned from Camp David to chair a special meeting of the National Security Council that afternoon. In the evening the White House issued a formal statement which warned Iran that it would bear full responsibility for any ensuing consequences if the hostages should be put on trial. The statement noted that the United States was seeking a peaceful solution through the United Nations and "every other available channel," but warned the Government of Iran about the gravity of the situation it had created.

II. Meeting of November 27 and Subsequent Events.

On November 22, two days after the calls made on November 20, the Libyan Foreign Secretariat issued a formal statement on the hostage issue which said that "in our view the hostages should be released." This was the first official Libyan reaction to the embassy seizure and represented a substantial shift from the previous, open Libyan support for the Iranian position. On November 24, the U.S. Charge in

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Tripoli was called to the Foreign Ministry to be told that the November 22 statement represented the position of the Libyan government and that Libya would continue to use its good offices to seek release of the hostages.

On November 27, Ali el-Houdari came to my office, as prearranged. He was accompanied by Billy Carter and Henry R. Coleman. The latter was introduced to me by Billy Carter as "my associate." I had never previously met or heard of him, nor seen or talked to him since.

Initially, the conversation was social. Houdari and I talked of our various university associations, his with New York University and mine with Columbia. After such general pleasantries, I then expressed my satisfaction at the recent statements of the Libyan government, and I stressed to him that in our view it was important for all decent, and, particularly, religiously motivated, countries to condemn strongly the taking of the hostages. I expressed my satisfaction to him that this meeting was taking place, and I asked him to tell Col. Qadhafi on behalf of the President that we hoped that the Colonel would exercise whatever leverage he could to influence the Iranians to release the hostages.

Houdari responded that he would convey my message to his government and that he would respond as soon as he could. His attitude was very positive. The conversation lasted from 4:29 to 4:48 p.m. (Since it was primarily exploratory, I did not make a record of it.)

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I had no further conversations with Billy Carter from that time until our telephone conversation in March. He was not involved in my further dealings with the Libyans.

On November 29 we received a message from Col. Qadhafi to President Carter. Col. Qadhafi expressed a desire to develop U.S.-Libyan relations and his opposition to the taking of diplomatic hostages; he noted that Libya had been making efforts in this regard even before the above-mentioned approach; he suggested that Libyan efforts may have had some effect in securing the release of the American women and blacks in Tehran; and he stated that a delegation had been sent to Tehran to meet with Khomeini and to seek the release of the hostages. This message was relayed to the U.S. Charge in Tripoli and was also delivered to me at the White House.

During this same time, beginning on November 20, a band of religious fanatics seized the Great Mosque in Mecca. False rumors about U.S. involvement in the attack--reports which Ayatollah Khomeini personally endorsed--sparked a mob assault on the U.S. Embassy in Islamabad, Pakistan, on November 21. A U.S. Marine corporal and an Army chief warrant officer died as a result of this violence.

The combination of passion aroused by the Mosque incident and the heightened tension in U.S. relations with Iran also touched off a number of demonstrations in Moslem countries.

On December 2, a group of Libyan demonstrators, expressing solidarity with Iran, attacked the U.S. Embassy in Tripoli, Libya, and set it on fire. A vigorous U.S. protest was delivered to the Libyans the same day.

In the next several days, U.S.-Libyan relations became increasingly tense. On the morning of December 6, the President, having earlier consulted with the Secretary of State on the state of U.S.-Libyan relations, instructed me to summon the Libyan representative to the White House and to bring him to his office. In the course of the meeting, which lasted from 11:02 to 11:12, the President asked Houdari to convey the following message to the Libyan government: While expressing appreciation for Libyan assistance regarding the hostages, the President expressed grave concern over the attack on our Embassy. He stated that in his view the Libyan government could have prevented the attack and that it had not treated our Embassy with proper concern and protection. The President stated very firmly that it was his expectation that the Libyan leaders would apologize for the attack and repair the damage. If that issue could be put behind us, the U.S. would like to have a better relationship with Libya, since that was clearly in the interest of both countries. (A classified record of this meeting has been delivered to the Senate Select Committee on Intelligence.)

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Four days later, on December 10, Col. Qadhafi gave an interview to The New York Times (which appeared on December 11) in which he openly opposed the holding of hostages and indicated he had sent a message to Khomeini showing that this action was not supported by anything in the Koran. He indicated that Libya had tried mediation in the dispute. He expressed his support for the Iranian revolution and his opposition to any U.S. military action against Iran. He also discussed his disagreement with U.S. policy in the Middle East, but indicated that he was not contemplating use of oil as a weapon since he had received assurances that American Middle East policy would shift toward "a more neutral posture" if President Carter were reelected. In response to the latter point, The New York Times article quoted a White House spokesman as stating that, "There were no dramatic changes in United States policy in prospect." The spokesman added that, "The United States remains committed to a comprehensive peace in the Middle East. This involves continuity and not a fundamental change in policy."

Two days after this interview, on December 12, Houdari returned to Washington from Libya and contacted me to relay a personal message from Col. Qadhafi to the President. I met him in my office from 4:35 to 4:50 p.m. on the twelfth. Qadhafi's message covered many of the same points in the interview, noting that he was ashamed and unhappy with what the American hostages went through in Iran. He stated that messages and a delegation had been sent to Khomeini, and he offered some suggestions on

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ways to resolve the dispute. The message also acknowledged Libyan responsibility for the Embassy attack and promised remedial steps.

Qadhafi welcomed closer communication between the U.S. and Libya, and he emphasized the importance of a dialogue between our two countries. He indicated his intention to improve communications between himself and our Charge in Tripoli. He referred to the point in The New York Times interview about an anticipated change in U.S. policy if President Carter were reelected, and he expressed hope for a more evenhanded U.S. policy toward Libya.

I thanked Houdari for the message and said I would convey it to the President. I reiterated the importance to the Islamic world of the prompt resolution of the hostage issue, but I did not acknowledge or attempt to respond to any of the specific points he had relayed. Our public statement on Col. Qadhafi's interview had already made it plain that our policy toward the Middle East would continue on course. (A classified record of this meeting has been delivered to the Senate Select Committee on Intelligence.)

It is difficult to judge the extent to which the contact with Houdari, initiated through Billy Carter, and the subsequent indirect exchanges with Col. Qadhafi did or did not prompt the shift in the Libyan position on the hostage issue. It is clear, however, that a shift did take place and that this shift favored our ongoing efforts to isolate Iran and

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our objective of generating maximum international pressure for the release of the hostages.

III. Telephone Call to Billy Carter in March 1980.

In March 1980, Stansfield Turner, the Director of Central Intelligence, drew my attention to a brief intelligence report which bore on Billy Carter's commercial dealings with an oil company and Libyan efforts to exploit them. A copy of this classified report has been furnished to the Senate Select Committee on Intelligence. I must withhold further details in this statement in order to protect intelligence sources and methods.

Recognizing that Billy Carter might be involved in activities that were potentially embarrassing to this country and to the President, I decided to phone him. I did so on the afternoon of the day on which I read the report. (We have not been able to locate in the logs the precise time of this call, though I remember it was in the afternoon.) In my conversation with Billy Carter, I said to him substantially the following: As you probably know, in the nature of my job a great deal of information flows across my desk. I have recently seen some information which seems to suggest that you are engaged in an oil deal, and that you are seeking an increased allocation from Libya for a U.S. oil company. This could be exploited politically by the Libyans, and thus it could create considerable embarrassment for this country

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and for the President personally. I hope you will do nothing that would be embarrassing.

He responded by saying to me that he was entitled to his privacy and that I had no right to inject myself into his personal affairs; moreover, he had a right to make a living.

I responded to him by repeating again my basic message, namely that I hoped he would do nothing inappropriate or embarrassing and that I wished to stress that to him quite strongly.

The next day I reported to the President that I had seen an intelligence report, and I summarized to him its contents. I also reported my telephone call to Billy Carter, repeating what I had said to him and his response. The President said that I had done the right thing.

I saw no other intelligence reports before or later mentioning Billy Carter.

IV. Contacts on June 10-11, 1980.

On June 10, I received a phone call from Billy Carter asking if I could see him the next day. I made an appointment for him to come to my office at 3:30 p.m. on June 11. On that day I saw Billy Carter alone from 3:21 until 3:28, when Mr. Lloyd Cutler joined us at my invitation. The meeting continued until 3:45. At that time Billy Carter and Lloyd Cutler moved to Cutler's office. In the course of our

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initial conversation, Billy Carter informed me that he was being interrogated by the Department of Justice regarding his relationship with Libya, and he asked me whether, in that context, there were any national security reasons why he should not disclose his role in November 1979 in arranging my meeting with Ali el-Houdari on the hostage issue. I told him that I saw no reason why such information should be withheld, but since the matter involved the Department of Justice it would be wise to have Lloyd Cutler's advice. When Lloyd Cutler joined us, he confirmed the position that I had taken. In the course of the conversation it became clear that Billy Carter had attended the interrogation without a lawyer, whereupon Cutler advised Billy Carter to obtain a lawyer. Though the conversation continued for a while in my office, I took no further part in it and once or twice stepped out to attend to other business.

V. Other Considerations.

In the concluding part of my testimony, let me deal with two relevant issues:

A. U.S.-Libyan Relations. I can state unequivocally that at no time was my attitude on U.S. policy toward Libya affected, in any direction, by Billy Carter's activities. I have previously described the very limited nature of my contacts with Billy Carter.* The discussions and decisions

* In this connection, I attach the text of an unclassified document from my office to the Secretary of State, which illustrates the distance that was maintained from Billy Carter's activities.

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about aircraft exports to Libya were primarily the responsibility of the Departments of State and Commerce, which I and the NSC Staff followed in order to monitor the progress of events for the President. In fact, my only direct involvement in the aircraft export decisions was as a participant in the May 18, 1979 breakfast discussion of the proposed sale of three 747's to Libya. Secretary Vance and the President also discussed the issue in a telephone conversation after the breakfast. Secretary Vance subsequently recommended to the Secretary of Commerce that these aircraft not be exported to Libya because of evidence that previously exported 727's had been used to ferry troops and materiel into Uganda, contrary to the spirit of assurances against such use given by the Libyans. The fall 1978 decision by the Departments of State and Commerce to export two 727's was the result of a series of developments, including Libya's decision to accede to the Hague convention on hijacking and Libya's agreement to provide, in writing, assurances that these 727 aircraft would not be employed for military purposes. The decision had been under active review since early summer of 1978. At no time was there any mention of Billy Carter in connection with the aircraft export decisions.

B. The Effect of Billy Carter's Involvement. We may never know what motivated Col. Qadhafi to adopt a new public posture toward the hostages on November 22 -- two days after Billy Carter arranged a meeting with the Libyans -- and to send a delegation to Tehran several days later. But my

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telephone call to Billy Carter and his subsequent contact with Libyan officials may have played a part.

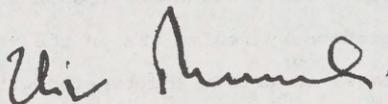
The initial contact with Billy Carter on November 20 was made at a time of intense Administration and public concern for the safety and well-being of the hostages in Tehran. There was every reason to believe that Iran's revolutionary regime was on the verge of placing the hostages on trial, and tension within the Islamic world was at an explosive level. Under those circumstances, it seemed urgent to open up every conceivable channel -- no matter how unorthodox -- to bring additional pressure to bear on the various elements in Tehran.

While there was the risk that this approach would enhance Billy Carter's status in the eyes of the Libyans, our overriding objective at the time was to influence the Libyans so that they would take a position helpful to the release of the hostages. They were obviously conscious of the fact that he was the President's brother, since before November he had twice visited Libya and been warmly received. That is precisely why he was asked to help in this connection. I also think it is right and fair for me to say that I had the distinct impression that Billy Carter was genuinely eager to help the hostages.

In brief, I believe the above shows that the relationship with Billy Carter was entirely proper; that the relationship was limited to the specific hostage matter at a time when

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every possible means to influence the Iranians was being mobilized; and that the subsequent telephone conversation with him in March was designed to deter him from any activity that could cause embarrassment to the nation or the President or that could be exploited by a foreign power.



Zbigniew Brzezinski

August 4, 1980

1547

UNCLASSIFIED DOCUMENTS

RELIED UPON

IN THE

STATEMENT OF DR. ZBIGNIEW BRZEZINSKI

THE WHITE HOUSE
WASHINGTON

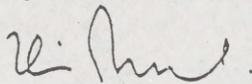
July 17, 1979

MEMORANDUM FOR

THE SECRETARY OF STATE

SUBJECT: Billy Carter Travel to Libya

I understand that Billy Carter yesterday announced on a television program that he would be making another trip to Libya. The purpose of this memorandum is to advise you that such a trip would be entirely a private one, with no official purpose or connection whatsoever. Accordingly, the Department of State and our Embassies abroad should be instructed to treat Mr. Carter's trip, should it take place, strictly as a personal visit by a private citizen and provide only that assistance consistent with such a trip.



Zbigniew Brzezinski

CLASSIFIED DOCUMENTS RELIED UPON
IN THE
STATEMENT OF DR. ZBIGNIEW BRZEZINSKI
HAVE BEEN SUBMITTED
TO THE
SENATE SELECT COMMITTEE ON INTELLIGENCE

Report of Counsel for the President
Submitted to the
Subcommittee of the Committee on the Judiciary
United States Senate

This report is in response to the subcommittee's inquiry into the relationship between Billy Carter and the Government of Libya and related matters. It covers items not covered by the President's report and the statements of Mr. Cutler and Dr. Brzezinski, such as contacts between Billy Carter or his associates with officials of the Department of State, the staff of the National Security Council and other members of the White House staff. It is based on personal interviews with present and former government employees and the review of documents obtained from the White House and relevant Executive Branch agencies, other than the Department of Justice.

This report is not definitive or final. We have not yet had the opportunity to interview all government employees who might have spoken to Billy Carter or his associates or to review all documents which might bear on the subcommittee's inquiry. The report does include all we know that is relevant and material to the subcommittee's inquiry at this time. We shall provide the subcommittee with further information periodically as it becomes available.

I. Billy Carter's Contacts with United States Government
Officials Concerning his Trips to Libya

Mr. James V. Bishop and Donald Hester at the Department of State have advised us that in 1978, before travelling to Libya, Henry R. Coleman, an associate of Billy Carter's, called the North African desk at the State Department and asked whether there was any ban on travel by United States citizens to Libya. In the course of this conversation, he mentioned that Billy Carter was planning to visit Libya. Mr. Coleman was told by Mr. Bishop and Mr. Hester that there was no such ban and, at Mr. Coleman's request, this was confirmed by letter. We have requested, but not yet received, a copy of the letter from the State Department. Mr. Hester recalls that he informed either William B. Quandt or Gary Sick of the NSC staff about the proposed trip to Libya and was advised by one of them to inform Thomas V. Beard at the White House of the trip. Mr. Hester told Mr. Beard of Billy Carter's plans and recommended that Billy Carter be briefed on United States-Libya relations upon his arrival in Libya. (The State Department made the same recommendation to the United States Embassy in Libya in a cable on September 26, 1978, which has previously been released.) Mr. Bishop, who is currently the United States Ambassador to Niger, also recalls being told that Mr. Jack Watson of the White House staff called Mr. Hester to ask about Billy Carter's travel plans after the NSC staff was told by the State Department of these plans, but neither Mr. Watson

nor Mr. Hester recalls such a conversation.

Mr. Quandt and Karl F. Inderfurth, of the NSC staff, also gave general briefings about United States-Middle East policy in telephone conversations with Mr. Coleman in August 1978. They believe that Phillip Wise, the President's Appointment Secretary, asked them to telephone Mr. Coleman. Mr. Wise does not recollect making such a request. Billy Carter participated briefly in one of these conversations.

In addition, Billy Carter and his associates had brief conversations with United States Embassy officials in Tripoli during their trips to Libya and were provided routine assistance in obtaining passports by United States government officials.

II. Contacts by Billy Carter Relating to the Export of
Airplanes to Libya

In January 1979, Mr. Quandt telephoned Morris Draper of the State Department and asked him to call Billy Carter at a number in Georgia to brief him on United States policy regarding the export to Libya of eight C-130 planes. Mr. Quandt is not certain who asked him to do this, but believes it was either Mr. Inderfurth or Mr. Wise. Neither Mr. Inderfurth nor Mr. Wise has any recollection of such a request. (Mr. Wise did receive occasional telephone calls from Billy Carter and Mr. Coleman, including one which

Mr. Wise's logs show he received on January 5, 1979, but to the best of his recollection none of these calls concerned Libya.) Mr. Draper did make the call to Georgia, and it was answered by Mr. Coleman. Mr. Draper summarized the history of the U.S. Government's public position against approving these exports, a policy established in 1973 and still in effect. Mr. Draper states that Mr. Coleman raised no questions.

At a reception in January 1979 for a visiting Libyan delegation, Mr. W. Alan Roy, Country Desk Officer for Libya at the Department of State, recalls that he was introduced to Billy Carter by a Libyan official with whom Mr. Roy was conversing. Billy Carter asked Mr. Roy about the status of the Boeing airplanes. Mr. Roy assumed that Billy Carter was referring to Boeing 727s, and replied that the licenses for two 727s had been granted two months previously. Billy Carter replied: "good".

We have been provided with two Commerce Department documents in which Commerce officials speculate that the State Department was under pressure from the White House to oppose export licenses for three 747s ordered by Libya because of White House sensitivity to charges that Billy Carter was seeking to influence the granting of the licenses. Former Secretary of State Vance and Deputy Secretary Christopher confirm that in their deliberations concerning the export of 747s there was no indication that Billy Carter

was a factor one way or the other in the formulation of White House views on this matter and that the export permission was denied solely for policy reasons unrelated to Billy Carter. Dr. Brzezinski's statement also confirms this fact.

(A full account of the United States Government's policies on exports of airplanes to Libya has been provided to this subcommittee in testimony by Under Secretary of State David Newsom.)

In sum, we are aware of no direct or indirect efforts by Billy Carter to influence United States decisions on the export of aircraft to Libya or any other United States policy or action affecting Libya.

III. Contacts Between the Department of Justice and White House Staff Concerning the Investigation of Billy Carter

There were two investigative inquiries by the Department of Justice to the White House staff in the course of the Department's investigation of Billy Carter. On September 19, 1979, the Department of Justice wrote to the President's Counsel referring to an investigation of the possible obligation of Billy Carter to register as an agent of Libya and inquiring whether the President had received a gift of a gold mounted saddle from Libyan government officials in October or November of 1978. On October 16, 1979,

the Counsel's office replied that White House records showed the President never received a saddle or any other gift from the Libyan Government during his time in office.

Two FBI interviews with Mr. Wise occurred on March 14 and June 4, 1980. As is customary, attorneys in the Counsel's office helped arrange these interviews. There was also a follow-up telephone conversation between Joel Lisker of the Department of Justice and Mr. Wise on July 1, 1980. The inquiry related to the subject matter of telephone calls from Billy Carter to Mr. Wise. Mr. Wise has stated that he has no recollection of any discussion with Billy Carter relating to the export from the United States of aircraft to Libya or other matters concerning Libya.

IV. Meetings Between the President and Jack McGregor

We have also investigated within the White House reports concerning a meeting between Jack McGregor and the President. Mr. McGregor had been Billy Carter's commanding officer in the Marine Corps. Mr. McGregor, who was then an executive of Carey Energy Corporation, was invited along with more than four hundred business and health care leaders to attend an April 4, 1979 White House briefing on the Hospital Cost Containment Act. The invitation was extended by the White House staff responsible for this meeting, without Presidential involvement. As reflected in the President's

notes attached to his Report, during a short telephone conversation on April 3, 1979, Billy Carter, who was then hospitalized in Long Beach, California, asked the President to see Mr. McGregor when he would be in the White House for this briefing. In the same conversation Billy Carter told the President how helpful Mr. McGregor had been to him while he was in the hospital. The President's diary shows that Mr. McGregor was in the Oval Office for nine minutes on April 4. The President recalls no mention of Mr. McGregor's business affairs or Billy's relationship with the Libyans. This meeting is referred to in the notes and correspondence attached to the President's Report.

V. Alleged White House Staff Knowledge of Payments to Billy Carter

So far as we have been able to determine, no one on the White House staff had any information about the payments of \$220,000 made by Libya to Billy Carter as described in his Registration Statement filed pursuant to the Foreign Agents Registration Act or about any evidence in the possession of the Department of Justice relating to such payments, and no one in the White House furnished any such information to Billy Carter or anyone associated with him. So far as we have been able to determine, no one in the White House knew anything about such payments until Billy Carter's counsel informed Mr. Cutler of them on July 11, 1980, when the court papers were about to be filed relating to Billy Carter's

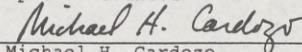
registration under the Foreign Agents Registration Act. Mr. Cutler's statement describes when and how he received this information.

We have determined that a United States intelligence organization did receive information about these payments to Billy Carter in April 1980 and that sometime before June 11 the head of the organization provided this information directly to the Department of Justice and only to the Department of Justice. We have been assured by the head of the organization that this intelligence information was not furnished to the President or to anyone on the White House staff. We have also been advised by this same official that the organization has provided the intelligence information and a description of how it was handled to the Senate Select Committee on Intelligence.

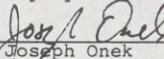
The documents pertinent to this report which are not attached to the President's Report and associated statements are attached here.



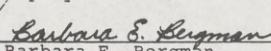
Alfred H. Moses
Special Counsel



Michael H. Cardozo
Deputy Counsel to the President



Joseph Onek
Deputy Counsel to the President



Barbara E. Bergman
Associate Counsel to the President

August 4, 1980

UNCLASSIFIED DOCUMENTS

RELIED UPON

IN THE

REPORT OF COUNSEL

1559

BELLAMY YERNELL P - 07/23/00 164317 PRINTER: LI
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WHITE HOUSE:TOM BEARD (SUBS)
NEA/AFN:JKBISHOP
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STADLS////////////////////////////////////

E.O. 11652: N/A

TAGS: OTRA, LI

SUBJECT: GEORGIA DELEGATION TO TRIPOLI
REF: TRIPOLI 1331

1. DEPARTMENT UNDERSTANDS THAT BILLY CARTER HAS DEPARTED US ON PRIVATE VISIT TO LIBYA VIA PARIS. DESPITE INQUIRIES, DEPARTMENT UNABLE TO IDENTIFY OTHER PEOPLE TRAVELING WITH BILLY CARTER OR PURPOSE OF THEIR VISIT TO LIBYA.
2. CHARGE REQUESTED TO TAKE OPPORTUNITY OF INVITATION TO GREET GEORGIA DELEGATION TO LEARN MEMBERS' NAMES AND TO ALERT THEM TO SENSITIVE NATURE OF U.S.-LIBYAN RELATIONS AND

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PAGE 02 STATE 244909
TO ACQUAINT THEM WITH U.S. POSITIONS ON ISSUES AFFECTING BILATERAL RELATIONS. CHRISTOPEER
LIMITED OFFICIAL USE

To : Stanley J. Mar
 From : Lawrence J. Brady
 Subject : Revocation of Aircraft License for Libya

You requested a status report on the revocation of a license in January for three Boeing 747 aircraft for Libya. The following information was obtained from the Libyan Desk in State.

Secretary Vance will try this week to win Senator Ribicoff over to imposing more restrictive conditions than now exist on the license rather than revoking it. If ^Usuccessful, Vance is expected to recommend that the license be revoked.

Secretary Vance is concerned about Ribicoff's support for S.333, which is the anti-terrorist bill the Administration is opposing. He hopes that Ribicoff will accept restrictive conditions on the license for the 747's and that this will induce him to lessen his support for S.333.

Vance has just been given an overview of U.S.-Libyan economic relations which refers to the large negative U.S. ~~trade~~ trade balance and the extent of U.S. dependence on Libyan oil. He is therefore aware of the possible economic consequences of revoking the aircraft license. The economic overview does reportedly indicate, however, that a tight cash flow situation at this time could cause the Libyan Government to hesitate before cutting off or reducing oil shipments to the United States.

Secretary Vance is also under pressure from the White House to take punitive action against Libya because of the reiter use of U.S. origin aircraft in the Uganda operation, and because of the charge that licenses for Boeing 727's and 747's were approved through Billy Carter's influence

Thus, the pressures on Secretary Vance at this time appear to make revocation the likely outcome if the restrictive conditions are not accepted. Libya's tight cash flow situation might allow Vance to take such action without fear of Libyan retaliation.

Recommendation

That we discuss the situation in light of Commerce's objectives and Vance's progress on the Hill.

Drafted by SCSodman

cc: Marcuss, Brady, Solga, Dyrt, Nelson, Clement (CAGNE), Redding (IEPR/OCA), OEA files, chrono.

LLOYD N. CUTLER
1666 K STREET, N. W
WASHINGTON, D. C. 20006

September 26, 1979

MEMORANDUM FOR MESSRS. LIPSHUTZ, ONEK
AND CARDOZO

Attached is a letter from Robert Keuch of the Criminal Division at Justice inquiring about Libyan gift of a "gold mounted" saddle to the President and to his brother and requesting we make inquiries to determine if the allegation is true.

L.N.C.

Jan. Kharvet

September 19, 1979

Honorable Lloyd M. Cutler
Counsel to the President
The White House
Washington, D. C. 20500

Dear Mr. Cutler:

This Division is conducting an investigation into the possible obligation of William A. Carter, III to register with the Attorney General as an agent of the Socialist People's Libyan Arab Jamahiriya. In attempting to develop facts surrounding William Carter's relationship with the Libyans and in connection with his trip to Libya during late September 1978, we have learned that officials of the Libyan Government reportedly gave a gift of a "gold mounted" saddle to President Carter in October or November 1978. A similar "silver mounted" saddle was given to William Carter by the Libyan Government. Would you kindly institute appropriate inquiries in order to determine if the allegation regarding the reported gift to the President is true, and if true, the circumstances surrounding the making of the gift as well as its disposition.

Should you need additional information, please do not hesitate to contact me.

Sincerely,

ROBERT L. REUCH
Deputy Assistant Attorney General
Criminal Division

THE WHITE HOUSE
WASHINGTON

October 16, 1979

Dear Mr. Keuch:

Lloyd Cutler has requested that I respond to your letter of September 19, 1979.

The White House has no record of President Jimmy Carter ever receiving a gift of a "gold mounted" saddle from officials of the Libyan government in 1978 or at any other time during President Carter's term as President.

Presidential records indicate that President Carter has never received any gift from the Libyan government since he assumed office.

Please let me know if I can be of further assistance in this matter.

Sincerely,

Michael H. Cardozo
Deputy Counsel to the
President

Mr. Robert L. Keuch
Deputy Assistant Attorney
General
Department of Justice
Washington, D.C.

March 14, 1980

MEMORANDUM FOR THE FILE

FROM: PHIL WISE *Phil*

At 10 a.m. today I met with Mr. Carter Cornick of the FBI to answer questions concerning the FBI investigation of Billy Carter's relationship with Libya. The questioning centered around a possible phone conversation between Billy and myself in August or September 1978 during which Billy asked me to put him in contact with anyone in the government who could brief him on the sale of aircraft to the Libyan government. I answered that to my recollection and in my call logs there was no indication of such a conversation. I explained that in the past three years I estimated I had taken 6-8 calls from Billy but none that fell in this category. Agent Cornick felt that was all the information he needed and the interview ended.

June 4, 1980

MEMORANDUM FOR THE FILE

FROM: PHIL WISE
SUBJECT: Billy Carter Libyan Investigation

Agent Clay Bickman interviewed me today on the same subject as my March 14 meeting with Agent Cornick. He had asked in a phone conversation on Monday, June 1, that I check my call files between September 1978 and January 1979 for calls from Billy Carter concerning a Libyan airplane situation. There was no such record.

He then asked a hypothetical question. If I had received a request from Billy on this subject, what would I have done? I explained that I had reservations about responding to requests for help in foreign relations especially those concerning contracts or goods and services. But that if I had done anything I would have contacted the NSC through Dr. Brzezinski's Administrative Assistant to check the propriety of the request and any follow-up appropriate. I used the recent example of the former Ambassador to the U.S. who contacted me through the President's Sunday School teacher to help insure the safety of his wife . I took this request directly to Les Denend who approved it and then followed through to the State Department.

Bickman ended the interview by stating he felt this would cover his needs.

July 1, 1980

MEMORANDUM FOR THE FILE

FROM: PHIL WISE

SUBJECT: July 1, 1980 Phone Interview with
Joseph Lister (Supervising Investigation)
724-7109

Mr. Lister called and asked if I recalled any conversation with Billy Carter regarding the Libyan Government and airplanes. He stated that Billy said I talked with him and mentioned the name Whitehurst or Whitehorse as a contact. I repeated that I had no recollection of such a phone conversation. I again pointed out that if I had received such a request, I most likely would have spoken with Inderfurth, Gates or Denend. Lister stated he would contact the three in case any of them recalled such a conversation.

Lister stated he was under pressure to complete the investigation and that Heinman had instructed him to call me.

I mentioned that my call logs show no record of a call from Billy Carter during the time period under investigation.

April 17, 1979

Dear Mr. McGregor:

We were pleased to invite you to the April 4 hospital cost containment briefing with the President, Chairman Charles Schultze, and Secretary Joseph Califano.

Reducing the rate of hospital cost increases is one of the President's highest priorities. Hospital cost containment legislation will do more to reduce inflation than any other single piece of legislation now in the Congress. It is a vital component of the President's anti-inflation program, and it is important that the public be informed about the relationship between hospital costs and inflation.

As a leader, you have an especially important role to play in explaining the need for hospital cost containment and the nature of the legislation that the President is proposing. The materials distributed at the briefing should give you a solid factual foundation for discussing the issue.

Please feel free to telephone my office, at (202) 456-7700, if we can be of any further assistance. In addition, if you would like to arrange for an Administration official to speak at meetings or conventions on hospital cost containment, please write or telephone:

Margaret Fishman or Joan Lewis
The President's Speakers Program
on Inflation
2001 S Street, N.W., Suite 213
Washington, D.C. 20009
(202) 673-7922

Thank you for your interest and help. With your cooperation, we can take a significant step toward reducing the inflation rate, a goal shared by all Americans.

Sincerely,

Anne Wexler
Assistant to the President

Mr. Jack McGregor
Executive Vice President
Carey Energy Corporation
825 Third Avenue
New York, NY 10022

0

1569

C-11

THE WHITE HOUSE
WASHINGTON

NAME: JACK MCGREGOR

TITLE: EXECUTIVE VICE PRESIDENT

ORGANIZATION: CAREY ENERGY CORP.

MAILING ADDRESS: 825 3rd Ave.

NY, NY 10022

OFFICE TELEPHONE NUMBER: (212) 758-7300

HOME TELEPHONE NUMBER: (914) 234-9765

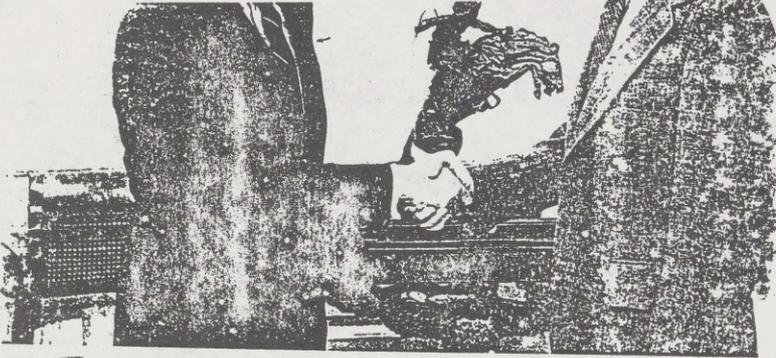
1570

FROM
THE WHITE HOUSE
WASHINGTON, D.C.

C-12

Mr. Jack McGregor
Executive Vice President
Carey Energy Corporation
825 Third Avenue
New York, New York 10022

5-8-79



Best wishes to Jack McGregor
Jimmy Carter

1571

CLASSIFIED DOCUMENTS RELIED UPON
IN THE
REPORT OF COUNSEL
HAVE BEEN SUBMITTED
TO THE
SENATE SELECT COMMITTEE ON INTELLIGENCE

X-4

SUPPLEMENTAL REPORT OF COUNSEL FOR THE PRESIDENT

To the Subcommittee of
The Committee on the Judiciary
United States Senate

August 18, 1980

Supplemental Report of Counsel for the President
Submitted to the Subcommittee of the Committee
on the Judiciary, United States Senate

In the Report of Counsel for the President submitted on August 4, 1980 to the Subcommittee of the Committee on the Judiciary, United States Senate, we undertook to provide the Subcommittee with further information periodically as it became available. This supplemental Report is submitted pursuant to that undertaking.

There were the following contacts between a member of the White House staff and the State Department concerning Billy Carter's first trip to Libya and the Department of Justice's investigation of Billy Carter's failure to file a Registration Statement under the Foreign Agent's Registration Act.

1. In September 1978, Mr. Thomas V. Beard of the White House staff was advised by the Office of North African Affairs of the Department of State that Billy Carter was en route to Libya. He informed the Department that he believed the trip should be treated as a private visit and that he would confirm this within the White House. He then called Ms. Clough, the President's personal secretary. Ms. Clough, after learning that the President did not know of the trip, told Mr. Beard that she agreed that the trip should be treated strictly as a private visit. Ms. Clough believes that her advice as to how the trip was to be treated was her own and not that of the President. We are advised that neither Mr. Beard nor Ms. Clough made a memorandum or record concerning this matter.

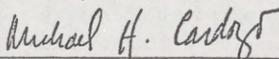
2. In late August 1979, Mr. Beard was advised, most probably by W. Alan Roy, Country Desk Officer for Libya at the

- 2 -

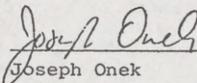
Department of State, that the Department of Justice had requested from the Department of State copies of documents involving Billy Carter and Libya. Mr. Beard advised the Department of State to follow routine procedures. We are advised by Mr. Beard that there were no communications, oral or written, between him and the Department of Justice with respect to Billy Carter's relations with Libya, including the Department's investigation of Billy Carter's failure to file a Registration Statement under the Foreign Agents Registration Act.



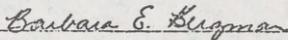
Alfred H. Moses
Special Counsel



Michael H. Cardozo
Deputy Counsel to the President



Joseph Onek
Deputy Counsel to the President



Barbara E. Bergman
Associate Counsel to the President

August 18, 1980

EXTRACT FROM PRESIDENT CARTER'S

PERSONAL NOTES

Dictated for Wednesday, April 4, 1979

"Billy's old commanding officer, Jack McGregor,
stopped by for a photograph."

(Note: President is in Washington, D.C.)

1576

THE WHITE HOUSE
WASHINGTON

July 17, 1979

Zbig,

Susan came down this afternoon to report that Billy Carter apparently announced yesterday on television that he would be going back to Libya. She has apparently shared this with Jody and they are both very worried that adverse publicity could derail the momentum the President is building as a result of his energy initiatives.

To ensure that the record is perfectly clear, she asked whether you would be willing to send a memorandum to State (which has heard about the trip and is already questioning how to treat Billy) strictly as a visit by a private citizen and to extend only such assistance as is consistent with such a trip.

telling them to treat it

She would like to have a xerox of your signed memorandum to give Jody, which he could then use if necessary with the media to show the line the Administration has taken on the trip.

I have the impression from Susan that the President is not yet aware of Billy's intentions. Before signing the attached, you might wish to call Susan in part to propose that she tell the President and convey a recommendation from you and Jody and her that the President try to dissuade Billy from making this trip. Apart from the domestic political aspects of the problem is, of course, our current sensitive political relationship with Libya. In any event, after you talk to Susan, if the memo is still desirable, you can sign the attached.

R.G.

Attachment

*TRH
wpt
23*

UNCLASSIFIED WITH
SECRET ATTACHMENTS

THE WHITE HOUSE
WASHINGTON
August 18, 1980

Dear Mr. Miller:

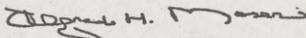
On August 4, 1980, I transmitted to you classified documents which were relied upon in the preparation of Dr. Zbigniew Brzezinski's statement and in the Report of Counsel submitted as part of the President's Report to the Subcommittee of the Committee on the Judiciary of the United States Senate.

We have today filed a supplemental Report to the Subcommittee in which we relied upon two classified documents. We have also located one classified document pertinent to the August 4 Report. Pursuant to the Subcommittee's request that classified documents be submitted to you for appropriate storage and handling, I am transmitting the following classified documents to you:

1. Memorandum from David D. Newsom to Warren Christopher, dated August 31, 1979;
2. Memorandum from DD to WC, dated August 31, 1979 (the Department of State has treated this document as classified; I am doing the same);
3. Letter from James K. Bishop to William L. Eagleton, dated March 9, 1979.

Thank you for your attention to this matter.

Sincerely,



Alfred H. Moses
Special Counsel

Mr. William Miller
Staff Director
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

Attachments

cc: Chairman Birch Bayh
Vice Chairman Strom Thurmond

UNCLASSIFIED WITH
SECRET ATTACHMENTS

1578

THE WHITE HOUSE

WASHINGTON

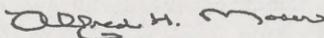
September 8, 1980

Dear Mr. Chairman:

In the Report of Counsel submitted to the Subcommittee as part of the Report of the President dated August 4, 1980, we advised the Subcommittee that we would furnish it with further information periodically as it became available.

In keeping with this undertaking I am now submitting a supplement to the prior Reports of Counsel together with unclassified documents.

Sincerely,



Alfred H. Moses
Special Counsel
to the President

The Honorable Birch Bayh
Chairman
Subcommittee of the
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

SUPPLEMENTAL REPORT OF COUNSEL FOR THE PRESIDENT

To the Subcommittee of
The Committee on the Judiciary
United States Senate

September 8, 1980

SUPPLEMENTAL REPORT OF THE PRESIDENT'S COUNSEL SUBMITTED
TO THE SUBCOMMITTEE OF THE SENATE COMMITTEE ON
THE JUDICIARY

This will supplement our previous reports of August 4 and August 18. It includes an update of relevant information previously submitted to the Subcommittee, together with known White House contacts with George Belluomini and Ronald Sprague. Information concerning Ronald Sprague was requested orally by Subcommittee counsel. Because of testimony at the hearings linking George Belluomini and Ronald Sprague, we are submitting information dealing with both.

1. Billy Carter testified that Mr. Belluomini attended the wedding of Billy Carter's daughter Jana in Plains in June, 1978. The President, the First Lady and Mrs. Ruth Carter Stapleton also attended the wedding. Although neither the President nor the First Lady recalls meeting Mr. Belluomini, on this, or on any other occasion, in all probability they were introduced at the wedding to Mr. Belluomini.

2. Mr. Belluomini later visited Mrs. Stapleton's religious retreat in Texas. In September, 1979, Mrs. Stapleton received the attached letter from Mr. Belluomini and Mr. Sprague dated September 4, 1979. On September 23, 1979, Mrs. Stapleton stayed overnight at the White House. During her visit, she believes

-2-

she delivered the letter to the First Lady to give to the President. Mrs. Carter has no direct recollection of receiving the letter from Mrs. Stapleton, but does recognize the letter itself, especially the President's notation thereon referred to below. On September 25, the President and Mrs. Carter had a regular weekly working lunch together. Later that day or the next, the President placed the Belluomini-Sprague letter in his outbox bearing this handwritten notation:

"cc Mr. Belluomini and Mr. Sprague. Thank you for offering to help. We are satisfied with our negotiated framework under which U.S. firms can buy Mexican Gas. J.C."

On September 26, the President's secretary sent copies of the letter bearing this notation to Mr. Belluomini and Mr. Sprague, with the attached notes.

3. During the Subcommittee's hearings, on August 20, 1980, Mr. Ronald Sprague testified that he had met and had his photograph taken with the President in March, 1980 in the company of Billy Carter. A search of the White House files revealed that such a meeting did take place from 2:00-2:03 p.m. on March 19, 1980 and that a photograph was taken. We have attached copies of the photograph sent to Mr. Sprague as well as a contact sheet showing all three photos which were taken. There are no other photographs on the roll of film.

4. Margaret McAleer, secretary to Danny C. Tate, Office of Congressional Liaison, recalls seeing a message that Mr. Belluomini had called to speak with Mr. Tate. Mr. Tate did not return the call; Ms. McAleer believes she returned the call, but does not remember whether or not she spoke with Mr. Belluomini and does not know the reason for Mr. Belluomini's call. Mr. Tate states that he has never met or talked to Mr. Belluomini.

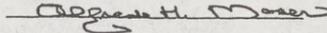
5. The White House Transportation Logs indicate that on March 19, 1980, "Billy Carter + 2" took a White House car from the South Grounds at 2:30 p.m. with a local stop before they were taken to Washington National Airport. The driver has told us that the local stop was at the Libyan Embassy.

6. There was an additional telephone call between Dr. Zbigniew Brzezinski and Billy Carter not previously noted in the review of Dr. Brzezinski's telephone logs by his office. Billy Carter called Dr. Brzezinski at 10:07 a.m. on November 30, 1979. The duration of this and other calls to Dr. Brzezinski is not recorded in the telephone logs. Dr. Brzezinski has no recollection of the call.

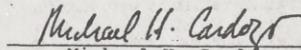
7. We have also attached a July 1, 1980 evening report from Captain Gary Sick of the National Security Council staff to Dr. Zbigniew Brzezinski which describes a telephone call

which Captain Sick received that day from Mr. Joel Lisker of the Department of Justice concerning the Billy Carter investigation.

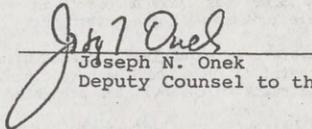
Respectfully,



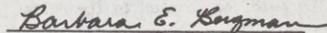
Alfred H. Moses
Special Counsel



Michael H. Cardozo
Deputy Counsel to the President



Joseph N. Onek
Deputy Counsel to the President



Barbara E. Bergman
Associate Counsel to the President

September 8, 1980.

1300 17TH STREET
SUITE A
BAKERSFIELD, CALIFORNIA 93301
(805) 327-9383

cc: Mr. Belluomini &
Mr. Sprague

*I had eyes for offering
help. We are satisfied
w. the current negotiations for
work under which U.S.
firms can buy Mexican
gas. J.C.*

September 4, 1979

TO THE HONORABLE JIMMY CARTER
PRESIDENT OF THE UNITED STATES
WASHINGTON, D. C.

RE: Acquisition of natural gas from Mexico

Mr. President:

This is a brief memo regarding the acquisition and use of natural gas for the United States and the mending of our strained relations with Mexico.

We will outline facts below, in order to keep this brief, short and to the point.

George and myself are very close to Lopez Portillo and his staff of ministers, and have been for some years. We are updated weekly and sometimes daily on events in Mexico which effect our relationship with the government.

We are very strongly associated with Jorge Diaz Serrano, Director General of Pemex, and we have discussed the proposed natural gas contracts which have been presented with Portillo and staff.

We believe a conflict exists between the two committees set up to negotiate the purchase price, terms and amount of natural gas to be sold and shipped to the United States.

We have offered the idea of utilizing the new pipeline between the state of Chiapas and the state of Tamaulipas, which is 74 miles from the Texas border. The line is capable of delivering two (2) billion cubic feet of gas per day to the United States.

In utilizing this pipeline for delivery of natural gas, we can accomplish two goals:

- (1) Import natural gas to the United States, to balance the shortages and:

Cont:

AGRICULTURAL &
COMMERCIAL ACQUISITIONS

Page 2 of 2

To Honorable Jimmy Carter
President of the United States

- (2) We have discussed a plan to convert the natural gas to electricity through the construction of steam generation plants, to be located in northern Mexico, close to the United States borders. If this plan were put into effect, we could purchase the excess electricity from Mexico at a more inexpensive rate than we in the United States could produce. Mexico would have the projected increase of 15% electrical current needed in the next two years, due to increased development within Mexico and we could still purchase surplus natural gas as increased production becomes available through development of Mexico's northern gas fields.

We feel that we can successfully mediate and negotiate the purchase price, terms and conditions between the two committees, and both countries, the United States and Mexico and use down to earth common sense tactics to convince the Mexican government that we want to work with them, as friends and neighbors, to help build the social standing of Mexico, as well as help the people of both nations.

The Government of Mexico feels we are trying to take advantage of them and we need to assure them, without being forceful, that we can be brothers and work together for a common goal.

Your team of Christopher, Krueger, Lucey and Katz are not tuned into the feelings of the Mexican government and therefore we are at a stand-off, wherein Mexico is holding out for what it can get!

We feel strong in our discussions with Mexico that we can set the price between \$3.40 and \$3.50 per 1000 cubic feet of natural gas delivered to the United States.

We also feel we can curb future increases in price and keep them low on a sliding scale.

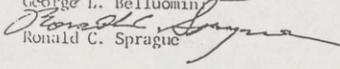
Much more important is to create a feeling of goodwill and understanding between our two countries.

We feel that this type of relationship will benefit America and Mexico and help you politically as well.

We are offering our help to you if needed, to help our country and our Mexican brothers. Time is of the essence, due to your meeting with Portillo, Sept. 28, 1979. If you would like our assistance, please feel free to contact us.

Sincerely,


George L. Belluomini


Ronald C. Sprague

GB-RS/jm

WASHINGTON

9/26/79

George Belluomini --

President Carter asked me to send the enclosed copy of the letter from you and Mr. Sprague which reflects the President's comments -- with his best regards.

-- Susan Clough

x
Mr. George Belluomini
Suite A
1300 17th Street
Bakersfield, California 93301

x
Mr. Ronald Sprague
Suite A
1300 17th Street
Bakersfield, California 93301

EXECUTIVE

THE WHITE HOUSE

WASHINGTON

9/26/79

Ronald Sprague --

President Carter asked me to send the enclosed copy of the letter from you and Mr. Belluomini which reflects the President's comments -- with his best regards.

-- Susan Clough

NRC
TH3
30104
PR5-1

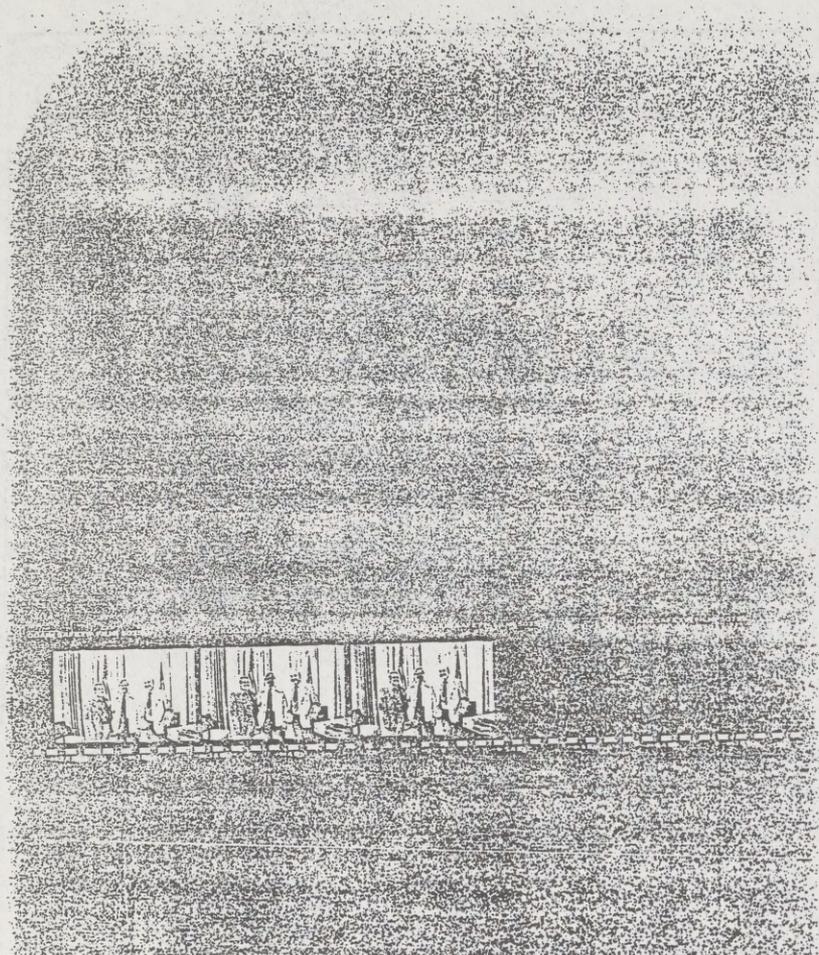


FROM
 WHITE HOUSE
 WASHINGTON, D.C.

Mr. Ron Sprague
 1300 - 17th Street
 Suite A
 Bakersville, California 93301

306422

Best wishes to
 Ron Sprague - Jimmy Carter 3-80



C 16 042

SCHUMACHER

19

MARCH 1880

BRZEZINSKI EVENING REPORT — July 1, 1980

Billy Carter. I was called today by Joel Lisker of the Criminal Division of Justice who is investigating charges that Billy Carter was improperly associated with Libyan policy. I told him I had never talked to Billy Carter and was unaware of any attempts on his part to influence U.S. policy on Libya. (Sick)

EDWARD M. KENNEDY, MASS., CHAIRMAN

BIRCH BATH, IND.
 BOB BYRDE, W. VA.
 JOSEPH R. BIDEN, JR., DEL.
 JOHN C. GULLEY, IOWA
 HOWARD M. METZENBAUM, OHIO
 DENNIS DE CONCINI, ARIZ.
 PATRICK J. LEAHY, VT.
 MAX BAUCUS, MONT.
 HOWELL HEPLIN, ALA.

STROM THURMOND, S.C.
 CHARLES MC C. MATTHEWS, JR., MD.
 PAUL LARALEY, NEV.
 OWEN D. MATHIS, UTAH
 ROBERT DOLE, KANS.
 THAD COCHRAN, MISS.
 ALAN K. SIMPSON, WYO.

STEPHEN BREYER, CHIEF COUNSEL

United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, D.C. 20510

September 24, 1980

Alfred H. Moses, Esq.
 Special Counsel to the President
 The White House Office
 Washington, D.C. 20500

Re: The Subcommittee of the Committee on the
 Judiciary to Conduct an Investigation of
 Activities of Individuals Representing
 Interests of Foreign Governments

Dear Mr. Moses:

The Subcommittee has authorized its counsel to forward to you a list of written questions seeking certain information relating to the President. Answers to these questions would assist in developing the record being compiled by the Subcommittee for use in preparing the Subcommittee's report. Inasmuch as the Subcommittee plans to issue its report on Thursday, October 2, 1980, any information that is to be used in preparing the report will have to reach the Subcommittee by Monday, September 29, 1980.

The information requested relating to the President is as follows:

1. Whether Billy Carter cleared with the President, as he said he would, ^{*}/ before making the decision to return to Libya in 1979, and if so what was said when Billy Carter cleared with the President; whether, after that decision was publicly announced in July, 1979, the President received advice from his advisors to attempt to dissuade Billy from making the trip; and whether the President made such an attempt.

^{*}/ The President's dictated note of April 3, 1979, states that in a conversation with Billy that day the President had told Billy "it would be a mistake and embarrassment for him to go to Libya anytime soon," and Billy had said, inter alia, "[t]hat he would clear it with [the President] before he made that decision."

Alfred H. Moses, Esq.
September 24, 1980
Page Two

2. Whether, at any time after April, 1979, the President considered, alone or with his advisors, the advisability of either a private statement to the government of Libya or a public announcement disassociating himself and the United States from, or disapproving, Billy's second trip to Libya or Billy's associations with Libya, and if so the conclusion reached and the reasons therefor.

3. Whether the President, on November 20, 1979, contemplated that Billy would participate in formulating and conveying a message to Libyan officials, or merely that Billy would arrange a meeting between Dr. Brzezinski and Mr. El Houderi.

4. Whether the President consulted with anyone other than Mrs. Carter and Dr. Brzezinski as to whether a contact with Libya would be helpful with the Iranians and the President's recollection of the content of any such consultations if they occurred.

5. The President's recollection of the events of March 31 - April 2, 1980 relating to the intelligence report received by Dr. Brzezinski from Admiral Turner, in light of the contemporaneous logs and other documents now available (in particular, whether Dr. Brzezinski informed the President of the intelligence report before calling Billy Carter, and if so whether he and the President discussed whether Billy should be called and what was said in that discussion).

6. Whether, after Dr. Brzezinski reported to the President his conversation with Billy about a Libyan oil allocation, the President himself sought to dissuade Billy from continuing with the oil venture.

7. Whether, knowing now that intelligence information was available in April, 1980, that a payment was about to be made by Libyan officials to Billy Carter, the President is of the opinion that he should have been advised of that intelligence at the time it became available.

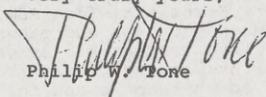
Alfred H. Moses
September 24, 1980
Page Three

8. The state of the President's knowledge of the relationship between Billy Carter and Libya or Libyan officials as of (a) November 20, 1979, and (b) April 1 and 2, 1980.

9. If the President has any knowledge of any of the telephone calls listed below, and if the call or calls are related to Billy Carter and the hostage crisis, the President is requested to state what he knows about the call or calls:

- (a) 11/19/79 at 10:57 p.m. from Camp David to Billy Carter's home;
- (b) 11/20/79 at 9:45 a.m. from Best Western Motel office, Americus, Ga. to White House;
- (c) 11/20/79 at 10:29 a.m. from Camp David to Best Western Motel office, Americus, Ga.;
- (d) 11/21/79 at 9:43 p.m. from Camp David to Billy Carter's home.

Very truly yours,


Philip W. Tone

Michael Davidson


Robert K. Kelley

THE WHITE HOUSE
WASHINGTON
September 29, 1980

Dear Judge Tone:

I am responding to Counsel's letter to me of September 24, 1980, requesting certain information relating to the President. The information requested is as follows:

1) Whether Billy Carter cleared with the President as he said he would, before making the decision to return to Libya in 1979, and if so what was said when Billy Carter cleared with the President; whether, after that decision was publicly announced in July, 1979, the President received advice from his advisors to attempt to dissuade Billy from making the trip; and whether the President made such an attempt.

1) The President sought from time to time through April 1979 to discourage Billy Carter from making a second trip to Libya. Following the President's dictated note of April 3, 1979, Billy Carter did not inform the President of Billy Carter's subsequent decision to make a second trip. In July 1979, Billy Carter announced on a television show that he intended to make a second trip to Libya. As previously disclosed to the Subcommittee, when Susan Clough, the President's Secretary, learned of this she discussed the matter with Jody Powell, the President's Press Secretary, and with Robert Gates of the National Security Council staff. At Ms. Clough's suggestion, Mr. Gates sent a memorandum to Zbigniew Brzezinski, the Assistant to the President for National Security Affairs, suggesting that Dr. Brzezinski inform the Department of State that Billy Carter's trip should be treated as a

- 2 -

strictly private visit. A copy of Mr. Gates' memorandum to Dr. Brzezinski and Dr. Brzezinski's follow-on memorandum to the Secretary of State have previously been furnished to the Subcommittee. Ms. Clough did not discuss the matter with the President and the President does not recall receiving advice from other members of the White House staff concerning Billy Carter's forthcoming trip to Libya.

2) Whether, at any time after April, 1979, the President considered, alone or with his advisors, the advisability of either a private statement to the government of Libya or a public announcement disassociating himself and the United States from, or disapproving, Billy's second trip to Libya or Billy's associations with Libya, and if so the conclusion reached and the reasons therefor.

2) The President did not discuss with his advisors at any time between April 1979 and the filing of the court papers on July 14, 1980, the advisability of making a private statement or public announcement regarding Billy Carter's second trip to Libya or his association with Libya. The President considered Billy Carter's trips to Libya to be strictly private visits involving no governmental function or purpose. In February 1979 the President had disassociated himself from certain of Billy Carter's public remarks made during the visit of the Libyan Trade Mission to the United States. He also stated at that time that he had no control over what Billy Carter said or did. As the President's Press Secretary had previously stated

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in a press briefing, "Billy is a private citizen and he tends to act and speak without prior consultation with the White House and vice versa..."

The President was also aware of the report of the American chargé in Tripoli that during Billy Carter's first visit to Libya he had avoided political comments of any kind. Under the circumstances, the President did not feel that any further announcement by him or private statement to the Government of Libya was called for. There was no evidence available to the President before July 14, 1980 to indicate that the Libyan Government viewed Billy Carter's trips as being other than private visits or that the Libyan Government believed Billy Carter was at any time speaking for or acting on behalf of the President in connection with such trips. When further evidence of Billy Carter's associations with Libya including the large payments did become available, the President stated in his August 4, 1980 report to the Subcommittee:

"I can state categorically that my brother Billy has had no influence on my decisions or on any United States Government policies or action concerning Libya. I can also state that Billy has never asked me to take any step that would affect any of these actions or policies. As far as my counsel have been able to determine, Billy has not made any such effort with others in my Administration."

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* * *

"I am deeply concerned that Billy has received funds from Libya and that he may be under obligation to Libya. These facts will govern my relationships with Billy so long as I am President. Billy has had no influence on U. S. policies or actions concerning Libya in the past and he will have no influence in the future."

3) Whether the President, on November 20, 1979, contemplated that Billy would participate in formulating and conveying a message to Libyan officials, or merely that Billy would arrange a meeting between Dr. Brzezinski and Mr. El Houderi.

3) On November 20, 1979, or perhaps the previous day, the First Lady suggested to the President that Billy Carter's Libyan friends might be helpful in obtaining the release of the American hostages in Tehran. On November 20, the President communicated this suggestion to Dr. Brzezinski and asked him to call Billy Carter about it. The President did not have any specific proposal in mind and left further implementation to Dr. Brzezinski. Dr. Brzezinski called Billy Carter and asked if he could be helpful in getting Libya to take a more positive role in the release of the hostages. Dr. Brzezinski asked Billy Carter if he knew the Libyan representative in Washington and could arrange a meeting with Dr. Brzezinski. Billy Carter arranged for such a meeting which was held on November 27 in Dr. Brzezinski's office. The President did not attend.

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4) Whether the President consulted with anyone other than Mrs. Carter and Dr. Brzezinski as to whether a contact with Libya would be helpful with the Iranians and the President's recollection of the content of any such consultations if they occurred.

4) On a number of occasions the President discussed with his foreign policy advisors, including the Secretary of State, Dr. Brzezinski, and other Department of State and National Security Council officials, the desirability of encouraging all Muslim countries, including Libya, to condemn the Iranian seizure of the American Embassy and the holding of Embassy personnel. Both official and unofficial contacts were pursued in furtherance of this objective. In the case of Libya, contacts were made by David Newsom, Undersecretary of State for Political Affairs, and by William Eagleton, the American charge in Tripoli. The President did not specifically discuss a possible role for Billy Carter with anyone other than the First Lady and Dr. Brzezinski. Dr. Brzezinski testified he recalls discussing such a role with the Secretary of State sometime after speaking by phone with Billy Carter on November 20 and again after the meeting with the Libyan representative, Ali El Houderi, on November 27, 1979.

5) The President's recollection of the events of March 31 - April 2, 1980 relating to the intelligence report received by Dr. Brzezinski from Admiral Turner, in light of the contemporaneous logs and other documents now available (in particular, whether Dr. Brzezinski informed the President of the intelligence report before calling Billy Carter, and if so whether he and the President discussed whether Billy should be called and what was said in that discussion).

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5) The President's recollection of the events of March 31 - April 2, 1980, concerning Billy Carter is that Dr. Brzezinski reported to him on a single occasion about the intelligence report and about Dr. Brzezinski's conversation with Billy Carter after Dr. Brzezinski received that report. On that occasion Dr. Brzezinski said he had seen an intelligence report that Billy Carter was seeking an increased allocation of Libyan oil for an American oil company and implying that Billy would receive a fee if the transaction was consummated. Dr. Brzezinski further said he had called Billy Carter and had cautioned him not to take any action that could embarrass the President or the country, or could lead to Billy Carter being exploited by the Libyan Government. As the President recalls, he did not actually see the intelligence report. The President told Dr. Brzezinski he approved Dr. Brzezinski's action.

6) Whether, after Dr. Brzezinski reported to the President his conversation with Billy about a Libyan oil allocation, the President himself sought to dissuade Billy from continuing with the oil venture.

6) The President did not himself discuss the matter with Billy Carter. The President did not do so because he believed that Dr. Brzezinski's warning would be understood by Billy as representing his own feelings on the matter as well. Given Billy Carter's oft-expressed feelings of independence from his brother on business and other matters, the President believed a further call from him was likely to be counterproductive.

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7) Whether, knowing now that intelligence information was available in April, 1980, that a payment was about to be made by Libyan officials to Billy Carter, the President is of the opinion that he should have been advised of that intelligence at the same time it became available.

7) The President believes that the correct policy with regard to the dissemination of intelligence information relating to possible law violations by persons close to the President is to leave this decision in the first instance to the heads of the intelligence agencies. They have the necessary knowledge and experience to determine what information should be brought to the attention of the President or to the Attorney General. These officials are also in the best position to determine whether the further use of such information -- for example, to discourage Billy Carter from accepting such payments -- would involve an unacceptable risk of compromising the sources or methods by which the intelligence information was obtained. With regard to the intelligence information available in April 1980, such a risk may well have existed. The agency head properly called this information to the attention of the Attorney General, to whom the President has delegated constitutional authority for the enforcement of the laws. Since the Attorney General determined that the information contained in the report was relevant to the Department of Justice's investigation of Billy Carter's duty to register under the Foreign Agents Registration Act, the President feels that public confidence in impartial law enforcement was best served by the decision reached not to bring this particular

intelligence report to his attention. This decision was consistent with the law enforcement policies described in the President's statement of August 4. The President's lack of knowledge from April to July 1980 had no effect whatever upon the conduct of United States foreign policy vis-a-vis Libya.

8) The state of the President's knowledge of the relationship between Billy Carter and Libya or Libyan officials as of (a) November 20, 1979, and (b) April 1 and 2, 1980.

8) As of November 20, 1979, the President knew that Billy Carter had visited Libya on two occasions and had been a host at a reception in Atlanta for a Libyan Trade Mission that had visited the United States in January 1979. He may also have known that Billy Carter had arranged for a Libyan official to appear on a morning television show and had performed other public relations functions in connection with the Trade Mission's visit. He was also aware of press reports that the Department of Justice had initiated an investigation as to whether Billy Carter was obligated to register under the Foreign Agents Registration Act. He did not know of Billy Carter's efforts to obtain a loan from the Libyan Government, nor did he know of any business dealings between Billy Carter and Libya, including specifically, Billy Carter's efforts to obtain an increased allocation of Libyan oil for an American oil company or such efforts as he may have pursued in the commodities field.

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On April 1 or 2, 1980 the President was informed by Dr. Brzezinski of an intelligence report which disclosed that Billy Carter was seeking to obtain an increased allocation of Libyan oil for an American oil company and implying that if this were successful, Billy would receive a fee. This is the only additional information concerning Billy Carter's Libyan relationships known to the President on April 1 or 2, not known on November 20, 1979.

9) If the President has any knowledge of any of the telephone calls listed below, and if the call or calls are related to Billy Carter and the hostage crisis, the President is requested to state what he knows about the call or calls:

- (a) 11/19/79 at 10:57 p.m. from Camp David to Billy Carter's home;
- (b) 11/20/79 at 9:45 a.m. from Best Western Motel office, Americus, Ga. to White House;
- (c) 11/20/79 at 10:29 a.m. from Camp David to Best Western Motel office, Americus, Ga.;
- (d) 11/21/79 at 9:43 p.m. from Camp David to Billy Carter's ome.

9) The President does not recall specifically any of the telephone calls listed above. In further answer to your question:

- (a) Mrs. Carter recalls a telephone call which she made to Billy Carter on the evening of November 19, 1979. She was at Camp David at that time. Her recollection of the conversation is that she asked Billy whether he thought that his Libyan friends might be of help

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in connection with the release of the American hostages in Tehran. Her recollection is that Billy Carter replied that he thought the Libyans might be of help. No telephone logs are kept at Camp David for the First Lady's calls made from the Camp David switchboard. The President's diary contains no indication that he made the call on November 19, 1979.

- (b) The telephone call in the morning of November 20, 1979 from the Best Western Motel office, Americus, Ga. to the White House was made at a time when the President and Mrs. Carter were at Camp David. We have found no record indicating to whom the call was made or whether it was completed.
- (c) The call on November 20, 1979 from Camp David to the Best Western Motel office was placed by someone other than the President. The President's logs do not show a call from him to the Best Western Motel office or to Billy Carter on November 20, 1979.
- (d) The call from Camp David to Billy Carter's home on the evening of November 21, 1979 (Thanksgiving Eve) is shown in the President's telephone logs to be a call from the President to Mrs. Sybil Carter, Billy Carter's

- 11 -

wife. The call was made six minutes after the President talked by phone with his mother, Mrs. Lillian Carter. The President does not recall what he discussed with Mrs. Sybil Carter on this occasion.

In reply to the inquiry in your letter dated September 25, 1980, concerning a report conversation between Billy Carter and Ambassador Kikhia, the President does not recall Billy Carter's having conveyed to him Ambassador Kikhia's statement or otherwise discussing the matter with him. Although the conversation between Ambassador Kikhia and Billy Carter was the subject of an inquiry by the Subcommittee's counsel in the deposition of Billy Carter taken on September 24, it appears that Billy Carter was not asked by counsel whether or not he discussed this matter with the President, and, as stated, the President has no recollection of any such conversation.

I am enclosing with this letter a list of contacts between Dr. Brzezinski and Secretary Vance on November 27, 28 and December 6, 12, 13 and 14, 1979 as you requested on September 19, 1980 during the testimony of Dr. Brzezinski before the Senate Subcommittee. There is also enclosed the declassified version of Dr. Brzezinski's testimony in executive session relating to his

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telephone conversation with Billy Carter during the period March 31 - April 1, 1980. This was requested by Mr. Kelley of your staff.

Sincerely yours,



Alfred H. Moses
Special Counsel
to the President

The Honorable Philip W. Tone
The Subcommittee of the Committee
on the Judiciary
United States Senate
Washington, D. C. 20510

Contacts Between Dr. Zbigniew Brzezinski
and Secretary of State Cyrus Vance
(as reflected in Dr. Brzezinski's telephone/appointment logs)

November 27, 1979

9:13	To Sit Rm - SCC meeting *	10:22
12:42	Sec Vance called	
1:58	Sec Vance joined **	2:22
*	Vance attended SCC meeting.	
**	Vance joined meeting with Secretary Brown already in progress.	

November 28, 1979

9:00	SCC Meeting *	10:30
12:08	Called Sec Vance	
2:24	Called Sec Vance	
7:08	Called Sec Vance	
*	Vance attended SCC meeting.	

December 6, 1979

900	SCC Meeting *	10:19
1020	called Secretary Vance	
1025	called Sec. Vance	
12:30	VBB lunch **	1:43
*	Vance attended SCC meeting.	
**	<u>Vance-Brown-Brzezinski</u> lunch	

December 12, 1979

None

December 13, 1979

None

December 14, 1979

7:06 *	The Pres., Sec Vance	7:45
*	p.m.	

1606

THE WHITE HOUSE
WASHINGTON

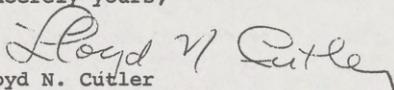
October 1, 1980

Dear Mr. Chairman:

In the President's Report to the Subcommittee dated August 4, 1980, he stated that he had asked his counsel to draft rules to bar dealings between employees of the Executive Branch and members of the President's family that create either the reality or the appearance of improper favor or influence.

The President is today issuing the attached guidelines concerning dealings by government officials with members of the President's family. They are being filed with the Federal Register for publication.

Sincerely yours,


Lloyd N. Cutler
Counsel to the President

The Honorable Birch Bayh
Chairman
Subcommittee of the
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Attachment

THE WHITE HOUSE

WASHINGTON

October 1, 1980

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS
AND AGENCIESSUBJECT: Guidelines Concerning Official Dealings with
Members of the President's Family

The purpose of these guidelines is to caution government employees against dealing with members of the President's family in ways that create either the reality or the appearance of impropriety.

The primary responsibility to avoid impropriety of course rests on the President and the members of his family. The President has cautioned members of his family not only to observe these guidelines, but also not to place government employees in a position where the appearance of impropriety can occur.

There are three situations which need to be distinguished:

First are the cases where a member of the President's family is performing the duties or exercising the rights of any other citizen. The payment of taxes, military service, and entitlements to Social Security, agricultural, or educational benefits are typical examples. In all such cases, members of the President's family are to be treated the same way as anyone else. They are to seek no special favor, nor are they to be granted any.

Second are the cases where the President calls on a member of his family to act as his official representative at a ceremony, function or meeting in the United States or abroad. In such cases, government employees should afford the designated members of the President's family the courtesies and amenities appropriate to his or her official status and to the occasion -- no more, no less.

When members of the President's family take personal trips or where the government has information that their personal security may be threatened, they should be accorded the same treatment and protection as any other public figure.

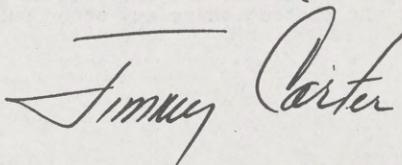
Third are the cases in which a member of the President's family is seeking to do business with the government on his or her own behalf or to act as an agent for another person, firm or government seeking to do business with our government. Examples are the discretionary award of government contracts and the discretionary granting of valuable licenses.

In this third class of cases, there is a strong presumption against such dealings with a family member. Even though the family member's proposal or request may be entirely meritorious, and the government employee's response is the same as it would be regardless of the family relationship, many will believe, without any other evidence, that the government's response was influenced by the family member's status as such. While it could be argued that members of the President's family have the same right as any other citizen to have the government engage in discretionary dealings with them, this is a right that is best relinquished during the President's incumbency. The President has therefore cautioned family members from making such proposals or requests, and urges all government employees not only to reject all such proposals and requests, but to report their occurrence to the head of the department or agency, who should advise the Counsel for the President. In extraordinary cases where the responsible employee believes the proposal or request should be approved -- for example when the family member's business relationship with the government predates the President's incumbency and the relationship has not been exploited during his incumbency -- the approval of the department or agency head shall first be obtained.

Government employees should also apply a strong presumption against the discretionary disclosure to family members of information of potential economic value about existing or planned government policies or actions that is not generally available to the public.

These guidelines apply only to family members. They do not apply to any business entity with which a family member may be associated, so long as the family member does not participate in any way, and the family member's association is not otherwise exploited, in the entity's dealings with the government.

For purposes of these guidelines, the President's family consists of the President's parents, brothers, sisters and children, and the spouses of his brothers, sisters and children.

A handwritten signature in cursive script that reads "Jimmy Carter". The signature is written in dark ink and is positioned in the lower right quadrant of the page.

**PART II.—TELEPHONE RECORDS RECEIVED BY THE
SUBCOMMITTEE**

Pursuant to subpoenas issued by the Subcommittee during its investigation, various telephone records of subscriber information and long-distance toll calls were obtained and analyzed. Records were made available for differing time periods by separate telephone companies. Included were records of two home telephones of Billy Carter, Buena Vista, Georgia (from July 1979 to July 1980); the home telephone of Randy Coleman, Plains, Georgia (from September 1978 to July 1980); the telephone at Horizon Farms, Plains, Georgia, used almost exclusively by Coleman (from September 1978 to July 1980); the office telephone at the Best Western Motel, Americus, Georgia, used frequently by Billy Carter, Coleman and Jimmy Murray regarding matters considered in this investigation (from August 1979 to July 1980); the home and office telephones of Jack McGregor, Bedford Village, New York (from January 1980 to July 1980); the office telephones of Charter Oil Company of Jacksonville, Florida (from November 1979 to December 1979); the office telephone of Thi-Cal Trading Company, Inc., Bakersfield, California, operated by George Belluomini and Ronald Sprague (January 1978 to July 1980); the home telephone of George Belluomini (January 1978 to July 1980).

Analysis of these telephone records revealed evidence of a number of telephone calls relevant to this inquiry. The Subcommittee Report makes reference to many of those calls. Attached, in chronological order by date and time of call, is an exhibit prepared from the telephone records which lists the more relevant telephone calls. The duration of each call is noted but, in certain cases, the time of the call was not noted in the records produced.

The "Phone Used" to place the call and the "Phone Called" are identified in separate columns. Where a call is placed from an outside phone but charged to a telephone for which the

Subcommittee received records, the "Phone Used" column will reflect the city and state from which the call was placed. In such cases, the final column, "Charged From Outside Phone," will identify the telephone actually charged for the call.

These records have been used to corroborate testimony presented to the Subcommittee and to identify, as precisely as is possible, the dates on which certain events occurred. Thus, the fact of travel by an individual is evidenced in long distance calls from out-of-state being charged to his home telephone. Finally, an inference may be drawn from increases in telephone communication activity during or immediately after significant events occur that a relationship exists between those events and communication activity.

<u>Date</u>	<u>Time</u>	<u>Duration (minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From Outside Phone</u>
11/8/78	1:08 pm	1	Randy Coleman	White House	
12/19/78	6:03 pm	8	Townhouse Motor Inn, Atlanta, Ga.	Randy Coleman's home	Horizon Farms
	6:11 pm	2	Townhouse Motor Inn, Atlanta, Ga.	Mark Fuller's home	Horizon Farms
	9:06 pm	3	Townhouse Motor Inn, Atlanta, Ga.	White House	Horizon Farms
12/20/78	9:07 am	4	Townhouse Motor Inn, Atlanta, Ga.	Best Western	Horizon Farms
1/6/79	10:08 am	8	Randy Coleman	Billy Carter's home	
1/27/79	12:31 pm	3	Randy Coleman	White House	
2/23/79	4:00 pm	13	Best Western	White House	Randy Coleman's home
3/6/79	11:53 am	2	Queens, N.Y. pay phone	Randy Coleman's home	
3/9/79	6:57 pm	7	Eastman, Ga.	Italy	Randy Coleman's home
3/12/79	4:16 pm	10	Randy Coleman	Italy	
	4:37 pm	3	Randy Coleman	Italy	
3/14/79	10:41 am	6	Randy Coleman	Italy	
3/16/79	6:52 pm	8	Randy Coleman	Greece	
5/10/79	6:52 pm	12	Americus, Ga.	Helen Medlin's ofc., Atlanta, Ga.	Billy Carter's home
5/11/79	6:53 pm	1	Americus, Ga.	Helen Medlin's ofc., Atlanta, Ga.	Billy Carter's home

<u>Date</u>	<u>Time</u>	<u>Duration (minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From Outside Phone</u>
6/5/79	11:27 am	4	Attorneys Gilliland Columbia Sugar Re- et al. (Helen Medlin), Atlanta, Ga.	Horizon Farms	Horizon Farms
6/11/79	10:55 am	3	Horizon Farms	Helen Medlin's ofc., Atlanta, Ga.	
	11:24 am	3	Horizon Farms	Helen Medlin's ofc., Atlanta, Ga.	
	1:40 pm	2	Horizon Farms	Helen Medlin's ofc., Atlanta, Ga.	
6/14/79	7:25 pm	2	Randy Coleman	Italy	
7/13/79	5:54 pm	9	Las Vegas, Nev.	White House	Billy Carter's home
7/16/79	2:05 pm	3	Franklin, Tenn.	White House	Billy Carter's home
7/27/79	9:31 am	3	Americus, Ga.	Helen Medlin's home	Billy Carter's home
	6:09 pm	1	Americus, Ga.	Helen Medlin's ofc., Atlanta, Ga.	Billy Carter's home
7/30/79	6:11 pm	5	Billy Carter	Helen Medlin's home	
8/3/79	12:40 am	8	Best Western	Robert Schwind, World- wide Trading, Atlanta, Ga.	
8/4/79	5:23 pm	2	Billy Carter	Helen Medlin's home	
8/13/79	6:49 pm	8	Billy Carter	Jack McGregor's home	
8/18/79	10:53 am	4	Best Western	Jack McGregor's home	

<u>Date</u>	<u>Time</u>	<u>Duration (minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From Outside Phone</u>
8/21/79	9:30 am	2	Best Western	Charter Oil, Jacksonville, Fla.	
8/22/79	5:19 pm	10	Marriott Hotel, Atlanta, Ga.	Billy Carter's home	Billy Carter's home
	11:23 pm	6	Marriott Hotel, Atlanta, Ga.	Billy Carter's home	Billy Carter's home
8/23/79	5:12 pm	5	Marriott Hotel, Atlanta, Ga.	Billy Carter's home	Billy Carter's home
9/10/79	10:18 am	1	Billy Carter	Best Western	
	12:47 pm	7	Billy Carter	Best Western	
	5:39 pm	5	Queens, N.Y.	Billy Carter's home	Billy Carter's home
	5:50 pm	6	Billy Carter	Randy Coleman's home	
9/11/79	3:38 pm	1	Best Western	Robert Schwind, Worldwide Trading, Atlanta, Ga.	
	3:46 pm	1	Best Western	Jack McGregor's home	
9/12/79	3:00 pm	7	Billy Carter	Libya	
9/14/79	9:00 pm	6	Randy Coleman	Libya	
9/20/79	9:29 am	1	Best Western	Robert Schwind, Worldwide Trading, Atlanta, Ga.	
9/25/79	7:31 pm	1	Billy Carter	Jack McGregor's home	
	7:32 pm	9	Billy Carter	Jack McGregor's home	
9/28/79	10:18 pm	8	Billy Carter	Jack McGregor's home	

<u>Date</u>	<u>Time</u>	<u>Duration (minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From Outside Phone</u>
10/1/79	12:58 pm	3	Best Western	Jack McGregor's home	
10/2/79	3:19 pm	2	Horizon Farms	Robert Schwind, World- wide Trading, Atlanta, Ga.	
10/15/79	2:26 pm	2	Americus, Ga.	Attorneys Gilliland, et al., (Helen Medlin) Atlanta, Ga.	Billy Carter's home
10/23/79	9:11 am	3	Billy Carter	Best Western	
	9:26 am	2	Billy Carter	Best Western	
	11:05 am	3	Randy Coleman	Libyan U.N. Mission, N.Y.	
	8:25 pm	2	Queens, N.Y.	Billy Carter's home	Billy Carter's home
	8:28 pm	3	Billy Carter	White House	
	9:43 pm	4	Queens, N.Y.	Billy Carter's home	Billy Carter's home
10/24/79	7:39 am	1	N.Y., N.Y.	Billy Carter's home	Billy Carter's home
	4:23 pm	9	Alexandria, Va.	Billy Carter's home	Billy Carter's home
10/26/79	9:26 am	2	Best Western	Libyan Embassy	
10/29/79	10:24 am	3	Best Western	Libyan Embassy	
	10:28 am	3	Best Western	Libyan Embassy	
	3:59 pm	2	Best Western	Libyan Embassy	
11/1/79	10:58 am	2	Best Western	Libyan Embassy	

<u>Date</u>	<u>Time</u>	<u>Duration</u> (minutes)	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From</u> <u>Outside Phone</u>
11/6/79	10:45 am	5	Best Western	Libyan Embassy	
11/7/79	11:16 am	1	Horizon Farms	White House	
11/8/79	11:42 am	2	Pay Phone, Sheraton Atlanta Hotel	White House	Horizon Farms
	11:53 am	7	Pay Phone, Sheraton Atlanta Hotel	Best Western	Horizon Farms
	12:13 pm	3	Best Western	White House Travel Office	
	12:21 pm	6	Best Western	White House	
11/9/79	9:05 am	2	Best Western	Robert Schwind, World-wide Trading, Atlanta, Ga.	
	9:24 am	2	Best Western	Robert Schwind, World-wide Trading, Atlanta, Ga.	
	4:16 pm	3	Best Western	Robert Schwind, World-wide Trading, Atlanta, Ga.	
	5:23 pm	2	Best Western	Robert Schwind, World-wide Trading, Atlanta, Ga.	
11/12/79	11:02 am	4	Horizon Farms	Libyan Embassy	
	2:26 pm	2	Best Western	Robert Schwind, World-wide Trading, Atlanta, Ga.	
11/13/79	11:20 am	2	Best Western	Libyan Embassy	
	12:04 pm	4	Billy Carter	Eastern Airlines, Atlanta, Ga.	

<u>Date</u>	<u>Time</u>	<u>Duration (minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From Outside Phone</u>
11/14/79	10:50 am	5	Best Western	Libyan Embassy	
	11:39 pm	9	Queens, N.Y.	Billy Carter's home	Billy Carter's home
11/15/79	9:20 am	11	Best Western	Robert Schwind, World- wide Trading, Atlanta, Ga.	
	9:33 am	3	Americus, Ga.	Helen Medlin's ofc., Atlanta, Ga.	Billy Carter's home
	10:43 am	4	Best Western	Robert Schwind, World- wide Trading, Atlanta, Ga.	
	11:55 am	3	Best Western	Robert Schwind, World- wide Trading, Atlanta, Ga.	
	3:08 pm	2	Best Western	Robert Schwind, World- wide Trading, Atlanta, Ga.	
	5:09 pm	16	Best Western	United Kingdom	
11/16/79	10:22 am	1	Best Western	Helen Medlin	
11/19/79	10:57 pm	-	Camp David switch- board	Billy Carter's home	
11/20/79	9:40 am	1	Best Western	Libyan Embassy	
	9:45 am	7	Best Western	White House	
	10:42 am	2	Best Western	Libyan Embassy	
	10:57 am	5	Best Western	Eastern Airlines	
	11:33 am	2	Best Western	Billy Carter's home	

<u>Date</u>	<u>Time</u>	<u>Duration (minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From Outside Phone</u>
11/20/79	11:35 am	2	Best Western	White House	
	11:38 am	2	Best Western	Libyan Embassy	
	11:40 am	2	Best Western	Billy Carter's home	
	8:06 pm	2	Randy Coleman	Libyan Embassy	
	8:08 pm	1	Randy Coleman	Mohammed Tarhuni, Alexandria, Va.	
	8:42 pm	3	Randy Coleman	Billy Carter's home	
	10:50 pm	3	Arlington, Va.	Billy Carter's home	Billy Carter's home
11/26/79	12:22 pm	2	Best Western	Billy Carter's home	
	3:43 pm	5	Jonesboro, Ga.	Libyan Embassy	
11/27/79	9:16 am	2	Petersburg, Va.	Billy Carter's home	Billy Carter's home
	1:34 pm	1	Petersburg, Va.	Randy Coleman's home	Randy Coleman's home
11/28/79	10:48 am	2	Occoquan, Va.	Jack McGregor	Billy Carter's home
	10:54 am	4	Aiken, S.C.	Randy Coleman's home	Randy Coleman's home
	1:25 pm	6	Emporia, Va.	Jack McGregor	Billy Carter's home
11/29/79	3:25 pm	2	Best Western	Jack McGregor's ofc.	
	4:19 pm	3	Best Western	Libyan Embassy	
11/30/79	9:20 am	2	Best Western	Billy Carter's home	
	9:49 am	2	Best Western	Charter Oil, Wash., D.C.	
	9:52 am	4	Best Western	White House Travel Office	

<u>Date</u>	<u>Time</u>	<u>Duration (minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From Outside Phone</u>
11/30/79	10:04 am	1	Best Western	Jack McGregor	
	10:05 am	2	Best Western	White House	
	1:21 pm	2	Best Western	Billy Carter's home	
12/1/79	9:22 am	2	Billy Carter	Best Western	
12/3/79	8:26 am	1	Billy Carter	Best Western	
	8:27 am	2	Billy Carter	Best Western	
	10:19 am	2	Best Western	Libyan Embassy	
	10:21 am	1	Best Western	Charter Oil, Wash- ington, D.C.	
	2:07 pm	1	Horizon Farms	Charter Oil, Wash- ington, D.C.	
	2:09 pm	1	Horizon Farms	Jack McGregor's home	
	2:10 pm	1	Horizon Farms	Jack McGregor's ofc.	
	3:38 pm	1	Horizon Farms	Jack McGregor's ofc.	
	8:36 pm	2	Billy Carter	White House	
12/4/79	4:18 pm	1	Best Western	Jack McGregor's ofc.	
	4:26 pm	1	Best Western	Jack McGregor's home	
12/6/79	10:06 am	2	Best Western	Libyan Embassy	
	10:08 am	5	Best Western	White House	
	10:14 am	2	Best Western	Meadows Motors	
	10:36 am	2	Best Western	Jack McGregor's ofc.	
	10:39 am	1	Best Western	Libyan Embassy	

<u>Date</u>	<u>Time</u>	<u>Duration (minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From Outside Phone</u>
12/6/79	11:21 am	2	Best Western	ABC, Inc.	
	2:22 pm	2	Best Western	Libyan Embassy	
	2:27 pm	1	Best Western	Charter Oil, Jacksonville, Fla.	
	2:47 pm	1	Best Western	Jack McGregor's ofc.	
	3:20 pm	5	Best Western	Charter Oil, Jacksonville, Fla.	
	5:11 pm	1	Charter Oil, Jacksonville, Fla.	Jack McGregor's ofc.	
12/7/79	9:32 am	1	Best Western	Jack McGregor's ofc.	
	9:33 am	1	Best Western	Jack McGregor's ofc.	
	11:37 am	3	Best Western	Jack McGregor's ofc.	
12/10/79	9:37 am	5	Horizon Farms	White House	
12/11/79	9:51 am	1	Horizon Farms	Libyan Embassy	
	3:16 pm	1	Horizon Farms	Libyan Embassy	
12/12/79	1:03 pm	3	Best Western	Libyan Embassy	
	1:07 pm	1	Best Western	Jack McGregor's home	
12/13/79	1:06 pm	4	Best Western	Libyan Embassy	
	1:10 pm	1	Best Western	Jack McGregor's ofc.	
	1:12 pm	1	Best Western	Jack McGregor's home	
	1:13 pm	1	Best Western	Charter Oil, Jacksonville, Fla.	

<u>Date</u>	<u>Time</u>	<u>Duration</u> (minutes)	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From</u> <u>Outside Phone</u>
12/13/79	1:40 pm	2	Horizon Farms	Libyan Embassy	
12/14/79	8:20 am	4	Best Western	Jack McGregor's home	
	12:10 pm	6	Best Western	Jack McGregor's ofc.	
	3:02 pm	2	Best Western	Eastern Airlines, Atl., Ga.	
	3:18 pm	1	Best Western	Billy Carter's home	
	3:40 pm	1	Billy Carter	Best Western	
	4:09 pm	3	Billy Carter	Randy Coleman's home	
	10:04 am	3	Best Western	White House Travel Office	
12/17/79	10:38 am	1	Best Western	White House Travel Office	
12/18/79	9:50 pm	2	Billy Carter	Jack McGregor's home	
12/19/79	9:09 am	1	Randy Coleman	White House	
	10:16 am	2	Best Western	Libyan Embassy	
	1:22 pm	6	Best Western	Top Billing, Inc.	
	4:04 pm	1	Best Western	Libyan Embassy	
	5:50 pm	1	Best Western	Libyan Embassy	
	5:52 pm	2	Best Western	Jack McGregor's home	
12/21/79	9:36 am	5	Best Western	Jack McGregor's ofc.	
	10:41 am	5	Best Western	Libyan Embassy	
	1:58 pm	1	Best Western	Libyan Embassy	
	2:21 pm	1	Best Western	Jack McGregor's ofc.	

<u>Date</u>	<u>Time</u>	<u>Duration</u> (minutes)	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From</u> <u>Outside Phone</u>
12/21/79	2:24 pm	3	Best Western	Houston, Tex.	
	3:29 pm	1	Best Western	Top Billing, Inc.	
	5:56 pm	1	Best Western	Libyan Embassy	
12/26/79	10:03 am	5	Best Western	Libyan Embassy	
	10:08 am	1	Best Western	Jack McGregor's home	
	10:13 am	2	Best Western	White House	
	10:15 am	6	Best Western	Top Billing, Inc.	
	10:33 am	5	Best Western	Eastern Airlines, Atlanta, Ga.	
	10:59 am	2	Best Western	Charter Oil, Jacksonville, Fla.	
	11:01 am	1	Best Western	Libyan Embassy	
	11:02 am	3	Best Western	New England Petro- leum Corp., N.Y.	
	11:17 am	2	Best Western	Billy Carter's home	
	11:23 am	1	Best Western	Libyan Embassy	
	12:00 pm	3	Best Western	New England Petro- leum Corp., N.Y.	
12/27/79	10:13 am	4	Best Western	Billy Carter's home	
	11:36 am	1	Best Western	ABC, Inc.	
	2:58 pm	1	Best Western	Billy Carter's home	
	3:51 pm	1	Best Western	Libyan Embassy	
	3:57 pm	1	Best Western	Billy Carter's home	

<u>Date</u>	<u>time</u>	<u>Duration</u> <u>(minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From</u> <u>Outside Phone</u>
12/27/79	5:29 pm	6	N.Y., N.Y.	Best Western	Billy Carter's home
	6:28 pm	8	N.Y., N.Y.		Billy Carter's home
12/28/79	10:05 am	2	Best Western	Randy Coleman's home Carter-Mondale Headquarters	
	7:25 pm	7	Queens, N.Y.	Randy Coleman's home	Billy Carter's home
12/29/79	5:16 pm	1	Best Western	Billy Carter's home	
12/31/79	9:30 am	3	Billy Carter	Best Western	
	10:51 am	2	Billy Carter	Eastern Airlines, Atlanta, Ga.	
	11:28 am	1	Best Western	Meadows Motors	
	11:30 am	5	Best Western	Carter-Mondale Headquarters	
	11:48 am	1	Best Western	Top Billing, Inc.	
	1:15 pm	3	Best Western	Billy Carter's home	
	1:34 pm	2	Best Western	Carter-Mondale Headquarters	
	2:09 pm	4	Best Western	Jack McGregor's ofc.	
	2:56 pm	1	Best Western	Jack McGregor's ofc.	
	2:57 pm	2	Best Western	Jack McGregor's home	
	3:02 pm	3	Best Western	Charter Oil, Jacksonville, Fla.	
	3:19 pm	1	Best Western	Jack McGregor's ofc.	
	3:22 pm	1	Best Western	Jack McGregor's home	

<u>Date</u>	<u>Time</u>	<u>Duration (minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From Outside Phone</u>
12/31/79	3:47 pm	1	Best Western	Jack McGregor's ofc.	
	4:00 pm	7	Best Western	Libyan Palace Hotel, Tripoli, Libya	
	4:03 pm	1	Best Western	M.D. Management Associates, Inc.	
	4:07 pm	1	Best Western	Charter Oil, Jacksonville, Fla.	
	4:09 pm	1	Best Western	Charter Oil, Jacksonville, Fla.	
	5:00 pm	4	Randy Coleman	Libyan Palace Hotel Tripoli, Libya	
	5:06 pm	1	Best Western	Jack McGregor's ofc.	
	5:06 pm	1	Best Western	Jack McGregor's home	
	5:25 pm	2	Billy Carter	Eastern Airlines, Atlanta, Ga.	
1/1/80	10:28 am	4	Best Western	Jack McGregor's home	
	3:00 pm	6	Best Western	Libyan Palace Hotel, Tripoli, Libya	
	3:26 pm	4	Franklin, Tenn.	Billy Carter	Billy Carter's home
1/2/80	9:00 am	5	Birmingham, Ala.	Jack McGregor's office	Billy Carter's home
	9:06 am	4	Birmingham, Ala.	Best Western	Billy Carter's home
	3:00 pm	4	Best Western	Libyan Palace Hotel, Tripoli, Libya	
	5:00 pm	11	Randy Coleman	Libyan Palace Hotel, Tripoli, Libya	

<u>Date</u>	<u>Time</u>	<u>Duration (minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From Outside Phone</u>
1/3/80	7:32 pm	5	Best Western	Dixie Bassett Hounds	
1/4/80	8:25 am	3	Franklin, Tenn.	Libyan Embassy	Billy Carter's home
	8:28 am	3	Franklin, Tenn.	Best Western	Billy Carter's home
	10:28 am	3	Franklin, Tenn.	Best Western	Billy Carter's home
	1:14 pm	1	Best Western	Libyan Embassy	
	3:57 pm	4	Birmingham, Ala.	Best Western	Billy Carter's home
	4:00 pm	8	Best Western	Libyan Palace Hotel, Tripoli, Libya	
1/5/80	9:46 am	1	Best Western	CBS News	
1/6/80	11:00 am	8	Best Western	Libyan Palace Hotel, Tripoli, Libya	
1/7/80	11:28 am	2	Best Western	Billy Carter's home	
	9:39 am	4	Best Western	Billy Carter's home	
	1:26 pm	3	Best Western	Billy Carter's home	
1/9/80	9:23 am	5	Best Western	White House	
	10:02 am	5	Best Western	King & Spaulding	
	1:39 pm	2	Atlanta, Ga.	Best Western	Billy Carter's home
	1:40 pm	1	Atlanta, Ga.	Billy Carter's home	Billy Carter's home
	1:52 pm	5	Best Western	ABC, Inc.	
	1:57 pm	2	Atlanta, Ga.	Libyan Embassy	Billy Carter's home
	5:40 pm	1	Best Western	Libyan Embassy	

<u>Date</u>	<u>Time</u>	<u>Duration</u> (minutes)	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From</u> <u>Outside Phone</u>
1/10/80	9:32 am	2	Best Western	White House	
	9:53 am	1	Best Western	Libyan Embassy	
	10:34 am	1	Best Western	Libyan Embassy	
	10:36 am	1	Best Western	Charter Oil, Jacksonville, Fla.	
	10:39 am	7	Best Western	Jack McGregor's ofc.	
	2:02 pm	1	Best Western	Libyan Embassy	
	5:06 pm	3	Best Western	Libyan Embassy	
1/14/80	9:48 am	4	Billy Carter	Joel Lisker's ofc.	
	11:25 am	1	Horizon Farms	Libyan Embassy	
	12:23 pm	1	Horizon Farms	Jack McGregor's home	
	12:24 pm	1	Horizon Farms	Jack McGregor's ofc.	
	1:59 pm	1	Best Western	Billy Carter's home	
	4:44 pm	6	Horizon Farms	Jack McGregor's home	
	5:30 pm	3	Best Western	Billy Carter's home	
1/15/80	11:12 am	3	Best Western	Billy Carter's home	
	1:21 pm	1	Horizon Farms	Libyan Embassy	
	3:49 pm	1	Horizon Farms	Libyan Embassy	
	4:11 pm	2	Best Western	ABC, Inc.	
	4:34 pm	1	Best Western	Libyan Embassy	
	5:54 pm	1	Best Western	Libyan Embassy	

<u>Date</u>	<u>Time</u>	<u>Duration</u> <u>(minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From</u> <u>Outside Phone</u>
1/16/80	10:39 am	1	Best Western	Jack McGregor's ofc.	
	4:21 pm	1	Best Western	Libyan Embassy	
	4:24 pm	7	Best Western	Jack McGregor's ofc.	
1/18/80	11:05 am	2	Horizon Farms	Libyan Embassy	
1/19/80	9:22 am	1	Best Western	Billy Carter's home	
1/23/80	10:45 am	1	Best Western	Libyan Embassy	
1/25/80	11:36 am	2	Horizon Farms	Libyan Embassy	
1/27/80	1:00 pm	2	Randy Coleman	Mukhtar Jamal, Tripoli, Libya	
1/29/80	12:05 pm	1	Best Western	Libyan Embassy	
	1:00 pm	2	Best Western	Mukhtar Jamal, Tripoli, Libya	
2/4/80	1:36 pm	1	Best Western	White House	
2/5/80	11:00 am	3	Best Western	Mukhtar Jamal, Tripoli, Libya	
	11:20 am	3	Best Western	Jack McGregor's ofc.	
2/6/80	9:31 am	5	Best Western	Joel Lisker's ofc.	
	12:08 pm	6	Columbus, Ga.	Charter Oil, Jacksonville, Fla.	Best Western

<u>Date</u>	<u>Time</u>	<u>Duration (minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From Outside Phone</u>
2/7/80	10:30 am	5	Best Western	Charter Oil, Jacksonville, Fla.	
	10:36 am	1	Best Western	Jack McGregor's ofc.	
	12:38 pm	1	Billy Carter	Thi-Cal Trading, Inc.	
	1:34 pm	1	Best Western	Jack McGregor's ofc.	
2/8/80	11:29 am	2	Americus, Ga.	George Belluomini's home	Billy Carter's home
	1:43 pm	1	Best Western	Eastern Airlines Atlanta, Ga.	
2/10/80	11:00 am	3	Randy Coleman	Mukhtar Jamal, Tripoli, Libya	
2/11/80	8:40 am	3	Best Western	Townhouse Motor Inn, Atlanta, Ga.	
2/15/80	9:29 am	1	Atlanta, Ga.	George Belluomini's home	Billy Carter's home
2/16/80	7:39 am	3	Cedar Rapids, Ia.	Best Western	Billy Carter's home
	11:17 am	1	Best Western	Libyan Embassy	
2/18/80	11:02 am	1	Best Western	Libyan Embassy	
	12:30 pm	4	Best Western	Libyan Embassy	
2/19/80	11:47 am	2	Best Western	Ron Sprague's ofc.	
	11:52 am	6	Best Western	George Belluomini's home	

<u>Date</u>	<u>Time</u>	<u>Duration (minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From Outside Phone</u>
2/19/80	1:00 pm	4	Horizon Farms	Mukhtar Jamal, Tripoli, Libya	
2/20/80		4	Buttonwillow, Ca.	Libyan Embassy	Billy Carter's home
		1	Bakersfield, Ca.	Best Western	Billy Carter's home
		6	Bakersfield, Ca.	Best Western	Billy Carter's home
		3	Bakersfield, Ca.	Best Western	Billy Carter's home
	10:34 am	6	Best Western	Libyan Embassy	
	11:28 am	6	Best Western	Libyan Embassy	
	12:05 pm	5	Best Western	Libyan Embassy	
	1:15 pm	1	Best Western	George Belluomini's home	
	1:16 pm	2	Best Western	Ron Sprague's ofc.	
	2:18 pm	1	Best Western	Libyan Embassy	
	4:58 pm	8	Best Western	Billy Carter's home	
2/21/80	10:28 am	1	Best Western	Libyan Embassy	
	11:56 am	2	Best Western	Libyan Embassy	
	12:40 pm	5	Long Beach, Ca.	People's Bank of LaGrange, Ga.	Billy Carter's home
	1:12 pm	2	Best Western	Libyan Embassy	
2/25/80	10:52 am	2	Best Western	Libyan Embassy	
	11:01 am	3	Best Western	Libyan U.N. Mission, N.Y.	

<u>Date</u>	<u>Time</u>	<u>Duration</u> <u>(minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From</u> <u>Outside Phone</u>
2/25/80	1:43 pm	4	Best Western	Ron Sprague's ofc.	
	5:59 pm	3	Woodward, Ok.	Randy Coleman's home	Billy Carter's home
2/27/80	11:03 am	1	Best Western	Libyan Embassy	
	11:23 am	3	Best Western	Libyan U.N. Mission, N.Y.	
	1:07 pm	3	Best Western	Libyan Embassy	
3/3/80	10:35 am	3	Best Western	Libyan Embassy	
	10:39 am	1	Best Western	Eastern Airlines, Atlanta, Ga.	
	11:28 am	3	Atlanta, Ga.	Best Western	Billy Carter's home
3/6/80	2:16 pm	2	Billy Carter	Belluomini/Sprague's ofc.	
3/7/80	10:04 am	1	Best Western	Libyan Embassy	
	10:16 am	3	Billy Carter	Best Western	
	10:20 am	11	Billy Carter	White House	
3/10/80	10:30 am	1	Best Western	Libyan Embassy	
	5:37 pm	5	Randy Coleman	Jack McGregor's home	
3/11/80	10:17 am	1	Best Western	Libyan Embassy	
	10:47 am	2	Best Western	Libyan Embassy	
	11:03 am	19	Americus, Ga.	Jack McGregor's ofc.	Billy Carter's home
	1:42 pm	3	Best Western	Libyan Embassy	
3/12/80	10:48 am	2	Best Western	Libyan Embassy	

<u>Date</u>	<u>Time</u>	<u>Duration</u> (minutes)	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From</u> <u>Outside Phone</u>
3/12/80	2:36 pm	3	Best Western	Libyan Embassy	
3/13/80	10:33 am	2	Best Western	Libyan Embassy	
	1:54 pm	1	Best Western	Jack McGregor's ofc.	
	1:56 pm	1	Best Western	Jack McGregor's home	
	2:52 pm	2	Best Western	Libyan Embassy	
	3:21 pm	7	Billy Carter	Eastern Airlines, Atlanta, Ga.	
	4:52 pm	1	Best Western	Libyan Embassy	
3/14/80	10:31 am	3	Best Western	Libyan Embassy	
	10:49 am	1	Best Western	Libyan Embassy	
	3:57 pm	2	Best Western	Libyan Embassy	
3/15/80	12:04 pm	2	Best Western	Libyan Embassy	
	4:54 pm	4	Randy Coleman	Libyan Embassy	
3/16/80	2:39 pm	6	Billy Carter	Eastern Airlines, Atlanta, Ga.	
3/17/80	11:27 am	2	Shreveport, La.	Thi-Cal Trading, Inc.	Billy Carter's home
	12:36 pm	1	Best Western	Libyan Embassy	
	1:48 pm	4	Horizon Farms	Libyan Embassy	
	5:20 pm	1	Best Western	Jack McGregor's home	
	6:09 pm	7	Billy Carter	Georgette Belluomini	
3/20/80	1:13 pm	15	Billy Carter	Joel Lisker's ofc.	

<u>Date</u>	<u>Time</u>	<u>Duration</u> <u>(minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From</u> <u>Outside Phone</u>
3/24/80	9:13 am	6	Best Western	White House	
3/25/80	2:34 pm	1	Best Western	Thi-Cal Trading, Inc.	
	2:35 pm	7	Best Western	Thi-Cal Trading, Inc.	
	3:00 pm	8	Randy Coleman	Libyan Palace Hotel, Tripoli, Libya	
3/26/80	2:12 pm	1	Americus, Ga.	Jack McGregor's ofc.	Billy Carter's home
	3:00 pm	9	Best Western	Libyan Palace Hotel, Tripoli, Libya	
	3:11 pm	1	Best Western	Jack McGregor's home	
3/27/80	9:00 am	7	Best Western	Libyan Palace Hotel, Tripoli, Libya	
	9:29 am	1	Best Western	Billy Carter's home	
	10:33 am	2	Best Western	Charter Oil, Jacksonville, Fla.	
	6:52 pm	1	Atlanta, Ga.	Jack McGregor's home	Billy Carter's home
	7:34 pm	1	Atlanta, Ga.	Jack McGregor's home	Billy Carter's home
	7:59 pm	1	Atlanta, Ga.	Jack McGregor's home	Billy Carter's home
3/28/80	8:00 am	9	Best Western	Libyan Palace Hotel, Tripoli, Libya	
	9:54 am	1	Gainesville, Ga.	Jack McGregor's home	Billy Carter's home

<u>Date</u>	<u>Time</u>	<u>Duration (minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From Outside Phone</u>
3/28/80	9:55 am	5	Gainesville, Ga.	Jack McGregor's home	Billy Carter's home
	12:20 pm	3	Best Western	Charter Oil, Jacksonville, Fla.	
	3:00 pm	7	Randy Coleman	Austria	
	5:14 pm	1	Best Western	Jack McGregor's ofc.	
3/30/80	4:00 pm	14	Randy Coleman	Libyan palace Hotel, Tripoli, Libya	
3/31/80	8:00 am	5	Best Western	Libyan Palace Hotel, Tripoli, Libya	
	8:45 am	12	Best Western	Jack McGregor's ofc.	
	8:59 am	1	Best Western	Charter Oil, Jacksonville, Fla.	
	9:26 am	8	Best Western	Billy Carter's home	
	11:30 am	1	Best Western	Billy Carter's home	
4/1/80	11:06 am	3	Jacksonville, Fla.	Billy Carter's home	
	3:00 pm	7	Randy Coleman	Libyan palace Hotel, Tripoli, Libya	
	6:48 pm	7	Americus, Ga.	White House	Billy Carter's home
	6:59 pm	1	Best Western	Jack McGregor's ofc.	
	8:09 pm	1	Billy Carter	Jack McGregor's home	
	10:47 pm	1	Billy Carter	Jack McGregor's home	
	11:35 pm	2	Jack McGregor's home	Billy Carter's home	

<u>Date</u>	<u>Time</u>	<u>Duration</u> (minutes)	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From</u> <u>Outside Phone</u>
4/2/80	9:00 am	3	Best Western	Libyan Palace Hotel, Tripoli, Libya	
	9:39 am	8	Best Western	Jack McGregor's ofc.	
	3:00 pm	14	Randy Coleman	Libyan Palace Hotel, Tripoli, Libya	
4/3/80	8:50 am	2	Billy Carter	Best Western	
	11:02 am	6	Best Western	Jack McGregor's ofc.	
	7:00 pm	15	Randy Coleman	Libyan Palace Hotel, Tripoli, Libya	
4/4/80	8:00 am	7	Best Western	Libyan Palace Hotel, Tripoli, Libya	
	1:08 pm	1	Best Western	Jack McGregor's ofc.	
	4:44 pm	4	Billy Carter	White House	
4/5/80	8:00 am	5	Randy Coleman	Libyan Palace Hotel, Tripoli, Libya	
	3:00 pm	7	Best Western	Libyan Palace Hotel, Tripoli, Libya	
4/7/80	10:00 am	5	Best Western	Libyan Palace Hotel, Tripoli, Libya	
	10:23 pm	8	Billy Carter	Eastern Airlines, Atlanta, Ga.	
4/8/80	11:28 am	3	Americus, Ga.	Tri-Cal Trading, Inc. Billy Carter's home	
4/10/80	1:26 pm	1	Best Western	Libyan Embassy	

<u>Date</u>	<u>Time</u>	<u>Duration (minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From Outside Phone</u>
4/11/80	10:07 am	1	Horizon Farms	George Belluomini's home	
	10:19 am	12	Horizon Farms	Ronald Sprague's home	
4/14/80	9:01 am	2	Best Western	Libyan Embassy	
	3:45 pm	1	Pay phone in Natl. Airport (Arl., Va.)	Billy Carter's home	Billy Carter's home
4/15/80	9:22 am	1	Best Western	People's Bank of LaGrange, Ga.	
	10:27 am	3	Best Western	People's Bank of LaGrange, Ga.	
	10:35 am	1	Best Western	Charter Oil, Jacksonville, Fla.	
4/17/80	10:08 am	5	Horizon Farms	White House	
4/18/80	10:51 am	4	Best Western	Jack McGregor's ofc.	
	1:12 pm	1	Best Western	White House	
4/21/80	3:01 pm	4	Billy Carter	White House	
4/24/80	9:55 am	6	Horizon Farms	White House	
4/25/80	10:08 am	3	Billy Carter	People's Bank of LaGrange, Ga.	
4/29/80	2:28 pm	4	Best Western	People's Bank of LaGrange, Ga.	
	4:32 pm	7	Best Western	Ronald Sprague's ofc.	

<u>Date</u>	<u>Time</u>	<u>Duration (minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From Outside Phone</u>
4/30/80	6:00 am	2	Randy Coleman	Mukhtar Jamal, Tripoli, Libya	
	10:48 am	17	Randy Coleman	Ronald Sprague's home	
5/2/80	9:52 am	1	Americus, Ga.	People's Bank of LaGrange, Ga.	Billy Carter's home
5/6/80	9:31 am	1	Americus, Ga.	People's Bank of LaGrange, Ga.	Billy Carter's home
	5:22 pm	1	Albany, Ga.	Jack McGregor's ofc.	Billy Carter's home
5/7/80	11:25 am	1	Billy Carter	Belluomini/Sprague's ofc.	
	11:25 am	8	Billy Carter	George Belluomini's home	
	11:30 am	1	Columbus, Ga.	People's Bank of LaGrange, Ga.	Billy Carter's home
5/8/80	1:02 pm	8	Best Western	Jack McGregor's ofc.	
5/9/80	12:10 pm	1	Best Western	Charter Oil, Jacksonville, Fla.	
	3:40 pm	4	Best Western	Charter Oil, Jacksonville, Fla.	
	4:43 pm	3	Randy Coleman	Belluomini/Sprague's ofc.	
5/14/80		10	George Belluomini	Billy Carter's home	Billy Carter's home
5/15/80	3:22 pm	1	Nashville, Tenn.	Thi-Cal Trading, Inc.	Billy Carter's home

<u>Date</u>	<u>Time</u>	<u>Duration (minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From Outside Phone</u>
5/19/80		1	George Belluomini	Billy Carter's home	Billy Carter's home
		16	George Belluomini	Billy Carter's home	Billy Carter's home
5/22/80	10:43 pm	12	Billy Carter	George Belluomini's home	
5/27/80	9:02 am	1	Sevierville, Tenn.	Best Western	Billy Carter's home
	12:25 pm	6	Sevierville, Tenn.	Best Western	Billy Carter's home
	1:38 pm	2	Sevierville, Tenn.	George Belluomini's home	Billy Carter's home
	1:41 pm	2	Sevierville, Tenn.	Thi-Cal Trading, Inc.	Billy Carter's home
	2:00 pm	1	Randy Coleman	Mukhtar Jamal, Tripoli, Libya	
	4:53 pm	4	Sevierville, Tenn.	George Belluomini's home	Billy Carter's home
5/29/80		10	George Belluomini	Billy Carter's home	Billy Carter's home
5/30/80	11:29 am	5	Inglewood, Ca.	Billy Carter's home	Billy Carter's home
6/1/80	3:00 pm	2	Randy Coleman	Mukhtar Jamal, Tripoli, Libya	
6/3/80	10:33 pm	7	Sevierville, Tenn.	Randy Coleman's home	Billy Carter's home
6/9/80	10:55 am	1	Americus, Ga.	White House	Billy Carter's home
6/10/80	9:03 am	2	Best Western	Merrill Lynch, Atlanta, Ga.	
	9:07 am	4	Americus, Ga.	People's Bank of LaGrange, Ga.	Billy Carter's home
	9:33 am	1	Best Western	Jack McGregor's ofc.	

<u>Date</u>	<u>Time</u>	<u>Duration (minutes)</u>	<u>Phone Used</u>	<u>Phone Called</u>	<u>Charged From Outside Phone</u>
6/10/80	4:35 pm	1	Atlanta, Ga.	Jack McGregor's ofc.	Billy Carter's home
6/11/80	9:29 am	1	Atlanta, Ga.	Best Western	Billy Carter's home
	9:44 am	1	Atlanta, Ga.	White House	Billy Carter's home
	11:06 am	2	Atlanta, Ga.	Jack McGregor's ofc.	Billy Carter's home
	4:09 pm	1	Best Western	Merrill Lynch, Atlanta, Ga.	
	9:08 pm	5	Billy Carter	Randy Coleman's home	
6/12/80	11:26 am	1	Best Western	Jack McGregor's ofc.	
6/13/80	9:16 am	1	Best Western	Merrill Lynch, Atlanta, Ga.	
6/16/80	2:59 pm	7	Horizon Farms	Steven Pollack's ofc.	
6/23/80	11:30 am	11	Best Western	Jack McGregor's ofc.	
7/1/80	10:56 am	2	Best Western	Merrill Lynch, Atlanta, Ga.	
	11:55 am	5	Best Western	Charter Oil, Jacksonville, Fla.	
7/2/80	2:51 pm	7	Horizon Farms	Steven Pollack's ofc.	

PART III.—LEGAL APPENDIX

INTRODUCTION

In addition to its contributions to the conduct of public affairs, each Congressional investigation makes a contribution to an institution as old as the Republic -- the Congressional investigation itself. Each Congressional investigation works out its solutions to the legal problems posed by the occasional reluctance of witnesses and the complexity of investigative subjects; subsequent Congressional investigations must then revise these solutions in the light of new opportunities and requirements created by changes in the law and in the public sense of investigative necessity and witnesses' rights. A sound Congressional investigation leaves a legacy of earned respect and improved technique.

When it began its inquiry into the relationship between Billy Carter, Libya and the executive branch, the Subcommittee to Investigate Individuals Representing the Interests of Foreign Governments was fortunate in its inheritance from recent Congressional investigations. Not only had the Senate Select Committee on Presidential Campaign Activities, popularly known as the Watergate Committee, left a basis of public respect for Senate investigations, but it had also published an invaluable two-volume set of legal papers. Legal Documents Relating to the Select Committee Hearings: Appendix to the Hearings of the Select Committee on Presidential Campaign

Activities of the United States Senate, 93d Cong., 1st & 2d Sess. (1974). The House Select Committee on Assassinations has also published its legal papers. Legislative and Administrative Reform: Appendix to Hearings Before the Select Committee on Assassinations of the House of Representatives, 95th Cong., 2d Sess. (1978). These materials made it possible for this investigation to begin with the experience of the past in shaping the means to search for the truth. However, the Subcommittee still faced a number of novel problems, particularly those posed by the extraordinary Senate timetable mandating a thorough investigation, public hearings, and a report, all within ten weeks after the creation of an ad hoc Subcommittee.

The papers in this volume reflect the means devised by the Subcommittee for solving its legal problems. They are published in order that the Subcommittee's work may be subject to public scrutiny, and in the hope that they will be of assistance to future investigations. At the same time, the Subcommittee would like to take this opportunity to acknowledge the invaluable assistance of the American Law Division of the Library of Congress, traditionally the source of expertise in the law of Congressional investigations, for the memoranda included in this volume and for other assistance. Mr. Joseph E. Ross, head of that Division, deserves special mention for arranging the drafting of urgently needed legal memoranda on an expedited basis.

I. SUBCOMMITTEE AUTHORITY, RULES AND SCOPE

The Subcommittee to Investigate Individuals Representing the Interests of Foreign Governments was created by a unanimous consent agreement of the Senate on July 24, 1980. That unanimous consent agreement and the discussion at the time of its adoption, respectively Documents 1 and 2, reflect a compromise between proponents of investigation by a standing committee or subcommittee, and proponents of an investigation by a new committee whose membership would be selected from the Senate as a whole. As established, the Subcommittee was, of course, a "subcommittee" -- to be precise, a subcommittee of the Committee on the Judiciary -- rather than a full committee. However, the Subcommittee had several attributes of a full committee: (1) it was directed to "submit to the Senate not later than October 4, 1980, a final or interim report," thereby being directed to report to the Senate rather than to a committee, and (2) its subpoena power was delegated directly by the Senate in the provision "that subpoenas shall be issued by the subcommittee" rather than being delegated by the Senate to a full committee and being subdelegated by a full committee to a subcommittee.

This unique character of the Subcommittee had lasting impact on the legal characteristics of the investigation. For example, in light of the Subcommittee's status as a subunit of the Committee on the Judiciary, the supplementary appropriations to fund the Subcommittee were made to the Committee on the Judiciary rather than directly to the Subcommittee, pursuant to S. Res. 513, Document 3, discussed in the statement by Senator Birch Bayh, Document 4, made at the time of adoption of S. Res. 513. On the other hand, focusing on other aspects that made the Subcommittee, for subpoena-related purposes, take on attributes of a full committee, the Senate delegated authority to request tax records directly to the Subcommittee in S. Res. 496, Document 9, rather than to a full committee with subdelegation to the Subcommittee.

Seven of the Subcommittee's nine members were drawn from the Committee on the Judiciary, and the titles "select" or "special" were not conferred on the Subcommittee. However, the Subcommittee did draw two members from a second committee, the Committee on Foreign Relations. As Senator Robert Byrd explained, "the Judiciary Committee, having primary jurisdiction over the matter, and certainly jurisdiction over any criminal activities that may have occurred, is the appropriate committee to conduct the investigation, with the added provision that the Foreign

Relations Committee, which has jurisdiction over the Foreign Agents Registration Act, is appropriately represented by the unanimous-consent agreement." As reflected in the announcement of appointments to the Subcommittee, Document 5, appointment of the two members from the Committee on Foreign Relations occurred five days after the establishment of the Subcommittee.

The agreement establishing the Subcommittee provided "that the Senate Legal Counsel and Deputy Counsel be authorized and directed to work with and under the jurisdiction and authority of the subcommittee chairman and ranking minority." As Senator Byrd explained on July 24, this would "enable the investigation to proceed immediately. There should be no delay." The Office of Senate Legal Counsel, and the positions of Senate Legal Counsel and Deputy Senate Legal Counsel, had been created by the Ethics in Government Act of 1978. The Subcommittee subsequently resolved to appoint a Special Counsel, of named Philip W. Tone, a distinguished former federal district and appellate judge, to that position. The Senate Legal Counsel and Deputy Senate Legal Counsel then proceeded to work under the direction of Judge Tone.

Section 708(a)(6) of the Ethics Act, 2 U.S.C. § 288g(a)(6), directs the Senate Legal Counsel to "advise, consult, and cooperate with ... any committee or subcommittee of the Senate in promulgating and revising their rules and procedures for the use of congressional investigative powers and with respect to questions which may arise in the course of any investigation." Moreover, under Section 708(c), 2 U.S.C. § 288g(c), "The Counsel shall perform such other duties consistent with the purposes and limitations of this title as the Senate may direct." Prior to the Subcommittee's investigation, the Office of Senate Legal Counsel had assisted in investigations by the Permanent Subcommittee on Investigations, the Subcommittee on Limitations of Contracted and Delegated Activity, the Subcommittee on Improvements in Judicial Machinery, and the Select Committee on Indian Affairs.

The agreement establishing the Subcommittee provided "that the extent and scope of the investigation shall be determined by the subcommittee." In part, this provision reflected the special time pressure faced by the Subcommittee. In order to report to the Senate by October 4, the Subcommittee was requested to begin investigation immediately, even if the scope of the investigation could not yet be precisely defined. On August 19, 1980, the Subcommittee adopted a statement of the scope of its investigation, Document 6. As the statement noted:

The investigation should enable the subcommittee to respond to the following questions. First, as applied to the facts of this matter, does the Foreign Agents Registration Act fail to require registration in circumstances in which the national interest requires disclosure? On the other hand, does it include activities for which the requirement of registration serves no useful governmental interest? Second, are the enforcement procedures under the Act sufficient, and in the Billy Carter case, was enforcement impeded by a lack of interagency cooperation? Third, has justice in this case been administered in an efficient and evenhanded manner? Fourth, did Billy Carter or others associated with him engage on behalf of Libya in activities subject to the registration requirements of the Act? Did any of these activities affect decisions of the United States government with respect to Libya? Did Billy Carter's failure to register at an earlier date adversely affect the interest of the United States? Fifth, did he engage in any activities with respect to foreign nations of a kind which may be appropriate subjects of future legislation?

Within a week after its creation, on July 31, 1980 the Subcommittee adopted formal rules of procedure, Document 7. These rules reflected the nonpartisan nature of the investigation originally established in the agreement creating the Subcommittee. That agreement had indicated that the ranking minority member of the Subcommittee would have the status of vice chairman, and that the chairman and vice chairman would act together in the critical matter of issuing subpoenas, insofar as it provided "that subpoenas shall be issued by the Subcommittee upon the cosignature of its chairman and vice chairman, or upon the signature of either of them at the direction of

the subcommittee." The rules further defined the joint role of the chairman and vice chairman. Subcommittee Rule 2.3 provided that "The Chairman of the subcommittee shall preside over all meetings of the subcommittee. In the absence of the Chairman, the Vice Chairman shall preside." Rule 4.1 provided for the authorization of subpoenas by the Chairman and Vice Chairman. Rule 6.1 provided for the authorization of deposition notices by the Chairman and Vice Chairman. Rule 8.3 provided that the Chairman and Vice Chairman would "at all times have access to all papers and other material received from any source."

In general the Subcommittee's rules followed the rules of the Permanent Subcommittee on Investigations of the Committee on Government Affairs, which has had long experience with investigations, and the rules of the Select Committee on Intelligence, which has had experience handling sensitive intelligence materials. Subcommittee Rules 1 and 2 established the procedures for convening and holding meetings, and Rule 3 established the procedure for coverage of open meetings by the media. Rule 4.1 established the procedures for issuance of subpoenas; Rule 4.2 established a simplified procedure for receiving the return on a subpoena duces tecum.

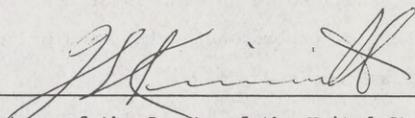
Rule 5 established the procedures for the taking of testimony at hearings. This provision guaranteed witnesses a right to counsel, and as provided by Rule 5.5, the Subcommittee undertook to endeavor to obtain voluntary counsel for witnesses who were unable to obtain counsel, with the assistance of the District of Columbia Bar Association. Rules 6 and 7 established procedures for depositions and other staff examinations; because of the significance of these procedures for the operations of the Subcommittee, they shall be separately treated below.

Rule 8 established the procedures for handling of classified or sensitive materials; using these procedures, strict security was maintained on an array of intelligence documents and other materials with the assistance of the staff and facilities of the Select Committee on Intelligence. Rule 9 established the duties and obligations of the Subcommittee staff, and Rule 10 authorized the Chairman to utilize personnel of government agencies ("detailees") and private persons ("consultants") as part of the Subcommittee staff. While the majority of the Subcommittee staff were Senate employees, a number of detailees and consultants were eventually hired or retained, most notably the Subcommittee's Special Counsel, Philip W. Tone. Finally, Rule 11 established a simple procedure for changes in rules; this provision was never used.

DOCUMENT 1

I, J. S. KIMMITT, Secretary of the Senate of the United States of America, do hereby certify that the document hereto attached is a photostatic copy of an excerpt from the Journal of the Senate of the United States for July 25, 1980, embodying portions of the proceedings of the Senate on that day.

IN TESTIMONY WHEREOF, I hereunto
subscribe my name and affix
the seal of the Senate of
the United States of America
at the city of Washington,
this the 29th day of July,
A. D. 1980.



Secretary of the Senate of the United States



DESIGNATION OF A SUBCOMMITTEE OF THE COMMITTEE ON THE
JUDICIARY TO CONDUCT AN INVESTIGATION OF
ACTIVITIES OF INDIVIDUALS REPRESENTING
INTERESTS OF FOREIGN GOVERNMENTS

On motion by Mr. Robert C. Byrd, and by unanimous consent,
Ordered, That a subcommittee of the Committee on the Judiciary,
consisting of four Democrats and three Republicans, to be selected by
the Acting Chairman (Mr. Bayh), who has been designated by the Chair-
man of the Committee on the Judiciary (Mr. Kennedy), and the ranking
member of the Committee on the Judiciary (Mr. Thurmond), be estab-
lished immediately for the purpose of conducting an investigation of
activities relating to individuals representing the interests of for-
eign governments, and such subcommittee shall submit to the Senate no
later than October 4, 1980, a final or interim report.

Ordered further, That two members of the Committee on Foreign
Relations, one each to be designated by the majority and minority
leaders, shall serve as members of the aforementioned subcommittee,
with the same powers, authority, and prerogatives of all other members
of that subcommittee.

Ordered further, That service on this subcommittee shall not be
considered a violation of Senate rule XXV, subsections (4) (b) (1) and
(4) (e) (2).

Ordered further, That subpoenas shall be issued by the subcom-
mittee upon the co-signature of its chairman and vice chairman, or
upon the signature of either of them at the direction of the subcom-
mittee.

Ordered further, That the Senate Legal Counsel and Deputy Counsel
be authorized and directed to work with and under the jurisdiction and
authority of the subcommittee chairman and ranking member.

Ordered further, That the extent and scope of the investigation
shall be determined by the subcommittee.

DOCUMENT 2

July 24, 1980

CONGRESSIONAL RECORD—SENATE

S 9779

UNANIMOUS-CONSENT AGREEMENT
—INVESTIGATION OF ACTIVITIES
RELATING TO INDIVIDUALS RE-
PRESENTING INTERESTS OF FOR-
EIGN GOVERNMENTS

Mr. ROBERT C. BYRD. Mr. President, meetings have occurred on yesterday and today with the distinguished minority leader, the distinguished minority whip, Senators THURMOND and DOLE from the minority, the distinguished majority whip, Senator BAYH, Senator RINCOFF, Senator BAUCUS, Senator PELL, and myself, in my office to discuss the investigation of activities relating to individuals representing the interests of foreign governments.

Several discussions took place and the following unanimous-consent request represents the unanimous agreement that was reached after those discussions terminated in the final meeting earlier today.

The distinguished minority leader is here to speak for himself. I am sure that he discussed with other Senators on his side of the aisle the understanding that was reached, and I have done the same on my side of the aisle.

Mr. President, I ask unanimous consent that a committee of the Judiciary Committee, consisting of four Democrats and three Republicans, to be selected by the acting chairman (Mr. BAYH), who has been designated acting chairman by the chairman of the Judiciary Committee (Mr. KENNEDY), and ranking member of the Judiciary Committee, be established immediately for the purpose of conducting an investigation of activities relating to individuals representing the interests of foreign governments, which subcommittee shall submit to the Senate not later than October 4, 1980, a final or interim report;

S 9780

CONGRESSIONAL RECORD—SENATE

July 24, 1930

Provided further, that two members of the Foreign Relations Committee, one each to be designated by the majority and minority leaders, shall serve as members of the aforementioned subcommittee, with the same powers, authority, and prerogatives of all other members of that subcommittee;

Provided further, that service on this subcommittee shall not be considered a violation of Senate rule XXV, subsections 4(b) (1) and 4(e) (2);

Provided further, that subpoenas shall be issued by the subcommittee upon the cognisance of its chairman and vice chairman, or upon the signature of either of them at the direction of the subcommittee;

Provided further, that the Senate legal counsel and deputy counsel be authorized and directed to work with and under the jurisdiction and authority of the subcommittee chairman and ranking member;

Provided further, that the extent and scope of the investigation shall be determined by the subcommittee.

Mr. BAKER, Mr. President, reserving the right to object, and I will not object.

THE PRESIDING OFFICER, The Senator from Tennessee.

Mr. BAKER, Mr. President, the majority leader, of course, correctly describes the negotiations that have been undertaken in the course of the last 2 days and which culminated in the meeting conducted an hour or so ago in his office.

Mr. President, I wish to join with the majority leader in asking unanimous consent for the action directed in this request.

Mr. President, further on reservation. I would like to thank the majority leader for his time and patience and his consideration of the elements of this agreement, which were deemed to be especially significant to those of us in the minority who were concerned with the quality of the investigation that is about to occur.

I personally had hoped for and would have preferred a select committee, a select committee appointed by the majority and minority leaders, comprised of equal representation of both parties, and drawn from the Senate as a whole.

But I recognize the circumstances that have suggested this arrangement and I believe this is the best arrangement that can be achieved at this time. I fully support it.

It should be noted, Mr. President, as I have noted in previous meetings leading to this point, that nothing in this resolution deprives me, or any other Member of the Senate, from later introducing a resolution calling for the creation of a select committee, nor does it abrogate nor supersede the jurisdictional responsibility or opportunity of any other committee. But this is a good beginning. This is a good way to commence.

This, I believe, is a good faith effort by both sides to create a forum for a fair, depoliticized, impartial inquiry of the most sensitive nature into a matter of great importance to the Senate and to the country.

Having arrived now at a satisfactory arrangement for that undertaking, I wish, on this reservation, to pledge to

the majority leader, to the Senate, and to the country, there, so far as we are concerned on our side of the aisle, from this moment forward there will be no element of partisan politics involved; that this will be the most judicious, the fairest, the most impartial inquiry that is possible. We recognize and acknowledge not only the sensitivity of this issue but also our responsibility to the Senate and to the country, which far transcends any temporary political advantage.

Mr. President, we recognize that the lives, the fortunes, and the good names of men and women are being dealt with in this inquiry, and we are sensitive to that requirement. We wish no one ill.

Now, Mr. President, I thank the majority leader for his cooperation. I believe it is especially important that we broaden the inquiry to include representatives of the Foreign Relations Committee. If this unanimous-consent request is granted—and I hope it will be—I will designate one member from our side of the Foreign Relations Committee to participate.

I am especially pleased that the senior Republican on this committee, who will be chosen from the Judiciary Committee, will be designated as the vice chairman. I believe it is important that we will have coauthorship between the chairman and the vice chairman to issue subpoenas. I approve of the provision which states that if the chairman and the vice chairman cannot agree on the issue of subpoena, either of them may sign the subpoena on order of the subcommittee itself.

It is my understanding, although I do not see it in the request, that this subcommittee will make its report to the Senate. Maybe I overlooked that.

Mr. ROBERT C. BYRD, It is in there. Mr. BAKER, It will make its report to the Senate, which I believe is an important aspect.

I am especially pleased that, on the suggestion of the majority leader, the Senate legal counsel and the deputy legal counsel will be involved in these proceedings. That is a good employment of their resources and talents.

Altogether, Mr. President, I believe the Senate has acted wisely and well in a difficult and sensitive political situation, and I offer my congratulations to the majority leader for his efforts in this respect.

THE PRESIDING OFFICER, Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD, Mr. President, I thank the distinguished minority leader for his cooperation in arriving at the unanimous-consent agreement.

I thank all the other Senators whose names I have mentioned previously and, of course, I thank those whose advice and concurrence were sought, but whose names I have not mentioned, for their cooperation.

I also express my appreciation to the distinguished minority leader for the statement he has just made. I wish to say, on my own behalf, Mr. President, that this is a matter that is not going to go away. It is a matter that, in my judg-

ment, requires the investigation which has been ordered by this consent agreement.

I believe that the Judiciary Committee, having primary jurisdiction over the matter, and certainly jurisdiction over any criminal activities that may have occurred, is the appropriate committee to conduct the investigation, with the added proviso that the Foreign Relations Committee, which has jurisdiction over the Foreign Agents Registration Act, is appropriately represented by the unanimous-consent agreement.

I have every confidence that the acting chairman of the Judiciary Committee, Mr. BAYH, who has been asked by me to serve as chairman of the subcommittee, and the Democrats whom he will select from that committee, as well as the ranking member, Mr. THURMOND, and the Republican members whom he will select, and the two members of the Foreign Relations Committee who will be selected by Mr. BAKER and me, will discharge their duties in a responsible, honorable, admirable, and dutiful way.

It will be the responsibility of this subcommittee to act fairly and to act thoroughly and to follow leads wherever they may go. I have every confidence that they will be able to do that.

I appreciate the statement of the distinguished minority leader—if I did not misunderstand him—that this will not be a partisan matter, and I agree that it should not be a partisan matter. I am just as concerned about this matter as is any other Member of the Senate, on either side of the aisle, and just as concerned that there be an investigation; that it be fair; that it be thorough; that it be impartial, and that it be conducted on a nonpartisan basis rather than on a partisan basis.

As the distinguished minority leader has said, there are people whose names, whose reputations, whose lives, and whose honor may be involved. So I feel it the duty of the Senate to proceed forthwith.

I can understand the preference of the majority leader for a select committee; but, as he has indicated, I believe there are circumstances which, in my judgment, dictate that the procedure that has been agreed upon is the better one under the circumstances.

The Judiciary Committee is staffed and has the authority to employ additional staff. The Senate legal counsel, who I appointed, and the Senate deputy legal counsel, who was appointed by Mr. BAKER, both of whom received the formal approval of the Senate, are very able men and are being authorized and directed by the agreement to assist the chairman and the ranking member of the subcommittee which is being created by the consent agreement. This will enable the investigation to proceed immediately. There should be no delay.

I believe that the agreement that was reached with respect to the issuance of subpoenas gives to both the majority and the minority the right to subpoena witnesses, but with the cognisance each of the other. I feel that, in all respects, this is a very appropriate way to proceed.

It has been required that the subcom-

CONGRESSIONAL RECORD—SEN

report be submitted before a vote will be either the time of adjournment of the Senate or until after the election.

Having said that, Mr. President, I again feel indebted to the minority leader and the Members on his side of the aisle, to my own Members, especially Mr. BAYNE, who will be taking on this onerous task, and to the others whose names were mentioned.

I think that about does it.

Mr. BAYNE. Mr. President, I think the Senate owes the distinguished majority leader a debt of gratitude for the time and effort he expended in putting together the framework on which the special subcommittee of the Judicial Committee will undertake this very important task.

I express my deep appreciation to him for the tremendous role he played in this.

I think we also owe to the minority leader a debt of gratitude because he was willing to display a significant willingness to give and take that was necessary to put this together in a harmonious fashion.

This is a thankless task. It is an important task. It is one that I trust the subcommittee will in fact exercise in a manner in which the entire Senate can take some degree of pride.

We want this committee to act expeditiously, thoroughly, and fairly, and we shall endeavor to do just that.

Again, I am indebted to the distinguished majority leader for the critical catalytic role he played in putting this together in a way that I think the hearings that are conducted by this committee will as much as is humanly possible search the truth and follow the tracks of these activities wherever they may lead and let the chips fall where they may.

I am confident that the Senator from South Carolina and I will be able to structure a committee in such a way that we will put on our quasi-judicial robes and we will take off the partisan remnants that occasionally adorn us every 2 years or 4 years and pursue truth. We will avoid the temptation to resort to witch hunting or playing petty expedient politics.

Let us see what the facts are and then the Senate itself, the Government of this country and more importantly, the people of this country can decide for themselves what the proper course of action should be.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Indiana (Mr. BAYNE) and again I say that I have asked him to serve as chairman of the subcommittee and I have done it with the utmost confidence in his integrity and dedication to purpose.

Mr. THURMOND. Mr. President, I wish to commend the able majority leader and the able minority leader in reaching agreement as to the membership to be composed of this Subcommittee on Investigation.

It was suggested that we have a select committee of the Senate. I, like the dis-

tinguished minority leader, would have preferred that. But since that was not the decision, as the ranking member of the Judiciary Committee, who I presume now will be the vice chairman of this subcommittee, I just wish to say that it shall certainly be my intention to see that this investigation is conducted in a fair, impartial, and honest manner.

No investigation is worth anything unless it is conducted in such a manner. We are not entering upon this investigation as partisans. We are not entering upon this investigation as Democrats or Republicans. We shall enter upon this investigation with one purpose in mind, and that is to seek the truth.

We shall go after the facts, regardless of here they lead to, regardless of who it affects. It may affect individuals. It may affect people in the Government. Or it may affect other individuals in one way or another.

But this investigation from the standpoint of the vice chairman will certainly be conducted in a way that we hope will meet the approval of the American people and to do that it must be done in a fair, just, impartial, and honest manner.

Mr. BAUCUS. Mr. President, I know it is customary during these moments when the Senate is embarking upon an investigation to praise the participants who were part of putting the endeavor together. But I wish to say that I, as one who somewhat participated, probably more observed these deliberations in the last 24 hours, was very impressed with the fact that we are starting off with the right foot. The right tone is being set.

No one knows precisely where this investigation is going to go. No one knows precisely what evidence will be uncovered, and no one knows probably in any way where this investigation will lead.

But I must say I am very impressed and very proud that the participants, particularly the minority leader and the majority leader, started off on the right foot with the right tone in the spirit of bipartisanship.

There were times when the negotiations almost broke down. There were times when emotions perhaps got a little higher than they ordinarily are. But with perseverance in the effort and more important, in my judgment, because the majority leader and minority leader and those who participated above all wanted the investigation to proceed properly, we overcame those differences as small as they might be and in the end we reached agreement as to how we might proceed.

Mr. President, I must say that I think that speaks well not only for our institution, our body—and I commend the minority leader and majority leader very highly—but it also speaks well for the professional manner in which this investigation will be undertaken.

96TH CONGRESS
2D SESSION

S. RES. 513

Authorizing supplemental expenditures by the Committee on the Judiciary for inquiries and investigations.

IN THE SENATE OF THE UNITED STATES

AUGUST 27 (legislative day, JUNE 12), 1980

Mr. ROBERT C. BYRD (for Mr. BAYH) (for himself and Mr. THURMOND) submitted the following resolution; which was considered and agreed to

RESOLUTION

Authorizing supplemental expenditures by the Committee on the Judiciary for inquiries and investigations.

- 1 *Resolved*, That section 2 of the Senate Resolution 350,
- 2 Ninety-sixth Congress, agreed to March 5 (legislative day,
- 3 January 3), 1980, is amended by striking out the amounts
- 4 "\$4,971,700" and "\$177,500" and inserting in lieu thereof
- 5 "\$5,168,700" and "\$198,500", respectively.

○

August 27, 1950

S 11685

SENATE RESOLUTION 513—AUTHORIZING SUPPLEMENTAL EXPENDITURES BY THE COMMITTEE ON THE JUDICIARY

Mr. ROBERT C. BYRD, Mr. President, on behalf of Mr. BAYH and Mr. TRUMBULL, I send to the desk a resolution and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The resolution will be stated by title.

The legislative clerk read as follows: A resolution (S. Res. 513) authorizing supplemental expenditures by the Committee on the Judiciary for inquiries and investigations.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. ROBERT C. BYRD, Mr. President, I ask unanimous consent to have printed in the Record a statement by Mr. BAYH.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

STATEMENT BY SENATOR BAYH

This resolution amends Senate Resolution 350 so as to increase total expenditures authorized for the Committee on the Judiciary by \$197,000 from \$4,971,700 to \$5,168,700, of which the amount may be expended for the procurement of services of individual consultants is increased by \$21,000 from \$177,500 to \$198,500. The additional monies would be applied to fund a new subcommittee established under the Judiciary Committee as approved by unanimous consent of the Senate on July 24, 1950. The subcommittee was mandated to conduct an investigation of activities relating to individuals representing the interests of foreign governments. The subcommittee shall submit to the Senate, not later than October 4, 1950, an interim or final report.

PURPOSE OF INVESTIGATION

This investigation was initiated by the unanimous consent of the Senate on July 24, 1950. Its purpose is to determine whether individuals representing foreign governments as their agents have attempted to influence the actions of the United States government. Moreover, the subcommittee is to determine if the current laws of the United States are sufficient to meet any such challenges and whether existing government agencies and departments have responded appropriately to any such attempts.

ORGANIZATION

By order of the Senate the newly formed subcommittee was made up of seven Members of the Judiciary Committee and two

Members of the Foreign Relations Committee.

In order to complete its task in the most efficient and economical manner, the subcommittee will use, to the extent possible, existing staff resources of its Members. The Members have agreed to designate members of their personal or Committee staff to serve as staff investigators assigned to the new subcommittee. There are nonetheless both salary and operational expenses which must be provided for by an increase in the amount the Committee on the Judiciary may expend for investigations. The subcommittee has retained a Special Counsel. It has retained the service of a former high ranking FBI official as Director of Investigation, and must reimburse the General Accounting Office for accountants and auditors who have been detailed to the subcommittee.

The investigation also will entail significant travel, deposition and witness expenses, as well as the possibility of retention of additional temporary outside consultants.

This resolution will provide funds to augment existing resources to enable the subcommittee to carry out its responsibilities. The subcommittee intends that the staff assigned by Members to this investigation, and consultant, will be a unified nonpartisan staff.

The resolution was agreed to, as follows:

S. RES. 513

Resolved, That section 2 of Senate Resolution 350, Ninety-sixth Congress, agreed to March 5 (legislative day, January 3), 1950, is amended by striking out the amounts "\$4,971,700" and "\$177,500" and inserting in lieu thereof "\$5,168,700" and "\$198,500", respectively.

Mr. ROBERT C. BYRD, Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.



APPOINTMENT OF SENATOR PELL
TO THE SPECIAL JUDICIARY
SUBCOMMITTEE

Mr. ROBERT C. BYRD. Mr. President, in accordance with the order of the Senate previously entered, under the authority reposed in me by that order I hereby announce the appointment of Mr. CLAUDE PELL to serve on the ad hoc subcommittee of the Judiciary Committee which is to conduct an investigation of the actions, if any, of individuals in the representation of foreign powers.

I yield to the distinguished minority leader.

APPOINTMENT OF SENATOR LUGAR
TO THE SPECIAL JUDICIARY SUB-
COMMITTEE

Mr. BAKER. Mr. President, I am pleased to inform my colleagues that the distinguished Senator from Indiana (Mr. LUGAR) has consented to serve on the special Judiciary Subcommittee charged by the Senate last week to investigate the activities of agents of foreign governments in this country.

Senator LUGAR's willingness to assume this onerous duty is greatly appreciated, both by myself and by the vice chairman of the committee, the able Senator from South Carolina (Mr. TITMUS). Further, it is indicative of his leadership and his devotion to his responsibilities to the Foreign Relations Committee, the Senate, and the Nation.

This appointment fills the Republican membership on the special committee.

I thank the distinguished majority leader for yielding to me at this time so I could make this announcement.

I would urge the committee to begin its deliberations forthwith.

DOCUMENT 6

August 19, 1980

STATEMENT OF SENATOR BAYH
PROPOSED SCOPE OF THE INVESTIGATION

The Senate has directed the subcommittee to investigate the activities of persons representing the interests of foreign governments, but has left it to the subcommittee to define the extent and scope of the investigation. Although its charter is broad, the specific context for this investigation is Billy Carter's activities with respect to Libya. The subcommittee has agreed that the following shall constitute the scope of its investigation.

This is a congressional investigation and its objectives therefore relate to a legislative purpose. The subcommittee will inquire into the adequacy and enforcement of present law, and the performance of executive functions by members of the executive branch. When the subcommittee calls on private individuals for their testimony, it does so not to embarrass or harass them, but to provide a factual context for the subcommittee's assessment of the adequacy of public law and its enforcement.

The investigation should enable the subcommittee to respond to the following questions. First, as applied to the facts of this matter, does the Foreign Agents Registration Act fail to require registration in circumstances in which the national interest requires disclosure? On the other hand, does it include activities for which the requirement of registration serves no useful governmental interest? Second, are the enforcement procedures under the Act sufficient and, in the Billy Carter case, was

enforcement impeded by a lack of interagency cooperation? Third, has justice in this case been administered in an efficient and evenhanded manner? Fourth, did Billy Carter or others associated with him engage on behalf of Libya in activities subject to the registration requirements of the Act? Did any of these activities affect decisions of the United States government with respect to Libya? Did Billy Carter's failure to register at an earlier date adversely affect the interest of the United States? Fifth, did he engage in any activities with respect to foreign nations of a kind which may be appropriate subjects of future legislation?

This week the subcommittee will hear from Henry ("Randy") Coleman, who assisted Billy Carter in these matters, Jack McGregor, an oil consultant and friend of Mr. Carter, and Lewis Nasife, President of The Charter Crude Oil Company. Billy Carter will also testify. The purpose of these hearings will be to determine whether Billy Carter or others associated with him undertook or promised to undertake activities as an agent of Libya (as that term is defined in the Act), whether he or they received compensation for such activities, and to what extent these persons had contact with officials of the executive branch and received information or assistance from them.

The next step will be to hear, probably in closed session, about the intelligence information which was provided to the Department of Justice and the Assistant to the President for National Security Affairs about Billy Carter's activities, and

about any other efforts of Libya to influence the policy of the United States. We will also hear views on whether classified information with respect to Billy Carter was properly handled. The principal purpose of this testimony will be to show the knowledge which key officials had of Billy Carter's activities, and the broader context in which they made decisions relating to him.

The subcommittee will then call witnesses from the Department of Justice to assess the manner in which the Department enforced the Registration Act in Billy Carter's case and whether inaccurate interview information impeded the enforcement of the Act. This review will evaluate the time required to dispose of the case, examine the role of top law enforcement officers, determine whether classified information was handled properly, and consider whether Billy Carter's case was handled specially, either to his benefit or his detriment. In addition, the subcommittee will investigate any direct or indirect communications between the White House and the Department of Justice with respect to the Billy Carter case, and whether any officials in the White House sought to affect the course or disposition of the Billy Carter case in the Justice Department. During this phase of the investigation the witnesses the subcommittee expects to hear from are Joel Lisker, the attorney in charge of the Department of Justice Registration Unit, Philip B. Heymann, the Assistant Attorney General in charge of the Criminal Division, and the Attorney General.

Finally, the subcommittee will turn to an examination of other executive departments and the White House. It will consider

whether Billy Carter influenced or attempted to influence United States policy and whether his delay in registering caused any harm. As part of this review the subcommittee will hear testimony on the proposed sales of trucks and planes to Libya, the roles which the Departments of Commerce and State and the National Security Council had in these matters, and whether Billy Carter sought to influence their decisions. The subcommittee will also consider the implications and effects, if any, of the use of Billy Carter as an intermediary in the hostage crisis. During the White House phase of the investigation the subcommittee will consider whether to call for the testimony of the Assistant to the President for National Security Affairs and the President.

The designation of the subcommittee dated July 25, 1980, provides that the subcommittee "shall submit to the Senate no later than October 4, 1980, a final or interim report." The subcommittee must therefore work within that time constraint. The investigation and the report of the subcommittee to be delivered by October 4 will be as comprehensive and thorough as is possible in the time available.

DOCUMENT 7

(Reprinted in Congressional Record--Senate, August 19, 1980)

RULES OF PROCEDURE OF THE
JUDICIARY SUBCOMMITTEE INVESTIGATING
ACTIVITIES RELATING TO INDIVIDUALS
REPRESENTING FOREIGN GOVERNMENTS

Rule 1. Convening of Meetings

1.1 The subcommittee may schedule a regular day and hour for the subcommittee to meet.

1.2 The Chairman shall have authority, upon proper notice, to call such additional meetings of the subcommittee as he may deem necessary and may delegate such authority to any other member of the subcommittee.

1.3 A special meeting of the subcommittee may be called at any time upon the written request of six or more members of the subcommittee filed with the clerk of the subcommittee.

1.4 In the case of any meeting of the subcommittee, other than a regularly scheduled meeting, the clerk of the subcommittee shall notify every member of the subcommittee of the time and place of the meeting and shall give reasonable notice which, except in extraordinary circumstances, shall be at least 24 hours in advance of any meeting held in Washington, D.C., and at least 48 hours in the case of any meeting held outside Washington, D.C.

1.5 If six or more members of the subcommittee have made a request in writing to the Chairman to call a meeting of the subcommittee, and the Chairman fails to call such a meeting within seven calendar days thereafter, including the day on which the written notice is submitted, such members may call a meeting by filing a written notice with the clerk of the subcommittee who shall promptly notify each member of the subcommittee in writing of the date and time of the meeting.

Rule 2. Meeting Procedures

2.1 Meetings of the subcommittee shall be open to the public, except when otherwise directed by the Chairman or majority vote of the members present.

2.2 It shall be the duty of a staff officer designated by the Chairman to keep or cause to be kept a record of all subcommittee proceedings.

2.3 The Chairman of the subcommittee shall preside over all meetings of the subcommittee. In the absence of the Chairman, the Vice Chairman shall preside.

2.4 Except as otherwise provided in these Rules, decisions of the subcommittee shall be by majority vote of the members present

and voting. A quorum for the transaction of subcommittee business, including the conduct of Executive sessions, shall consist of five subcommittee members except that, for the purpose of hearing witnesses, taking sworn testimony, and receiving documentary or physical evidence, a quorum shall consist of one Senator.

Rule 3. Broadcasting, Television, and Photography

Any Committee meeting which is open to the public may, subject to Rule 5.8, be covered, in whole or in part, by television, radio, still photography, or other media coverage, if the Chairman authorizes such coverage. When coverage by any such media is authorized it must be conducted in an orderly and unobtrusive manner, and the Chairman may for good cause terminate such media coverage in whole or in part, or take such other action as the circumstances may warrant.

Rule 4. Subpoenas

4.1 Subpoenas for attendance of witnesses or the production of memoranda, documents, records, or any other material, and orders for the inspection of locations and systems of records, shall be authorized by the subcommittee or by the Chairman and Vice Chairman. When authorized by the subcommittee, subpoenas may be issued upon the signature of either the Chairman or the Vice Chairman, or by a member designated by the subcommittee. When authorized by the Chairman and Vice Chairman, subpoenas shall be issued upon both their signatures and thereupon each member shall be notified.

4.2 A subpoena duces tecum may be issued whose return shall occur at a time and place other than that of a regularly scheduled meeting. Upon the return of such a subpoena, any member, on two hours' telephonic notice all other subcommittee members, may convene a meeting for the sole purpose of elucidating further information about the return on the subpoena and deciding any objections to the subpoena.

Rule 5. Taking of Testimony at Hearings

5.1 Witnesses required to appear before the subcommittee shall be given, absent extraordinary circumstances, at least forty-eight hours' notice and all witnesses shall be furnished with a copy of these rules.

5.2 All witnesses at public or executive hearings who testify to matters of fact shall be sworn unless a majority of members of the subcommittee provide otherwise.

5.3 Subcommittee interrogation shall be conducted by members of the subcommittee and by such staff personnel as are authorized by the presiding member.

5.4 Counsel retained by any witness and accompanying such witness shall be permitted to be present during the testimony of

such witness at any public or executive hearing, and to advise such witness while he is testifying, of his legal rights; provided, however, that in the case of any witness who is a government officer or employee, or officer or employee of a corporation or association, the presiding member may rule that selection of counsel from the government or the corporation or association, creates a conflict of interest, and that the witness shall be represented by personal counsel not from the government or corporation or association.

5.5 A witness who is unable to obtain counsel may inform the subcommittee of such fact, and if, consistent with the notice given under section 5.1 hereof the subcommittee is so informed at least 24 hours prior to the witness's appearance, the subcommittee shall then endeavor to obtain voluntary counsel for the witness. Such counsel shall be subject solely to the control of the witness and not the subcommittee. Failure to obtain counsel will not excuse the witness from appearing and testifying.

5.6 Counsel shall conduct themselves in an ethical and professional manner. Failure to do so shall, upon a finding to that effect by a majority of the members present, subject such counsel to disciplinary action, which may include warning, censure, or removal and if counsel is removed, the provisions of Rule 5.5 hereof for a witness who is unable to obtain counsel shall apply.

5.7 Any witness desiring to make an introductory statement in executive or public hearings shall file a copy of such statement with the Chairman or clerk of the subcommittee 48 hours in advance of the hearings at which the statement is to be presented unless the presiding member waives this requirement. The subcommittee shall determine whether such statement may be read or placed in the record of the hearing.

5.8 A witness may request, on grounds of distraction, harassment, personal safety, or physical discomfort, that during his testimony, television, motion picture, and other cameras and lights shall not be directed at him. Such requests shall be ruled on by the subcommittee members present at the hearing.

5.9 An accurate stenographic record shall be kept of the testimony of all witnesses in executive and public hearings. The record of his own testimony whether in public or executive session shall be made available for inspection by witness or his counsel under committee supervision; a copy of any testimony given in public session or that part of the testimony given by the witness in executive session and subsequently quoted or made part of the record in a public session shall be made available to any witness at his expense if he so requests.

5.10 Any person who is the subject of an investigation in public hearings may submit to the Chairman of the subcommittee questions

in writing for the cross-examination of other witnesses called by the subcommittee. With the consent of a majority of the members of the subcommittee present and voting, these questions, or paraphrased versions of them, shall be put to the witness by the Chairman, by a member of the subcommittee, or by staff of the subcommittee.

5.11 Any person whose name is mentioned or who is specifically identified, and who believes that testimony or other evidence presented at a public hearing, or comment made by a subcommittee member or staff, tends to defame him or otherwise adversely affect his reputation, may (a) request to appear personally before the subcommittee to testify in his own behalf, or, in the alternative, (b) file a sworn statement of facts relevant to the testimony or other evidence or comment complained of. Such request and such statement shall be submitted to the subcommittee for its consideration and action.

If a person requests to appear personally before the subcommittee pursuant to alternative (a) referred to herein, said request shall be considered untimely if it is not received by the Chairman of the subcommittee or its counsel in writing on or before fifteen days subsequent to the day on which said person's name was mentioned or otherwise specifically identified during a public hearing held before the subcommittee, unless the Chairman and the Vice Chairman waive this requirement.

If a person requests the filing of his sworn statement pursuant to alternative (b) referred to herein, the subcommittee may condition the filing of said sworn statement upon said person agreeing to appear personally before the subcommittee and to testify concerning the matters contained in his sworn statement, as well as any other matters related to the subject of the investigation before the subcommittee.

Rule 6. Depositions on Notice

6.1 Notices for the taking of depositions shall be authorized by the Chairman and the Vice Chairman or by a staff officer designated by them. Such notices shall specify a time and place for examination, and may specify that the examination shall be in private.

6.2 The subcommittee shall not initiate procedures leading to criminal or civil enforcement proceedings in the event a witness fails to appear at a deposition unless the deposition notice was accompanied by a subcommittee subpoena.

6.3 Witnesses may be accompanied at a deposition by counsel to advise them of their rights, subject to the provisions of Rules 5.4, 5.5, and 5.6 hereof.

6.4 Witnesses shall be examined upon an oath administered by an individual authorized by local law to administer oaths. Questions shall be propounded orally by committee staff. Objections by the witness as to the form of questions shall be noted for the record. If a witness objects to a question and refuses to testify on the basis of relevance or privilege, the committee staff may proceed with the deposition, or may, at that time or at a subsequent time, seek a ruling by telephone or otherwise on the objection from a member of the subcommittee. If the member overrules the objection, he may refer the matter to the subcommittee or he may order and direct the witness to answer the question, but the subcommittee shall not initiate procedures leading to civil or criminal enforcement unless the witness refuses to testify after he has been ordered and directed to answer by a member of the subcommittee.

6.5 The committee staff shall see that the testimony is either transcribed or electronically recorded, or both. If a witness's testimony is transcribed, he shall be furnished with a copy of it for review. No later than five days thereafter, the staff shall enter the changes, if any, requested by the witness, with a statement of the witness's reasons for the changes, and the witness shall sign the transcript. The individual administering the oath shall then certify on the transcript that the witness was duly sworn in his presence, the transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall then be filed, together with any electronic recording, with the clerk of the subcommittee.

Rule 7. Examinations on Commission

7.1 Commissions for the examination of witnesses shall be authorized and issued by the Chairman. Such commissions shall name a commissioner, who shall be authorized to appoint a time and place for examination, and to determine whether the examination shall be in public or in private.

7.2 The subcommittee shall not initiate procedures leading to criminal or civil enforcement proceedings in the event a witness fails to appear at an examination on commission unless the witness has received a subcommittee subpoena. The commission may name the witness or witnesses to be examined, or if the witnesses cannot be determined at the time of issuance of the commission, it may authorize the commissioner to name subsequently the witness or witnesses to be examined. In the event that such a commission is issued, with witnesses to be named subsequently, the commissioner may be issued properly authorized subpoenas without witness's names. The commissioner will subsequently insert the names upon receiving telephonic authorization from the Chairman and Vice Chairman or members designated by them to insert the names and serve the subpoenas.

7.3 Witnesses may be accompanied at an examination upon commission by counsel to advise them of their rights, subject to the provisions of Rules 5.4, 5.5, and 5.6 hereof.

7.4 Witnesses shall be examined upon an oath administered by an individual authorized by local law to administer oaths. Questions shall be propounded orally by the commissioner or by committee staff. Objections by the witness as to the form of questions shall be noted for the record. If a witness objects to a question and refuses to testify, the provisions of Rule 6.4 hereof shall apply.

7.5 The commissioner shall see that the testimony is transcribed or electronically recorded, or both, and then reviewed, subscribed, certified, and filed, as provided by Rule 6.5 hereof.

Rule 8. Procedures for Handling of Classified or Sensitive Materials

8.1 Subcommittee staff offices shall operate under strict security precautions. The Chairman shall request the Staff Director of the Senate Select Committee on Intelligence and the Senate Sergeant at Arms to provide assistance necessary to insure strict security.

8.2 Sensitive or classified documents and materials shall be segregated in a secure storage area. They may be examined only at secure reading facilities. Copying, duplicating, or removal from the subcommittee staff offices of such documents and other materials is prohibited except as is necessary for use in, or preparation for, interviews or subcommittee meetings, including the taking of testimony at hearings, examinations, and depositions.

8.3 The members of the subcommittee shall at all times have access to all papers and other material received from any source, subject to the security provisions of S. Res. 400. The Chairman shall designate a staff officer responsible for the maintenance, under appropriate security procedures, of a registry which will number and identify all classified or sensitive papers and other materials in the possession of the subcommittee, and such registry shall be available to any member of the subcommittee.

8.4 Access to categories of classified information supplied to the subcommittee shall be limited to members, and to staff members with a need-to-know, designated by the Chairman and Vice Chairman.

8.5 No testimony taken including the names of witnesses testifying, or material presented at an executive session, or classified papers and other materials received by the staff or its consultants while in the employ of the committee shall be made public, in whole or in part or by way of summary, or disclosed to

any person outside the committee unless authorized by a majority vote of the entire subcommittee, or after the termination of the subcommittee, in such manner as may be determined by the Senate.

Rule 9. Staff

9.1 For purposes of interrogation of witnesses and security of information, under Rules 5, 6, 7, 8 and 9 officers and employees of the Office of Senate Legal Counsel shall be deemed subcommittee staff.

9.2 The staff of the subcommittee shall not discuss either the substance or procedure of the work of the subcommittee with anyone other than a member of the subcommittee or other subcommittee personnel. Upon termination of employment by the subcommittee, each member of the staff, or consultant, shall surrender all classified and other material relating to the work of the subcommittee which came into his possession while in the employ of the subcommittee.

9.3 The employment of any member of the staff or consultant who fails to conform to any of these Rules shall be immediately terminated. In the event of a serious unjustified release of information obstructing the progress of the investigation the subcommittee may vote to refer the matter to the Department of Justice.

Rule 10. Detailees and Consultants

10.1 The Chairman shall have the authority to utilize the services, information, facilities, and personnel of the departments and agencies of the government.

10.2 The Chairman shall have the authority to procure the temporary or intermittent services of experts or consultants or organizations thereof to make studies or assist or advise the subcommittee with respect to any matter under investigation. Government personnel detailed to the subcommittee, and consultants, may be deemed subcommittee staff for purposes of Rules 5, 6, 7, 8 and 9 if the Chairman so designates in writing.

Rule 11. Changes in Rules

These Rules may be modified, amended, or repealed by the subcommittee, provided that a notice in writing of the proposed changes has been given to each member at least 48 hours prior to the meeting at which action thereon is to be taken. The changes shall become effective immediately upon publication of the changed rules or rules in the Congressional Record.

II. ACCESS TO, AND USE OF, INTERNAL REVENUE SERVICE MATERIALS

One of the first issues facing the Subcommittee was to determine what were Billy Carter's financial relations with Libya. In order to develop quickly the financial information needed for that examination, the Subcommittee sought access to the records kept for Billy Carter, and for his businesses and close associates, by the Internal Revenue Service.

To secure access to those records, the Subcommittee followed the three-step procedure mandated by the Tax Reform Act of 1976. First, on August 1, 1980, the Senate adopted S. Res. 496, Document 8, making the Subcommittee "specially authorized to inspect [a] return or return information by a resolution of the Senate" as required by 26 U.S.C. § 6103(f)(3). Second, on August 6, 1980, the Subcommittee adopted a resolution, Document 9, resolving that "this Subcommittee, sitting in closed executive session, be furnished by the Secretary of the Treasury with the tax-related materials described in S. Res. 496." This resolution constituted the "action by ... a committee of the Senate ... specially authorized to inspect any return or return information by a resolution of the Senate" (emphasis supplied) required by 26 U.S.C. § 6103(f)(3). Finally, on August 6, the Chairman and Vice Chairman wrote a letter,

Document 10, to the Secretary of the Treasury, requesting that the Subcommittee be furnished the materials described in S. Res. 496. This letter constituted the "written request by the chairman" required by 26 U.S.C. § 6103(f)(3). Prior to these actions, the Internal Revenue Service had assembled and readied the tax materials, and so immediately upon receipt of this letter, it provided the materials to the Subcommittee.

The Subcommittee also used a supplementary means for gaining access to the tax materials. On August 6, 7, and 14, the Chairman and Vice Chairman wrote the Secretary of the Treasury three letters, respectively Documents 10, 11, and 12, notifying him of the appointment of four tax examiners authorized to examine records pursuant to 26 U.S.C. § 6103(f)(4).

Through these means, the Subcommittee received and analyzed Billy Carter's tax materials, using them both for the information they contained, and for the leads they provided for the gathering of other financial information. Also, the IRS provided to the Subcommittee's chief accountant, Joseph Jacques, a set of valuable briefings by IRS personnel familiar with the materials.

When the Subcommittee indicated an intention to make limited use of the tax information in its open hearings, Billy Carter, through counsel, objected in writing, Document 13,

on the basis of 26 U.S.C. § 6103. The Subcommittee then requested the Congressional Research Service (CRS) to conduct a series of research projects on the complex legal issues raised by that objection.

CRS's analysis of the issue of disclosure of tax material focused on three aspects of the issue. One aspect was the wording and legislative history of 26 U.S.C. § 6103(f), discussed in an August 19, 1980 CRS memorandum by Howard M. Zaritsky, Document 14; in light of the paucity of legislative history, this aspect appeared largely inconclusive. A second aspect was the general constitutional and statutory law applicable to Congressional dissemination of information, discussed in an August 20, 1980 CRS memorandum, Document 15, by Robert L. Tienken; this memorandum indicated that limited dissemination of IRS records would not lead to civil or criminal sanctions for the Members of the Subcommittee, but did not resolve the question of whether, sanctions aside, dissemination was legally proper. Finally, the third aspect was the key statutory phrase that the tax material was to be furnished to a committee "sitting in closed executive session." The core issue of how material received in "closed executive session" has traditionally been treated by Congress was addressed in a full CRS memorandum of August 27, 1980, by Thomas B. Ripy and Jay R. Shampansky, Document 16, which described an extensive

Congressional history of controlled release of materials initially received or considered in closed executive session.

In the end, the Subcommittee developed from Billy Carter's bank records and other non-tax records all the financial information it needed for its open hearings and its report. Accordingly, the Subcommittee was able to avoid making use of information derived from Billy Carter's tax records, other than to verify the completeness and accuracy of information obtained from non-tax sources.

96TH CONGRESS
2D SESSION

S. RES. 496

To authorize the inspection and receipt of tax records by a subcommittee of the Committee on the Judiciary.

IN THE SENATE OF THE UNITED STATES

AUGUST 1 (legislative day, JUNE 12), 1980

Mr. THURMOND submitted the following resolution; which was considered, amended, and agreed to

RESOLUTION

To authorize the inspection and receipt of tax records by a subcommittee of the Committee on the Judiciary.

Whereas, by Order of July 24, 1980, the Senate established a subcommittee of the Committee on the Judiciary to investigate activities relating to individuals representing the interests of foreign governments;

Whereas, allegations have been made that financial assistance, reimbursements, or payments were made to William E. Carter III, by or for Libyan sources, and that his pre-existing financial condition may have been a reason for seeking such assistance, reimbursements, or payments;

Whereas, in order to investigate these allegations it is necessary for the subcommittee to inspect and receive tax returns,

return information, and tax-related material, held by the Secretary of the Treasury;

Whereas, information necessary for such investigation cannot reasonably be obtained from any other source; and

Whereas, under sections 6103(f) and 6104(a)(2) of the Internal Revenue Code of 1954, as amended, a committee of the Senate has the right to inspect tax returns if such committee is specifically authorized to investigate tax returns by resolution of the Senate: Now, therefore, be it

1 *Resolved*, That the subcommittee of the Committee on
2 the Judiciary established to investigate activities relating to
3 individuals representing the interests of foreign governments
4 be specifically authorized to inspect and receive for the tax
5 years 1975-1980 any tax return, return information, or other
6 tax-related material, held by the Secretary of the Treasury,
7 related to William E. Carter III, (Billy Carter), including
8 any trusts, sole proprietorships, partnerships, corporations,
9 and other business entities, other than publicly held corpora-
10 tions, in which William E. Carter III, or Sybil Carter have a
11 beneficial interest, and any other tax return, return informa-
12 tion, or other tax-related material held by the Secretary of
13 the Treasury which the subcommittee determines may con-
14 tain information directly relating to its investigation.

..... CONGRESS

..... SESSION

RES. _____

(Note.—Fill in all blank lines except those provided for the date, number, and reference of resolution.)

IN THE SUBCOMMITTEE TO INVESTIGATE ACTIVITIES OF
INDIVIDUALS REPRESENTING THE INTERESTS OF FOREIGN
GOVERNMENTS

Mr. Bayh

submitted the following resolution; which was adopted by the Subcommittee
on August 6, 1980

RESOLUTION

To authorize inspection, copying, and receipt of tax materials

(Insert title of resolution here)

Resolved,

Whereas, on July 24, 1980, the Senate established this Subcommittee and directed it to report directly to the Senate by October 4, 1980;

Whereas, on August 1, 1980, the Senate adopted S. Res. 496, specifically authorizing this Subcommittee to inspect and receive tax-related materials described therein from the Secretary of the Treasury pursuant to 26 U.S.C. § 6103(f);

Whereas, 26 U.S.C. § 6103(f) provides that the Secretary of the Treasury shall furnish such an authorized committee, sitting in closed executive session, with the tax-related materials described in the authorizing resolution, upon the written request of the Chairman: Now, there be it

RESOLVED, That this Subcommittee, sitting in closed executive session, be furnished by the Secretary of the Treasury with the tax-related materials described in S. Res. 496.

DOCUMENT 10

RICHARD ROY, MD.
 ROBERT C. BYRD, W. VA.
 JOSEPH R. BYRD, JR., DEL.
 JOHN C. STUBBS, W. VA.
 HOWARD M. BAKER, OHIO
 DENNIS DE CONNO, W. VIRG.
 PATRICK J. LEAHY, VT.
 HAROLD H. HALE, MONT.
 HOWELL H. HILL, ALA.
 STAZHEN BREYER, CHIEF COUNSEL
 STROM THURMOND, S. C.
 C. DILLIS MCINTYRE, JR., MD.
 PAUL CANALE, NEV.
 FOR W. G. HATCH, UTAH
 BOB H. TOLLE, KANS.
 THOMAS COCHRAN, MISS.
 ALAN R. SIMPSON, WYO.

United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, D. C. 20510

August 6, 1980

The Honorable William Miller
 The Secretary of the Treasury
 Washington, D. C.

Dear Mr. Secretary:

On Friday, August 2, 1980, the Senate adopted S. Res. 496, a copy of which was furnished to you on August 4, authorizing inspection and receipt of tax-related materials described therein by the Subcommittee of the Committee on the Judiciary to Investigate Activities Relating to Individuals Representing the Interests of Foreign Governments. Although constituted as a subcommittee of Judiciary, the Senate, which established the Subcommittee, gives it the responsibility of reporting directly to the full Senate. We therefore make this request with the authority of a full committee.

On Wednesday, August 6, 1980, the Subcommittee resolved that the Secretary of the Treasury, pursuant to 26 U.S.C. § 6103(f)(3), shall furnish it, sitting in closed executive session, with the tax-related materials described in S. Res. 496.

Pursuant to this action by the Subcommittee under 26 U.S.C. § 6103(f)(3), I request that you furnish the Subcommittee with the materials described in S. Res. 496.

In addition, under 26 U.S.C. § 6103(f)(4)(B), the Chairman of an authorized committee may appoint in writing two examiners to inspect and receive copies of tax-related materials, and the Ranking Minority Member may also appoint two examiners. At this time, I appoint Joseph Jacques and Ed Messenger as examiners. The Vice Chairman, Senator Thurmond, will communicate any appointments by a separate letter.

Sincerely,


 Birch Bayh
 Chairman

1674

DOCUMENT 11

MICHAEL DAVIDSON
COUNSEL

ROBERT K. KELLEY
DEPUTY COUNSEL

PAULA A. SWEENEY
CHARLES TIEFER
ASSISTANT COUNSEL

United States Senate

OFFICE OF SENATE LEGAL COUNSEL
WASHINGTON, D.C. 20510

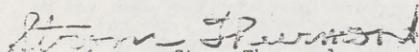
August 7, 1980

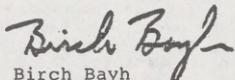
The Hon. William Miller
The Secretary of the Treasury
Washington, D.C.

Dear Mr. Secretary:

Yesterday, on August 6, the Chairman of the Subcommittee, Senator Birch Bayh, communicated to you the Subcommittee's request for the tax materials described in S. Res. 496. He appointed two examiners, Joseph Jacques and Ed Messenger, both of whom are detailees from the General Accounting Office without partisan identification. To simplify matters, we are readjusting the appointment: Joseph Jacques will be appointed by the Chairman, and Ed Messenger by the Vice Chairman.

Sincerely,


Strom Thurmond
Vice Chairman


Birch Bayh
Chairman

DOCUMENT 12

EDWARD M. KENNEDY, MASS., CHAIRMAN

BIRCH BAYH, IND.
 ROBERT C. BYRD, W. VA.
 JOSEPH R. BIDEN, JR., DEL.
 JOHN C. CULVER, IOWA
 HOWARD H. METZENBAUM, OHIO
 DENNIS DE CONCHINI, ARIZ.
 PATRICK J. LEAHY, VT.
 MAX BAUCUS, MONT.
 HOWELL HEFLIN, ALA.

STROM THURMOND, S.C.
 CHARLES McC. MATHIAS, JR., MD.
 PAUL LABALT, NEV.
 ORRIN S. HATCH, UTAH
 ROBERT DOLE, KANS.
 THAD COCHRAN, MISS.
 ALAN K. SIMPSON, WYO.

STEPHEN BREYER, CHIEF COUNSEL

United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, D.C. 20510

August 14, 1980

The Hon. William Miller
 Secretary of the Treasury
 Washington, D.C. 20510

Dear Mr. Secretary:

Consistent with our previous communications, and pursuant to 26 U.S.C. § 6103(f)(4)(B), the Chairman hereby appoints Charles Tiefer, Assistant Senate Legal Counsel, as an examiner of the tax-related materials described in S. Res. 496. The Vice Chairman hereby appoints Joseph Barker, of the Subcommittee staff, as an examiner of the tax-related materials described in S. Res. 496. Messers. Tiefer and Barker will assist the Subcommittee in analyzing these materials, and in arranging the furnishing to the Subcommittee of copies of the tax-related materials, as requested in the letter of August 6, 1980.

Sincerely,

Strom Thurmond
 Strom Thurmond
 Vice Chairman

Dick Bayh
 Birch Bayh
 Chairman

DOCUMENT 13

SHEA & GARDNER

1800 MASSACHUSETTS AVENUE, N.W.

WASHINGTON, D.C. 20036

(202) 828-2000

CABLE ADDRESS: "SANDG"

TELEX NO.: 89-2399

FRANCIS M. SHEA
 WARNER W. GARDNER
 LAWRENCE J. LATTO
 ALFRED L. SCARLAN
 RICHARD T. CONWAY
 ROBERT T. BASSÈCHES
 BENJAMIN W. DOLEY
 RALPH J. MOORE, JR.
 MARTIN J. FLYNN
 STEPHEN J. POLLAK
 DAVID BOOTH BEERS
 ANTHONY A. LAPHAM
 RICHARD M. SHARP
 JOHN D. ALDOCK
 WILLIAM S. MOORE
 JOHN TOWNSEND RICH
 LOUIS M. KAUDER
 JAMES R. BIEKE
 I. MICHAEL GREENBERGER
 HENRY S. RUTH, JR.
 WILLIAM F. SHEEHAN
 R. JAMES WOOLSEY
 FREDERICK C. SCHAFFRICK
 DAVID B. COOK

WENDY S. WHITE
 WILLIAM R. GALEOTA
 STEPHEN J. HADLEY
 RAYMOND H. BERSTEIN
 PATRICK M. HANLON
 NANCY C. SHEA
 S. ELIZABETH GIBSON
 NANCY J. BREGSTEIN
 TIMOTHY N. SHUBA
 JAMES R. BIRD
 MICHAEL S. GIANNOTTO
 WILLIAM N. ESKRIDGE, JR.

August 21, 1980

BY HAND

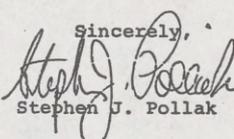
Honorable Philip W. Tone
 Special Counsel
 Subcommittee of the Committee
 on the Judiciary
 United States Senate
 Washington, D.C. 20510

Dear Judge Tone:

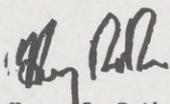
As counsel for Mr. Billy Carter, we are submitting herewith a Notice of Mr. Carter's assertion of rights to confidentiality in regard to tax returns and tax return information pursuant to Section 6103 of the Internal Revenue Code of 1954.

We request that the enclosed Notice be made a part of the Subcommittee's permanent records and that any member of the Subcommittee staff who examines any copy of a tax return or tax document pertaining to Mr. Carter be apprised of the content of the Notice.

Sincerely,



Stephen J. Pollak



Henry S. Ruth, Jr.

Enclosure

IN THE UNITED STATES SENATE

BEFORE THE
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY
TO INVESTIGATE ACTIVITIES RELATING TO INDIVIDUALS
REPRESENTING THE INTERESTS OF FOREIGN GOVERNMENTS

NOTICE BY WILLIAM A. (BILLY) CARTER
OF THE ASSERTION OF HIS RIGHT OF
CONFIDENTIALITY WITH RESPECT TO TAX
RETURNS AND RETURN INFORMATION

PLEASE TAKE NOTICE that William A. (Billy) Carter, through his counsel, hereby asserts the rights of confidentiality and nondisclosure conferred upon him by Section 6103 of the Internal Revenue Code of 1954 in respect of all tax returns and return information, as defined in Section 6103(b) of the Code, pertaining to himself, his wife Sybil S. Carter, and all trusts, partnerships, corporations and other entities in which he or Sybil S. Carter have an interest, insofar as such returns or return information are, have been, or will become available to the United States Senate and the Subcommittee of the Committee on the Judiciary established on July 24, 1980 to investigate activities relating to individuals representing the interests of foreign governments.

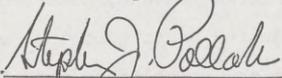
This notice applies (1) to returns and return information obtained, or to be obtained, by the Subcommittee

-2-

from the Internal Revenue Service pursuant to Senate Resolution No. 496, dated August 1, 1980, (126 Cong. Record S10510 (daily ed.)), (2) to returns and return information obtained or to be obtained by the Subcommittee pursuant to subpoenas duces tecum served or to be served on William A. Carter, Donald Roland, or any other person in possession of returns and return information pertaining to William A. Carter, and (3) to returns and return information obtained by the Subcommittee from any other source whatever.

No action on the part of William A. Carter in cooperating in any way with the present investigation of the Subcommittee established on July 24, 1980, shall be construed as, or is meant to imply, a waiver by him of any right he has to confidentiality and nondisclosure by reason of Section 6103 of the Code, including such remedies as he may be entitled to against any person under Section 7217 of the Code.

Respectfully submitted,



Stephen J. Pollak

Henry S. Ruth, Jr.

Counsel for William A. (Billy) Carter

August 21, 1980

DOCUMENT 14

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

August 19, 1980

To: Office of Senate Legal Counsel
Attention: Charles Teifer, Assistant Counsel

From: American Law Division

Subject: Tax Return Confidentiality and the Meaning of "Closed Executive Session" in Section 6103 of the Internal Revenue Code of 1954

This memorandum has been prepared pursuant to your inquiry of August 15, 1980, requesting an examination of the legislative history of section 6103 of the Internal Revenue Code of 1954 (Code), to determine whether there is any evidence of an intent to preclude Congressional committees which have received tax returns and return information, from thereafter making such information public.

Section 6103 was substantially rewritten and revised as part of the Tax Reform Act of 1976. Pub. L. 94-455 § 1202, 94th Cong., 2d Sess. (1976). Prior to the 1976 Act, section 6103(d)(1)(A) authorized the supplying of tax returns and tax return information to the tax-writing committees of the Congress, and also to:

a select committee of the Senate or House specially authorized to investigate returns by a resolution of the Senate or House, or a joint committee so authorized by concurrent resolution.

The Tax Reform Act removed this reference, and provided that committees of the Congress, aside from the tax-writing committees, could obtain tax returns and return information pursuant to a written request of the chair of that Committee, along with specific authorization under a resolution of the House

CRS-2

or Senate (or a concurrent resolution in case of a joint committee), and the committee must be "sitting in closed executive session." Code § 6103(f)(3).

Furthermore, section 6103 also states that nontax committees which obtain tax returns or return information may submit that information to the House or Senate, or to both, but if the data can be associated with a specific taxpayer, they must be furnished to the House or Senate "only when sitting in closed executive session unless such taxpayer consents in writing to such disclosure." Code § 6103(f)(4)(B).

The revision in section 6103 was added to the 1976 Act by the Senate Finance Committee, in its report on H.R. 10612 (which became the 1976 Act). The Committee stated that it sought to change the tax laws generally, to answer controversy raised as to:

whether the present extent of actual and potential disclosure of return and return information to other Federal and State agencies for nontax purposes breaches a reasonable expectation of privacy on the part of the American citizen with respect to such information.

S. Rep. No. 938, part I, 94th Cong., 2d Sess.
317 (1976).

When the Senate Finance Committee focused its attention specifically on disclosures of tax returns and return information to Congress, it also stated that:

[w]hile the Congress, particularly the tax-writing committees, requires access in certain instances to the data contained in return and return information in order to carry out its legislative responsibilities, the [Senate Finance] committee decided that the Congress could continue to meet these responsibilities under more restrictive disclosure rules than those provided under present law.

S. Rep. No. 938, part I, 94th Cong., 2d Sess.
319-20 (1976).

The Senate Finance Committee discussed the requirements for disclosure of tax

returns and return information to committees other than the tax-writing committees, and it noted that:

The nontax committees, and designated and duly authorized subcommittees, would be furnished returns and return information in closed executive session upon (1) a committee action approving the decision to request such returns, (2) an authorizing resolution of the House or Senate, as the case may be, and (3) the written request by the Chairman of the committee on behalf of the committee (or on behalf of a subcommittee of such committee) for disclosure of such returns or return information. The resolution of the appropriate body authorizing these committees to obtain returns or return information would specify the purpose for inspection and that inspection was to be made only if there was no alternative source of information reasonably available to the committee (or subcommittee). The committees (or subcommittees), through the committee Chairman and ranking minority member, could designate no more than 4 agents (2 majority and 2 minority) to inspect the returns or return information requested.

The tax-writing committees could submit relevant tax information to the Senate or House, as the case may be. The nontax-writing committees could submit such information to the Senate or House sitting in closed executive session.

S. Rep. No. 938, part I, 94th Cong., 2d Sess.
320 (1976).

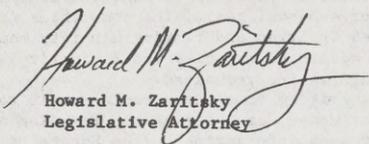
As is apparent from the quoted material, no definition was provided of the term "closed executive session." However, the Senate Finance Committee did state also that the nontax committees could disclose tax returns and return information to the House or Senate only if those bodies were also sitting in closed executive session. A reasonable implication of these statements is that the nontax committees were not to disclose tax returns or return information, other than to the whole House or Senate, and then, only if those bodies were also closed, in an effort to preserve the confidentiality and sanctity of the return data.

The Conference Committee on H.R. 10612 generally adopted the Senate Finance Committee's version of section 6103. The Conference Committee Report

CRS-4

on the 1976 Act discusses no changes with respect to the disclosure of tax returns or return information by the nontax committees of the Congress. S. Rep. No. 1236, 94th Cong., 2d Sess. at 482-83 (1976).

Neither the floor debates (122 Congressional Record 23915, 23994-24000, and 24012 (1976), nor a committee print published by the Staff of the Joint Committee on Taxation, entitled "General Explanation of the Tax Reform Act of 1976," adds to the Senate Finance Committee report on this point.



Howard M. Zaritsky
Legislative Attorney

DOCUMENT 15

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

August 20, 1980

TO : Senate Legal Counsel
Attn: Mr. Davidson, Counsel

FROM : American Law Division

SUBJECT : Use By Congressional Committee of Income Tax Records in Public Session

If income tax records are secured from IRS by a congressional committee other than a tax committee it is arguable that they may be made public where the committee is engaged in carrying out its legislative or other constitutional function; to be more exact, if the members of the committee and the staff thereof are acting within the sphere of legitimate legislative activity. There is however, a caveat to this statement. This assumes of course, that the records have been obtained by the committee in accordance with the provisions of 26 U.S.C. sec. 6103.

The caveat referred to is that the committee will be dealing with income tax statements and the statute requires that they be examined in executive session. In addition, 18 U.S.C. sec. 1905 makes it a crime to disclose confidential information generally. Do these statutes constitute a waiver, by Congress, of Speech or Debate immunity if tax returns are made part of the public hearings?

Disclosure of information when it occurs within "the sphere of legitimate legislative activity" shall not be questioned in any other place than Congress, Eastland v. United States Servicemen's Fund, 421 U.S. 491 (1975), Doe v. McMillan, 412 U.S. 306 (1973), Powell v. McCormack, 395 U.S. 486 (1969).

CRS-2

The Speech or Debate Clause was designed to assure a co-equal branch of the government with freedom of speech, debate and deliberation without intimidation or threats from the Executive Branch. It thus protects members against prosecutions that directly impinge upon or threaten the legislative process. Gravel v. United States, 408 U.S. at 619.

In determining whether the particular activities other than literal speech or debate fall within the legitimate legislative sphere the Court will look to see whether the activities took place in a session of the House by one of its Members in relation to the business before it. Kilbourn v. Thompson, 103 U.S. at 204.

More specifically, (the Court) must determine whether the activities are an integral part of the deliberations and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House. Eastland v. United States Servicemen's Fund, 421 U.S. at 503-504.

However, once it is determined that actions fall within the "sphere of legitimate legislative activity," the immunity applies "since the prohibitions of the Speech or Debate Clause are absolute." Id., at 501.

Moreover, the immunity "applies not only to a Member but also to his aides insofar as the conduct of the latter would be a protected legislative act if performed by the Member himself." Gravel v. United States, 408 U.S. 606 (1972) at 618.

The immunity is applicable in both civil and criminal cases (see, Eastland, supra).

Article I, sec. 5 cl. 3 of the Constitution authorizes Congress to publicize its proceedings. This does not mean that damaging information about a person may be distributed in a widespread fashion to the public particularly if such materials are otherwise actionable under local law such as defamatory matter or matter in violation of constitutional rights (see, Doe. v. McMillan,

CRS-3

412, U.S. 306 (1973)). "To the extent that the committee report is printed and internally distributed to members of Congress under the protection of the Speech or Debate clause, the work of Congress is in no way inhibited. Moreover, the internal distribution is 'public' in the sense that materials internally circulated unless sheltered by specific congressional order, are available for inspection by the press and by the public. We only deal, in the present case, with general public distribution beyond the halls of Congress and the establishments of its functionaries, and beyond the apparent needs of the 'due functioning of the legislative process' (citing, U.S. v. Brewster, 408 U.S. at 516)" (supra, p. 317).

In other words, if tax material which is to be considered by a committee in executive session under 26 U.S.C. sec. 6103 is made public pursuant to the publication clause and is distributed in normal fashion, i.e., in accordance with the law, that is, title 44 U.S.C. and Rules of the Senate and House (printed hearings and reports in specified numbers and to specified outlets) such act arguably should not place the members, staff and printer beyond the realm of Speech or Debate protection or qualified privilege.

26 U.S.C. sec. 7213, as amended, which prohibits unauthorized disclosure of tax information does not apply to Congress. It relates to executive officers and employees, state officers and employees, persons receiving tax material in an unauthorized manner, and others.

18 U.S.C. sec. 1905 prohibits the disclosure of confidential information even to Congress generally unless "authorized by law..." 2 U.S.C. sec. 190b, 190d, (secs. 134a or 136 of the Legislative Reorganization Act of 1946) authorized standing committees to conduct investigations into matters under

CRS-4

their jurisdiction and to require the production of such records as they deem advisable. It is an oversight authorization. It does not necessarily protect against publication of material so secured.

There thus does not seem to be any criminal statute explicitly or implicitly prohibiting Congress from publicizing tax information unless the Subcommittee in question is perhaps deemed a select committee and 2 U.S.C. 190b would not be applicable. The inhibition is that the material be examined in committee executive session and then if it is released and relates to an identifiable person that it be furnished to the Senate meeting in executive session.

There is no question that the committee (and the Senate) in considering such information would be acting in the sphere of legislative activity. This brings the activity within the scope of the Speech or Debate immunity.

Has Congress, however, waived such immunity by the passage of sec. 6103? Congress may not waive Speech or Debate immunity except where it be "founded upon a narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its members" (U.S. v. Helstoski, 42 U.S. 477, 492 (1979) citing U.S. v. Johnson, 383 U.S. 169 (1966)). A member cannot waive it except only after explicit and unequivocal renunciation of the protection (Helstoski, supra, p. 491). The courts have never determined that a statute passed by Congress specifically waives Speech or Debate immunity of the members. In this situation there is arguably no criminal statute but there is a civil prohibitory statute. If the tax information were to be revealed in contradiction of the statute a possible privacy action as in Doe v. McMillan, supra, might arise because of damages resulting from the

CRS-5

disclosure. If sec. 6103 is a specific waiver immunity statute (and at this point such a determination would be guesswork) a civil action might be brought.

If, on the other hand, Speech or Debate is applicable, then perhaps it might be prudent to limit distribution of printed hearings containing tax material to the boundaries set forth in Doe, McMillan, supra.

If the information were to be released at the committee hearing, again it might be prudent to hold such a hearing in executive session. Senate Rule XXVI, 5 (b) (3) and (6) provides that executive sessions of Senate committees should be closed when material will "represent a clearly unwarranted invasion of privacy of an individual," and when it "may divulge matters required to be kept confidential under other provisions of law or Government regulations." Because the rules of the Senate are the rules of the committees (Rule XXVI, 2) a committee by resolution may take the injunction of secrecy off of executive material communicated to it (Rule XXIX, 6). The Senate may do likewise, Rule XXIX, 2.

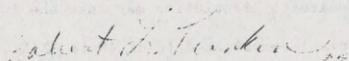
The rulemaking power of the Senate under Art. 1, sec. 5, cl. 2, makes statutory provisions subject to it open to change under such power (Congress may not by law interfere with constitutional right of a future House to make its own rules, Hinds', Precedents of the House of Representatives, Vol. 1, sec. 82, Vol. IV, sec. 3298). It is therefore arguable that under Senate rules, the tax material may be released by the committee to the Senate and the latter may consider it in open session.

And, while the courts will not ordinarily look behind the rules of Congress, if the operation of a rule affects a constitutional right of a third party (here the constitutional right of privacy of the taxpayer) the courts possess jurisdiction over the matter (see, United States v. Smith, 286 U.S. 6 (1932)).

CRS-6

Consequently, assuming that sec. 6103 is not a specific waiver by Congress of Speech or Debate immunity (standards that would so hold it to be have not been enunciated by the courts), it is suggested that release may be made by the committee but that the information be kept for the use of the Senate as set out in Doe v. McMillan, *supra*, and that no release be made voluntarily to the press, public, or media.

In the short time provided for completing this request, no instances of release of tax information by a committee were found. The Senate Select Committee on Ethics, in its investigation of Senator Talmadge, of Georgia, did examine tax returns from 1973 to date but found nothing relevant and thus made no decision as to publication.


Robert L. Tienken
Senior Specialist In
American Public Law

DOCUMENT 16

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

August 27, 1980

TO : Senate Legal Counsel
Attn: Charles Tiefer

FROM : American Law Division

SUBJECT : Past Practice of Congress on Release of Materials in Executive Session

The term "executive session" has acquired two meanings in common parlance. First, under Senate Rules executive business (nominations and treaties) must be considered in executive session. Rules XXIX-XXXI. A separate journal is required for executive proceedings. Rule IV. Because it was the general practice of the Senate to consider executive business in closed session until 1929, the term is often applied to closed or secret sessions. The memorandum which follows summarizes our research into the history of executive sessions of the Senate and House, tracing the changes from a closed to open executive session in the former; the precedents of the House and Senate with regard to publication of information received in closed session; rules of the House and Senate and their committees with regard to publication of information received in closed session.

Senate Precedents

From the First Congress through the 1st Session of the Third Congress, both the legislative and executive sessions of the Senate were held behind closed doors. In 1794 the Senate adopted a resolution opening the galleries of the Senate when that body was in legislative (not executive) session

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beginning with the next session of the Congress. ^{1/} The practice of conducting the executive business of the Senate behind closed doors was continued until 1929 when a resolution was adopted amending Senate Rule XXXVIII to provide that all sessions of the Senate be open, including "executive sessions", unless the Senate decided by majority vote in a particular case to close the doors. The amendment also provided that the injunction of secrecy as to all or any part of closed executive session could be removed by a motion adopted by majority vote of the Senate, as was the case when closed executive sessions were the norm, and any Senator could make public his vote (only his vote) in closed executive session. ^{2/}

In 1800 the Senate, in response to a request from President Adams that his instructions to envoys negotiating with the French be treated in strictest confidence, adopted a resolution specifically requiring treaties and confidential communications be kept secret until the Senate by resolution remove that injunction of secrecy. ^{3/}

Resolved, That all confidential communications made by the President of the United States to the Senate shall be, by the members thereof, kept inviolably secret, and that all treaties which may hereafter be laid before the Senate shall also be kept secret, until the Senate shall, by their resolution, take off the injunction of secrecy. (Executive Journal, vol. 1, p. 361.)

^{1/} H. Gilfry, *Precedents in the United States Senate*, S. Doc. 129, 61st Cong., 1st Sess., at 356-7. For a general discussion of closed sessions for the consideration of treaties and nominations and the development of the "open" executive session see G. Haynes, *The Senate of the United States* at 665-8 and J. Harris, *The Advice and Consent of the Senate*, at 249-55. (Excerpts attached). In 1925, prior to the rules change, the nomination of Harlan F. Stone was considered in open executive session pursuant to a Senate order. 66 Cong. Rec. 3032.

^{2/} 71 Cong. Rec. 3055.

^{3/} Gilfry, *supra*, n. 1 at 358.

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In 1830 a Senate select committee appointed to consider confidentiality rules said of the application of this rule:

A true construction of this rule, and the only safe practice under it, would seem to be, to consider everything connected with a treaty as confidential. The fact of its being submitted to the Senate, its terms, and provisions, and all proceedings of the Senate in relation to it, must be kept secret until the injunction of secrecy shall be removed. ^{4/}

In 1885 the Committee on Rules submitted a report on the application of the rule of confidentiality as to treaties, which was adopted by the Senate which removed the injunction as to secrecy and ordered the report printed in the Record. ^{5/}

The Committee on Rules, to which was referred a question of order raised by the Senator from Maine [Mr. Frye] as to the operation of clause 3, Rule 36, reported that it extends the injunction of secrecy to each step in the consideration of treaties, including the fact of ratification, and that no modification of this clause of the rules ought to be made; that the secrecy as to the fact of ratification of a treaty may be of the utmost importance and ought not to be removed except by order of the Senate or until it has been made public by proclamation by the President.

The removal of the injunction of secrecy as to all or any part of its proceedings on treaties, prior to the 1929 change in the rules, was by order of the Senate, adopted in executive session. Illustrative of the removal of the injunction of secrecy as to treaty proceedings by order of the Senate on a step by step basis are the following orders for removal of the injunction of secrecy with regard to arbitration treaties between the United States and France and the United States and Great Britain. (Citations are to the Journal of the Executive Proceedings of the Senate, Vol. XLIII, 62 Cong., 1st. Sess., 1911.)

^{4/} G. Furber, Precedents Relating to the Privileges of the Senate, S. Mis. Doc. 68, 52nd Cong., 2nd Sess. at 14-15.

^{5/} Journal of the Executive Proceedings of the Senate, Vol XXV at 21, proceedings of Mar. 21, 1885.

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August 5, 1911 (p. 206)

On motion by Mr. Cullom,
Ordered, That the injunction of secrecy be removed from the following treaties:

An authenticated copy of a treaty signed by the plenipotentiaries of the United States and France on August 3, 1911, extending the scope and obligation of the policy of arbitration adopted in the present arbitration treaty of February 10, 1908, between the two countries, so as to exclude certain exceptions contained in that treaty and to provide means for the peaceful solution of all questions of difference which it shall be found impossible in future to settle by diplomacy (Executive I, Sixty-second Congress, first session).

An authenticated copy of a treaty signed by the plenipotentiaries of the United States and Great Britain on August 3, 1911, extending the scope and obligation of the policy of arbitration adopted in the present arbitration treaty of April 4, 1908, between the two countries, so as to exclude certain exceptions contained in that treaty and to provide means for the peaceful solution of all questions of difference which it shall be found impossible in future to settle by diplomacy (Executive H, Sixty-second Congress, first session).

August 15, 1911 (p. 216)

Mr. Lodge, from the Committee on Foreign Relations, submitted a report on the arbitration treaties with Great Britain and France (Executive H, and Executive I, Sixty-second Congress, first session).

On motion by Mr. Smith of Michigan,
Ordered, That the injunction of secrecy be removed from the said report.

On motion by Mr. Cullom,
Ordered, That the minority members of the said committee be given a week in which to prepare and submit the views of said members.

August 21, 1911 (p. 237-8)

Mr. Bacon submitted an amendment which he proposed to offer to the resolution of ratification of the arbitration treaties with Great Britain and France intended to be offered by Mr. Root, and

Ordered, That the injunction of secrecy be removed therefrom, and also from the resolution of Mr. Root.

Mr. Root submitted the views of the minority of the committee on Foreign Relations on the arbitration conventions with Great Britain and France, and

Ordered, That the injunction of secrecy be removed therefrom.

(Note: This Executive Journal was ordered printed and the injunction of secrecy removed pursuant to S. Res. 477 (72nd Cong.).)

While this particular treatment of a treaty was unusual in that it effectively opened much of the Senate consideration of these treaties to public scrutiny and it was apparently more common to remove an injunction of secrecy after

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ratification, ^{6/} the Senate's orders illustrate the application of the pre-1929 rule to all phases of treaty consideration including committee actions. ^{7/}

In no instance where such information was authorized to be made public in the pre-1929 precedents we examined did that authorization take any form other than an order on the Senate. In two cases Members of the Senate were censured for violating the injunction of secrecy. In 1811 Senator Pickering was censured for reading a confidential communication on the floor in open session, and in 1844 Senator Tappan was censured for releasing a copy of a treaty. As a result of the Tappan case the Senate added a provision making Members liable to expulsion and officers liable to dismissal for disclosing matters directed by the Senate to be kept in confidence. ^{8/}

Rules of the Senate Expressly Providing a Method for Release
of Confidential Information Taken in Executive Session

Rule XXIX

§. All confidential communications made by the President of the United States to the Senate shall be by the Senators and the officers of the Senate kept secret; and all treaties which may be laid before the Senate, and all remarks, votes, and proceedings thereon shall also be kept secret, until the Senate shall, by their resolution, take off the injunction of secrecy.

^{6/} These were the only two treaties so treated during that session, though the Senate did order the injunction of secrecy from some other treaties after ratification, see, e.g., pp. 118, 183, 190, 207, of the same Executive Journal, Vol. XL III.

^{7/} The Senate rule, was interpreted as applying to all phases of Senate proceedings, including committee proceedings, and required secrecy. Logically the Senate had to order removal of the injunction insofar as it applied to committee activity. The Senate, having imposed the injunction, could remove it, but a committee could not remove a requirement imposed by the Senate.

^{8/} Senate Election, Expulsion and Censure Cases, S. Doc. 92-7, 92nd Cong., 1st Sess., cases 10 and 20.

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This provision was adopted prior to the 1929 rule change which made proceedings on treaties open unless closed by a vote of the Senate and must be read in light of that provision.

Rule XXXI

2. All business in the Senate shall be transacted in open session, unless the Senate as provided in rule XXI by a majority vote shall determine that a particular nomination, treaty, or other matter shall be considered in closed executive session, in which case all subsequent proceedings with respect to said nomination, treaty, or other matter shall be kept secret: *Provided*, That the injunction of secrecy as to the whole or any part of proceedings in closed executive session may be removed on motion adopted by a majority vote of the Senate in closed executive session: *Provided further*, That any Senator may make public his vote in closed executive session.

Rule XXVI on Committee Procedure makes express provision for closed hearings (4(b)) but contains no express provision for removing the injunction of secrecy or making public confidential information received in closed session.

While closed Senate sessions are no longer the norm, the procedure for removing an injunction of secrecy when the Senate closes its doors is still by order of the Senate under Rule XXXI.

Rules of Senate Standing Committees Expressly Providing
a Method for Making Public Confidential Information
Taken in Executive Session

The survey which follows was based on the rules of Senate Standing Committees as printed in the daily edition of the Congressional Record in 1979 and 1980. While under the Rules of the Senate (Rule XXVI, 2 (S. Doc. 96-46)) such rules are to be printed in the Record by March 1 of each year, the rule was suspended for committees who made no changes in their rules on February 6, 1980 (Cong. Rec., daily ed., S.1164). Where the index to the Record indicated rules had been printed by March 1, 1980, those rules were utilized. In all other cases the version appearing in the 1979 daily edition of the Record was used. All references to the Record are to the daily edition.

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Agriculture, Nutrition, and Forestry

No express provision. (Cong. Rec. for Feb. 26, 1979, S1825).

Appropriations

No express provision. (Cong. Rec. for Mar. 5, 1979, S2098).

Armed Services

Rule 9(f)

(f) Confidential testimony taken or confidential material presented in a closed hearing of the committee or subcommittee or any report of the proceedings of such hearing shall not be made public in whole or in part or by way of summary unless authorized by a majority vote of the committee or subcommittee.

(Cong. Rec. for Mar. 5, 1979, S2098).

Banking, Housing and Urban Affairs

Rule 2(c)

(c) Confidential testimony.—No confidential testimony taken or confidential material presented at an executive session of the Committee or any report of the proceedings of such executive session shall be made public either in whole or in part by way of summary, unless specifically authorized by the Chairman of the Committee and the ranking minority member of the Committee or by a majority vote of the Committee.

Rule 3(e)

(e) Confidential testimony.—No confidential testimony taken or confidential material presented at an executive session of the Subcommittee or any report of the proceedings of such executive session shall be made public, either in whole or in part or by way of summary, unless specifically authorized by the Chairman of the Subcommittee and the ranking minority member of the Subcommittee, or by a majority vote of the Subcommittee.

(Cong. Rec. for Mar. 1, 1979, S1905-6).

Budget

No express provisions. (Cong. Rec. for Mar. 1, 1979, S2000).

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Commerce, Science, and Transportation

No express provision. (Cong. Rec. for Feb. 4, 1980, S905).

Energy and Natural Resources

Rule 10

CONFIDENTIAL TESTIMONY

Rule 10. No confidential testimony taken by or confidential material presented to the Committee or any Subcommittee, or any report of the proceedings of a closed Committee or Subcommittee hearing or business meeting, shall be made public, in whole or in part or by way of summary, unless authorized by a majority of the Members of the Committee at a business meeting called for the purpose of making such a determination.

(Cong. Rec. for Jan. 23, 1980, S279-80).

Environment and Public Works

No express provision. (Cong. Rec. for Jan. 31, 1980, S758-9).

Finance

No express provision. (Cong. Rec. for Feb. 1, 1979, S1011-3).

Foreign Relations

Rule 5(3)(d)

(d) Declassification of executive transcripts and other executive records:

(1) Any executive transcript or classified Committee report, or portion thereof, may be declassified by the Committee less than 12 years after the date on which such transcript or record was made if—

(A) the Committee by majority vote approves; and

(B) each member of the Committee who participated in any meeting at which such transcript was made, approves of such declassification, except that the Committee may by majority vote declassify such transcript in the absence of such approval.

(2) Any such transcript, classified Committee report, or portion thereof, shall be declassified on a date 12 years thereafter unless the Committee by majority vote disapproves.

(Cong. Rec. for Mar. 1, 1979, S2003-5).

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Governmental Affairs

No express provision. (Cong. Rec. for Mar. 1, 1980, S1994-6). The rules of the Permanent Subcommittee on Investigation do contain such a provision. (Rule 15)

If All testimony taken in executive session shall be kept secret and will not be released for public information without the approval of a majority of the subcommittee.

Judiciary

No express provision. (Cong. Rec. for Jan. 30, 1980, S685-6).

Labor and Human Resources

Rule 17(e)

(e) No confidential testimony taken or confidential material presented in an executive hearing, or any report of the proceedings of such an executive hearing, shall be made public, either in whole or in part or by way of summary, unless authorized by a majority of the members of the Committee or subcommittee.

(Cong. Rec. for Feb. 4, 1980, S916-7).

Rules and Administration

No express provision. (Cong. Rec. for Mar. 1, 1979, S1987-8).

Veterans' Affairs

No express provision. (Cong. Rec. for Mar. 1, 1979, S1990-2000).

House Precedents and Rules

The rules of the House of Representatives make provision for the House to meet in secret session and for its committees to meet in executive session. However, research reveals few precedents, especially of recent vintage, relating to these rules. House Rule XXIX, relating to secret sessions of the House states:

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Whenever confidential communications are received from the President of the United States, or whenever the Speaker or any Member shall inform the House that he has communications which he believes ought to be kept secret for the present, the House shall be cleared of all persons except the Members and officers thereof, and so continue during the reading of such communications, the debates and proceedings thereon, unless otherwise ordered by the House.

The rule was originally adopted in 1972, "although secret sessions had been held by the House before that date." Constitution, Jefferson's Manual and Rules of the House of Representatives of the United States--Ninety-Sixth Congress, H. Doc. No. 95-403, 95th Cong., 2d Sess. (1979) [hereinafter cited as House Manual], § 914. Secret sessions "continued to be held at times with considerable frequency until 1830. In 1880, at the time of the general revision of the rules, the House concluded to retain the rule, although it had been long in disuse...." Id. [citations omitted] In a letter written in 1910 to the Secretary of War, speaker Cannon observed that use of a secret session "would be a procedure unprecedented for nearly a century...." VI Cannon's Precedents of the House of Representatives [hereinafter Cannon's Precedents] § 434 (1936).

House Rule XI, cl. 2(g)(1) and (2), provide that committee meetings and hearings shall be open to the public except when the committee or subcommittee votes to close a particular meeting or hearing to the public. These provisions relating to open committee meetings and hearings were first made part of the House rules in 1973 by the adoption of H. Res. 259, 93d Cong. See House Manual, supra, § 708. Despite the relative recent adoption of such rules, this apparently has been the practice for some time. According to Cannon's Procedure in the House of Representatives, H. Doc. No. 610, 87th Cong., 2d Sess. (1963) at 89: "All hearings conducted by standing committees shall be open to the public unless the committee by vote orders executive session....It is for the

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committee to determine, in its discretion, whether the proceeding of the committee shall be open or executive...." [citations omitted] Today the rules also specify that testimony or evidence shall be presented in executive session if the committee determines that the testimony or evidence may tend to defame, degrade, or incriminate any person. House Rule XI, cl. 2(k)(5).

Testimony received by a committee, apparently even if not taken in executive session, may be reported to the House with the recommendation that it be sealed and kept under seal until further order of the House. See III Hinds' Precedents of the House of Representatives [hereinafter, Hinds' Precedents] § 1782 (1907). A committee may act to remove the injunction of secrecy which it has imposed on its own proceedings. IV Hinds' Precedents § 4559 (select committee appointed in 1860, to which had been referred a portion of the President's message concerning the perilous condition of the country, at various times removed the injunction of secrecy from its proceedings). According to one precedent, the rules of the House do not permit the House itself to abrogate the secrecy of a committee's proceedings, although it was done in this instance under suspension of the rules. See IV Hinds' Precedents § 4565.

The procedure for release of evidence and testimony taken in executive session is now specified in House Rule XI, cl. 2(k)(7), which provides that "no evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee." The rule was adopted in 1955. House Manual, *supra*, § 712. A few precedents relating to this rule might be noted. In one instance it was held not in order on the floor of the House to refer to or quote from minutes of a committee executive session, unless the committee has voted to make the proceedings public. Deschler's Procedure in the U.S. House of Representatives--95th Congress, Chap. 17, § 13.3.

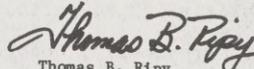
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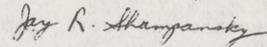
"Evidence or testimony taken in executive session, because of a committee determination that it may tend to degrade, defame, or incriminate, does not, in every case, remain forever under the restrictions imposed by the 'executive session' label; a committee has the right to make such information public at a later time and may, by vote of the committee, do so." Id., Chap. 17, § 13.6. Chairman Rodino of the Judiciary Committee submitted to the House "a statement of information' concerning the income tax returns of President Nixon examined by that committee in executive session during its impeachment inquiry, in order to comply with a Treasury Department regulation requiring submission of Internal Revenue Service files to the House prior to public release." Id., Chap. 17, § 13.9. The chairman emphasized that this procedure was being followed only to comply with regulations of the Treasury Department, and was unnecessary in view of the committee's responsibilities in regard to impeachment under both the Constitution and the House resolution directing the Committee to conduct an impeachment investigation. 120 Cong. Rec. 25306-7 (July 25, 1974). (The President's tax records in this instance were not obtained under the former § 6103(d) of the Internal Revenue Code, relating to disclosure of such records to congressional committees, but rather under the former §§ 6103(a) and 6106, which provided that certain tax records were open to public inspection only upon order of the President. The Judiciary Committee was authorized by Executive Order to inspect all of Nixon's tax returns for the years 1969 through 1972, including other information and data relating to such returns. Exec. Order No. 11,786, 39 Fed. Reg. 20473 (1974).)

A number of committees have included in their rules provisions identical or similar to House Rule XI, cl. 2(k)(7), governing release of executive session evidence or testimony. Even where a committee has not adopted such

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a provision, the House rules would be binding on the committee. House Rule XI, cl. 1(a)(1), provides that the House rules "are the rules of...committees and subcommittees so far as applicable...." Furthermore, many committees in their rules include a general provision specifying that the rules of the House apply to the committee. The committees in the 96th Congress which have adopted a specific rule comparable to House Rule XI, cl. 2(k)(7), include:^{9/} Committee on Armed Services (Rule XIV); Banking, Finance and Urban Affairs (Rule VII(g)(7)); District of Columbia (Rule J(7)); Government Operations (see Rule XV); House Administration (Rule 9(f)(7)); Public Works and Transportation (Rule VII(g)(7)); Select Committee on Committees (Rule 8); Select Committee on Narcotics Abuse and Control (Rule 4(b)); Select Committee on the Outer Continental Shelf (Rule IV(a)); and the Joint Committee on Printing (Rules 9(d), 11).


Thomas B. Ripy
Legislative Attorney


Jay R. Shampansky
Legislative Attorney

^{9/} Citations are to the rules of the committees, which are collected in Rules Adopted by the Committee of the House of Representatives - 96th Congress, 1979-1980, Print of the Committee on Rules (1979).

III. SUBPENAS

The Subcommittee made extensive use of subpoenas, both to require the attendance of witnesses at hearings and depositions, and to require the production of records. In all the Subcommittee served a total of eighty-six subpoenas.

One of the major techniques used by the Subcommittee to facilitate use of subpoenas in its investigation was the delegation of authority by commission. Because of the need to speed the investigation, it was frequently necessary to issue subpoenas without the delay inherent in delivering subpoenas to the Chairman or the Vice Chairman to sign, particularly during periods when they were in their home states. Previously, Congressional committees had solved this type of problem by having their chairmen sign blank subpoenas and leave them for the committee staff to fill in, but the legal authority for such a practice had never been authoritatively established in court. Moreover, such a practice, if uncontrolled, might be open to abuse, as suggested by the case of Wheeldin v. Wheeler, 373 U.S. 647 (1963), where the plaintiff alleged that a subpoena was signed in blank by committee chairman, and that the plaintiff's name was put in on the subpoena by a committee investigator without committee authorization.

The legal instrument for dealing with this problem was the commission, an order delegating authority to act on the Subcommittee's behalf to a staff member under carefully defined circumstances. Under a 1928 Senate resolution, S. Res. 118, 70th Cong., 1st Sess., the Senate has long had a procedure for issuing commissions, but the 1928 resolution had certain features not considered desirable in this investigation. Accordingly, on August 1, 1980, the Senate adopted S. Res. 495, Document 17. Section one of the resolution authorized the Subcommittee to issue commissions, and section four of the resolution authorized the Subcommittee to determine by Subcommittee rule the procedures for conducting examinations, including examinations on commission. Under Subcommittee Rule 7, the Chairman was empowered to authorize and issue a commission which would name a commissioner authorized to appoint a time and place for examinations, including examinations of witnesses who could not be named at the time of issuance of the commission. One such commission, issued to Senate Legal Counsel Michael Davidson, is Document 18.

Under Subcommittee Rule 7.2, "In the event that such a commission is issued with witnesses to be named subsequently, the commissioner may be issued properly authorized subpoenas without witnesses' names." Sets of such subpoenas were issued, properly authorized by the Chairman and Vice Chairman but without witnesses' names: one example is Document 19. To keep control of such blank subpoenas and avoid abuse, they were numbered in the upper right corner; for example, Document 19 was subpoena number 43.

When it was determined that a subpoena had to be issued which the Chairman and Vice Chairman had not previously authorized, and the subpoena could not be readily delivered to the Chairman and Vice Chairman to sign, under Subcommittee Rule 7.2 telephonic authorization to issue the subpoena was given by the Chairman and Vice Chairman. The commissioner then inserted the witness's name so authorized on one of the presigned, numbered subpoenas, and the subpoena was served. An example of such a subpoena is Document 20, which was subpoena number 41. A log of all such subpoenas issued under commission, Document 21, was maintained, enabling Subcommittee members and staff to determine at any time

what uses had been made of the numbered blank subpoenas. This use of commissions was based on prior analysis by the Office of Senate Legal Counsel, and the authority for it was further developed in a CRS memorandum by Jay R. Shampansky of August 12, 1980, Document 22. At no time did any witness object to use of commissions, and it proved to be a major step in speeding the investigation.

In the course of issuing subpoenas, the Subcommittee dealt with several noteworthy legal issues. One such issue was the applicability of a 1978 bank records privacy statute to Senate subpoenas. Subpoenas duces tecum were issued to a number of banks for Billy Carter's bank records. Some of the banks, notably the National Bank of Georgia, raised the issue of whether Senate subpoenas had to comply with the requirements imposed on other government subpoenas by the Right to Financial Privacy Act of 1978, 12 U.S.C. § 3401 et seq. A CRS memorandum by Raymond J. Celada of September 17, 1980, Document 23, analyzed this issue, finding that the contention that the 1978 act applied to Senate subpoenas was "without substantial merit in light of clear legislative history." Based on that memorandum, a subpoena was issued to the National Bank of Georgia with an accompanying letter, Document 24. The bank did not further object to the subpoena and complied fully with its specifications.

A second issue was the applicability of diplomatic immunity to bank records. The Subcommittee needed to determine what payments had been made by the Libyans to Billy Carter. The two known payments of \$200,000 and \$20,000 had both been drawn on one Libyan Embassy bank account. A logical step was to subpoena the bank records for that account, if they were not privileged by diplomatic immunity. A CRS memorandum on the subject was prepared by Raymond J. Celada on August 20, 1980, Document 25, supporting Congress's right to obtain such records. Out of deference to diplomatic concerns, the Subcommittee issued a subpoena for bank records that was narrowly drawn only to require production of checks showing payments over \$5,000 to Billy Carter. The bank did not contest this narrow subpoena, and the return on the subpoena established that the two known payments were the only large payments from this account to Billy Carter.

Besides its financial investigations, the Subcommittee conducted an extensive investigation of Billy Carter's meetings and telephone conversations, and those of his associates. Principal tools in this part of the investigation were subpoenas to telephone companies for toll information and subscriber information. One such subpoena is Document 20. A typical sequence followed by the Subcommittee in this area involved subpoenaing toll record information

for one of the principals, such as Billy Carter, and identifying phone numbers he called at particularly significant dates. Subscriber information for such numbers would then be obtained, either from directories or by subpoenas to telephone companies. If the subscribers so identified were of major interest to the Subcommittee, those subscribers' toll records were subpoenaed, and so on. The Subcommittee's interim report of October 4 made considerable use of the information developed in this fashion, for even when the testimony of participants in a telephone conversation did not shed light on what was discussed, the fact of telephone contact on critical dates often constituted valuable circumstantial evidence about the chain of events.

96TH CONGRESS
2D SESSION

S. RES. 495

To authorize the taking of depositions by the staff of a subcommittee of the Committee on the Judiciary.

IN THE SENATE OF THE UNITED STATES

AUGUST 1 (legislative day, JUNE 12), 1980

Mr. BAYH (for himself and Mr. THURMOND) submitted the following resolution;
which was considered and agreed to

RESOLUTION

To authorize the taking of depositions by the staff of a subcommittee of the Committee on the Judiciary.

Whereas, by Order of July 24, 1980, the Senate established a subcommittee of the Committee of the Judiciary to investigate activities relating to individuals representing the interests of foreign governments;

Whereas, for the expeditious conduct of the subcommittee investigation it is necessary that its staff members examine witnesses under oath and gather evidence;

Whereas, under 5 U.S.C. § 2903(c)(2), an oath authorized under the laws of the United States may be administered by an individual authorized by local law to administer oaths in the

State, District, or territory or possession of the United States where the oath is administered: Now, therefore, be it

1 *Resolved*, That the subcommittee of the Committee on
2 the Judiciary to investigate activities relating to individuals
3 representing the interests of foreign governments be author-
4 ized to issue commissions and to notice depositions for staff
5 members to examine witnesses and to receive evidence under
6 oath administered by an individual authorized by local law to
7 administer oaths. Employees of the Office of Senate Legal
8 Counsel shall be deemed staff members for purposes of this
9 resolution.

10 SEC. 2. The subcommittee shall have authority to place
11 in the record of its public or executive sessions sworn testi-
12 mony and evidence obtained at examinations and depositions,
13 but testimony and evidence so obtained shall be deemed to
14 have been taken before the subcommittee once filed with the
15 clerk of the subcommittee, whether or not placed in the sub-
16 committee record.

17 SEC. 3. Subpoenas for staff examinations and deposi-
18 tions may be issued under the authority granted by Order of
19 July 24, 1980, or under any other relevant authority. This
20 resolution shall supplement without limiting in any way the
21 existing authority of Senate committees and subcommittees
22 to conduct examinations and depositions.

23 SEC. 4. The subcommittee may delegate to the Chair-
24 man and Vice Chairman, or to staff officers designated in

1 writing by the Chairman and Vice Chairman, power to au-
2 thorize and issue deposition notices, and may determine by
3 subcommittee rule the procedures for conducting examina-
4 tions and depositions. Subcommittee rules of procedure shall
5 be effective immediately upon adoption by a majority of the
6 subcommittee and publication in the Congressional Record,
7 notwithstanding any other provision of law.

○

DOCUMENT 18

EDWARD M. KENNEDY, MASS., CHAIRMAN
 BIRCH BAYL, IND.
 ROBERT C. BYRD, W. VA.
 JOSEPH R. BIRCH, JR., DEL.
 JOHN C. CALVERT, IOWA
 HOWARD M. METZGERBAUM, OHIO
 DENNIS DE CONCINI, ARIZ.
 PATRICK J. LEAHY, VT.
 MAX BAUCUS, MONT.
 HOWELL HESTLIN, ALA.
 STROM THURMOND, S.C.
 CHARLES MCC. MATHIAS, JR., MD.
 PAUL LAXALT, NEV.
 ORRIN G. HATCH, UTAH
 ROBERT DOLE, KANS.
 THAD COCHRAN, MISS.
 ALAN K. SIMPSON, WYO.
 STEPHEN BREYER, CHIEF COUNSEL.

United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, D.C. 20510

COMMISSION FOR EXAMINATION OF WITNESSES

To: Michael Davidson, Senate Legal Counsel:

You have been duly designated and you are hereby authorized to cause certain witnesses, who cannot be determined at this time, to be examined by you or by members of the staff of the Subcommittee to Investigate Activities of Individuals Representing the Interests of Foreign Governments. The examinations will take place at times and places to be appointed by you, and shall take place in public or in private as you determine. The examinations will occur before a notary public, or some other officer authorized by local law to administer oaths, and they will be conducted pursuant to the Subcommittee's Rules of Procedure. Either you, or staff members under your direction, shall cause the testimony to be transcribed, and to be signed by the witness, and shall annex the transcript to a copy of this commission and make return hereof to the Clerk of the Subcommittee with all convenient speed.

Pursuant to Subcommittee Rule 7.2, you shall receive properly authorized subpoenas without witnesses' names. You shall insert the names of witnesses, and specify materials that the witnesses shall bring to the examinations, upon receiving telephonic authorization from the Chairman and Vice Chairman.

Dated: August 19, 1980

Birch Bayl
 Chairman, Subcommittee to
 Investigate the Activities of
 Individuals Representing the
 Interests of Foreign Governments

Strom Thurmond
 Vice Chairman

UNITED STATES OF AMERICA
Congress of the United States

To _____

_____, Greeting:

Pursuant to lawful authority, YOU ARE HEREBY COMMANDED to
appear before the _____ Sub Committee on ^{Activities Relating to} ~~Individuals~~ ^{Representing the}
of the Senate of the United States, on _____ ^{Interests of Foreign Governments}, 19____,
at _____ o'clock _____ m., at their committee room _____

_____, then and there
to testify what you may know relative to the subject matters under con-
sideration by said committee.

Hereof fail not, as you will answer your default under the pains and pen-
alties in such cases made and provided.

To any Subcommittee staff member or U.S. Marshal _____
to serve and return.

Given under my hand, by order of the committee, this
_____ day of _____, in the year of our
Lord one thousand nine hundred and eighty.

Birch Byrd
Sub Chairman, Committee on ^{Activities Relating to} ~~Individuals~~ ^{Representing the}
Interests of Foreign Gov'ts
Strom Thurmond
Vice Chairman

UNITED STATES OF AMERICA
Congress of the United States

To President, Southern Bell Telephone Company

c/o Mrs. Susan Lewis

AT&T Suite 1000

1120 20th Street, N.W.

Washington, D.C. 20036

Greeting:

Pursuant to lawful authority, **YOU ARE HEREBY COMMANDED** to
Activities Relating to
appear before the _____ Sub Committee on Individuals Representing the
Interests of Foreign Governments
of the Senate of the United States, on September 23, 1980,
at 11:00 o'clock a.m., at their committee room 1413 Dirksen
Senate Bldg., 1st & C St., NE, Washington 20510, then and there
to testify what you may know relative to the subject matters under con-
sideration by said committee.

and to bring with you the materials described in Attachment A,
under the terms and conditions there stated. A personal appearance
will be unnecessary if the materials are delivered to Thomas K.
McQueen at the aforesaid committee room no later than 24 hours in
advance of the scheduled return.

Heretofall not, as you will answer your default under the pains and pen-
alties in such cases made and provided.

To any Subcommittee staff member or U.S. Marshal,
to serve and return.

Given under my hand, by order of the committee, this
18th day of September, in the year of our
Lord one thousand nine hundred and eighty.

Birk Toyl
Sub to Investigate

Chairman, Committee on Individuals Representing the
Interests of Foreign Gov'ts

Strom Thurmond
Vice Chairman

ATTACHMENT A

Pursuant to an official investigation being conducted by the Subcommittee, it is requested that your company furnish the toll call information for the period August 1, 1979 through July 1, 1980 for all telephone numbers subscribed to by:

Charter Companies
P.O. Box 2017
Jacksonville, Florida 32231

and all toll call information for the period August 1, 1979 through October 31, 1979 for the following telephone number:

Americus, Georgia
912-924-6386

You are not to disclose the existence of this request for a period of 90 days from the date of this request. Any such disclosure could obstruct and impede the investigation being conducted.

DOCUMENT 21

MICHAEL DAVIDSON
COUNSEL

ROBERT K. KELLEY
DEPUTY COUNSEL

PAULA A. SWEENEY
CHARLES TIEFER
ASSISTANT COUNSEL

PHONE: 202-224-4435

United States Senate

OFFICE OF SENATE LEGAL COUNSEL
WASHINGTON, D.C. 20510

LOG OF NUMBERED SUBPOENAS

- 1 - Citizen's Telephone Company of Leslie Georgia
served on 8/11/80 (toll records)
- 2 - General Telephone Co. of the Southeast
served on 8/11/80 (toll records)
- 3 - Buena Vista Loan & Savings Bank
served 8/12/80 (records)
- 4 - Void (error on Henry Randolph Coleman)
- 5 - Henry Randolph Coleman
served 8/15/80 (hearings)
- 6 - William Carter, III
served 8/14/80 (hearings)
- 7 - Mario Leanza
served 8/12/80 (hearings held in abeyance)
- 8 - Jack McGregor
served 8/12/80 (hearings)
- 9 - Lewis Nasife
served 8/15/80 (hearings)
- 10 - Floyd Hudgins
served 8/19/80 (records)
- 11 - Ronald Sprague
served 8/21/80 (hearings)
- 12 - Ronald Sprague
served 8/21/80 (deposition)
- 13 - Bank of Manchester
served 8/19/80 (records)
- 14 - Jack Donnell (Charter Corp.)
~~not served~~
- 15 - Void (error on Raymond Mason)
- 16 - Raymond Mason (Charter Co.)
served 8/19/80 (records)

Log of Numbered Subpoenas - Page 2

- 17 - First Federal Savings & Loan Co. of Columbus
served on 9/10/80 (records)
- 18 - Trust Company Bank of Georgia
served on 9/12/80 (records)
- 19 - Al Cahill
served on 9/12/80 (deposition)
- 20 - Not used - destroyed
- 21 - Indiana Bell Telephone Co.
served on 9/2/80 (records)
- 22 - South Central Bell Telephone Co.
served on 9/2/80 (records)
- 23 - New Jersey Bell Telephone Co.
served on 9/2/80 (records)
- 24 - South Central Bell Telephone Co.
served on 9/2/80 (records)
- 25 - Southern Bell Telephone Co.
served on 9/2/80 (records)
- 26 - South Central Bell Telephone Co.
served on 9/2/80 (records)
- 27 - New Jersey Bell Telephone Co.
served on 9/2/80 (records)
- 28 - C&P Telephone Co.
served on 9/2/80 (records)
- 29 - C&P Telephone Co.
served on 9/2/80 (records)
- 30 - New York Telephone Co.
served on 9/2/80 (records)
- 31 - New York Telephone Co.
served on 9/2/80 (records)
- 32 - Southern Bell Telephone Co.
served on 9/2/80 (records)
- 33 - Southern Bell Telephone Co.
served on 9/2/80 (records)
- 34 - C&P Telephone Co.
not served
- 35 - Void (error on Henry Randolph Coleman)
- 36 - Henry Randolph Coleman
served on 9/10/80 (deposition)

Log of Numbered Subpoenas - Page 3

- 37 - UBAF Arab Bank of New York
served 9/15/80 (deposition and records)
- 38 - Bankers Trust Co. of New York
served 9/15/80 (deposition and records)
- 39 - Southern Bell Telephone Co.
served 9/15/80 (records)
- 40 - National Bank of Georgia
served 9/19/80 (records)
- 41 - Southern Bell Telephone Co.
served 9/19/80 (records)
- 42 - Jack McGregor
served 9/23/80 (records)
- 43-60 destroyed.

1718

DOCUMENT 22

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Washington, D.C. 20540

Distribution Limited

AUTHORITY OF SUBCOMMITTEE TO SUBPOENA A WITNESS FOR A DEPOSITION TO
BE GIVEN BEFORE SUBCOMMITTEE STAFF

Jay R. Shampansky
Legislative Attorney
American Law Division
August 12, 1980

AUTHORITY OF SUBCOMMITTEE TO SUBPOENA A WITNESS FOR A DEPOSITION TO
BE GIVEN BEFORE SUBCOMMITTEE STAFF

This report examines Rule 6 of the rules of the Senate subcommittee established by order of the Senate on July 24, 1980, to investigate "activities relating to individuals representing the interests of foreign governments...." 126 Cong. Rec. S9779 (daily ed. July 24, 1980). Although the report will emphasize arguments that can be made to support the authority of the subcommittee to subpoena a witness for the staff depositions provided for in Rule 6, where appropriate, note will be made of possible objections to such authority.

Section 1 of S. Res. 495, 95th Cong. (126 Cong. Rec. S10510 (daily ed. August 1, 1980)) authorizes the subcommittee to "issue commissions and to notice depositions for staff members to examine witnesses and to receive evidence under oath administered by an individual authorized by local law to administer oaths." Section 3 of S. Res. 495 permits "subpoenas for staff examinations and depositions [to] be issued under the authority granted by Order of July 24, 1980." Finally, section 4 authorizes the subcommittee to establish rules governing examinations and depositions.

The key provisions of Rule 6 of the rules of the subcommittee are as follows:

6.2 The subcommittee shall not initiate procedures leading to criminal or civil enforcement proceedings in the event a witness fails to appear at a deposition unless the deposition notice was accompanied by a subcommittee subpoena.

6.4 Witnesses shall be examined upon an oath administered by an individual authorized by local law to administer oaths. Questions shall be propounded orally by committee staff. Objections by the witness as to the form of questions shall be noted for the record. If a witness objects to a question and refuses to testify, the committee staff may proceed with the deposition, or may, at that time or at a subsequent time, seek a ruling by telephone or otherwise on the objection from a member of the subcommittee. If the member overrules the objection, he may refer the matter to the subcommittee or he may order and direct the

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witness to answer the question, but the subcommittee shall not initiate procedures leading to civil or criminal enforcement unless the witness refuses to testify after he has been ordered and directed to answer by a member of the subcommittee.

The authority of Congress to subpoena witnesses to provide testimony and documentary information is implicit in Congress' constitutional authority under Article I to legislate. The rationale for the congressional subpoena power was set forth by the Supreme Court in McGrain v. Daugherty, 273 U.S. 135, 175 (1927):

A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information--which not infrequently is true--recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry--with enforcing process--was regarded and employed as a necessary and appropriate attribute of the power to legislate--indeed, was treated as inhering in it. Thus there is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised.

In Watkins v. United States, 354 U.S. 178, 187 (1957), Mr. Chief Justice Warren, speaking for the Court, observed:

The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes....It comprehends probes into departments of the Federal Government to expose corruption, inefficiency, or waste.

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And in Barenblatt v. United States, 360 U.S. 109, 111 (1959), the Court declared that "the scope of the power of inquiry...is as penetrating and far reaching as the potential power to enact and appropriate under the Constitution."

The subpoena power today finds expression in the rules of the Senate and its committees. Rule XXVI of the Standing Rules of the Senate (see S. Doc. No. 96-46, 96th Cong., 2d Sess. (1980)) authorizes "each standing committee, including any subcommittee of any such committee,...to hold such hearings,...to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents, [and] to take such testimony ...as it deems advisable." Despite the fact that two Senators on the Foreign Relations Committee are to sit on the panel, it has been designated by the Senate as a subcommittee of the Judiciary Committee (see 126 Cong. Rec. S9779 (daily ed. July 24, 1980)), and therefore would appear to have the subpoena power granted to subcommittees of standing committees by Senate Rule XXVI. The order of the Senate establishing the subcommittee assumes that the subcommittee has subpoena power, specifying that subcommittee subpoenas are to be issued by the subcommittee upon the co-signature of the chairman and vice chairman, or the signature of either of them at the direction of the subcommittee. Id. Section 3 of S. Res. 495 provides that "subpoenas for staff examinations and depositions may be issued under the authority granted by Order of July 24, 1980 or under any other relevant authority."

In the congressional sphere, authority generally flows from the House or the Senate to the full committees and, in turn, to the subcommittees. See Gojack v. United States, 384 U.S. 702 (1966). The Senate, in Rule XXVI, has given the subcommittee subpoena power, and in S. Res. 495 has permitted the subpoena power to be used for depositions taken by subcommittee staff. Although the courts are

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cautious in reviewing delegations of the subpoena power (see Cudahy Packing Co. v. Holland, 315 U.S. 357, 363 (1942) (holding invalid a delegation of authority to exercise the subpoena power by the Administrator of the Wage and Hour Division of the Department of Labor); Shelton v. United States, 327 F.2d 601, 606 n.14 (D. C. Cir. 1963) (holding invalid a subpoena issued by the chairman of a Senate subcommittee that had not been approved by the full subcommittee, the court finding that under the applicable Senate resolution, the chairman on his own lacked authority to authorize a subpoena)), in this case the delegation of subpoena power to the subcommittee for the purpose of summoning witnesses to appear before staff to give sworn depositions seems clear.

Under Rule 6, evidence and testimony is to be received at a deposition rather than at a full committee hearing. Precedents can be found in both Houses of Congress for the taking of depositions. As early as 1928, the Senate adopted a resolution authorizing the President of the Senate, "on the request of any of the committees of the Senate, to issue commissions to take testimony within the United States or elsewhere." S. Res. 118, 70th Cong., 1st Sess., 69 Cong. Rec. 1926 (January 24, 1928). In adopting this resolution, there was no discussion of the authority of the Senate to provide for such a procedure. More recently, in 1978, the Congress granted to the United States District Court for the District of Columbia original jurisdiction over civil actions brought by the Senate to enforce process issued by the Senate, including Senate subpoenas to respond to depositions. 28 U.S.C. § 1364(a), P.L. 95-521, § 705(f)(1), Oct. 26, 1978, 92 Stat. 1879. There have been at least two instances in which House committee staff have been specifically authorized to receive statements or depositions in the absence of Members. The House Judiciary Committee, during its inquiry into the impeachment of President Nixon, was authorized to require "by subpoena or otherwise--(A) the

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attendance and testimony of any person (including at a taking of a deposition by counsel for the committee)...." H. Res. 803, 93d Cong. The resolution creating the House Select Committee on Assassinations, H. Res. 222, 95th Cong., authorized the committee and its subcommittees to "take testimony on oath anywhere within the United States or in any other country and to authorize designated counsel for the select committee to obtain statements from any witness who is placed under oath by an authority who is authorized to administer oaths in accordance with the applicable laws of the United States or of any State...." Congress can choose to receive information necessary to perform its legislative tasks by means of a deposition rather than by means of a full scale hearing. The courts have upheld another alternative to a congressional hearing, statutes requiring the filing of information with administrative agencies, on the ground that they are an exercise of the legislative power to obtain information. See Electric Bond & Share Company v. Securities and Exchange Commission, 303 U.S. 419 (1938) (upholding a statute requiring public utility holding companies to register with the SEC); United States v. Rappeport, 36 F. Supp. 915 (S.D.N.Y.), aff'd sub nom. United States v. Herling, 120 F.2d 236 (2d Cir. 1941).

It might be argued that the fact that the oath will be administered by persons other than Senators (under subcommittee Rule 6.4, the oath will be "administered by an individual authorized by local law to administer oaths") and/or the fact that questions will be posed by subcommittee staff rather than by the chairman or some other member of the subcommittee vitiates congressional power to compel the attendance of a witness at such a deposition. In regard to the administration of the oath, the general Federal perjury statute, 18 U.S.C. § 1621(1), requires that the oath be taken "before a competent tribunal, officer, or person...."*

* A complete analysis of the requirements of the perjury statute is beyond the scope of this paper.

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Under 5 U.S.C. § 2903(c), "an oath authorized or required under the laws of the United States may be administered by--(1) the Vice President; or (2) an individual authorized by local law to administer oaths in the State, District, or territory or possession of the United States where the oath is administered." In United States v. Morehead, 243 U.S. 607 (1917), the Court upheld the validity of a regulation of the Land Department providing that soldiers' declaratory statements, when filed by an agent, covering public lands under the Homestead Law, may be executed before any officer having a seal and authorized to administer oaths generally. The Court stated, 243 U.S. at 617:

Ever since the decision in United States v. Bailey, 9 Pet. 238, 255, it has been held that an oath administered by a state magistrate, in pursuance of a valid regulation of one of the departments of the Federal Government, though without express authority from Congress, subjects the affiant to the penalties of the federal statute against false swearing. See Caha v. United States, 152 U.S. 211, 218.

The general Federal perjury statute not only requires that the oath be taken before a competent tribunal, officer, or person, but that it have been taken in a "case in which a law of the United States authorizes an oath to be administered...." Three different arguments can be fashioned to support the proposition that there is a law of the United States which authorizes an oath to be administered in the case of a deposition given before staff of the subcommittee. First, it might be argued that 5 U.S.C. § 2903(c) authorizes the administration of the oath. Second, it might be argued that 2 U.S.C. § 191 authorizes the oath to be administered. Section 191 authorizes the President of the Senate, the Speaker of the House, or any committee chairman to administer oaths "to witnesses in any case under their examination." That section also permits any Member of either House to administer oaths "to witnesses in any matter depending in either House of Congress of which he is a Member, or any committee thereof." An objection that might be

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raised to the use of either 5 U.S.C. § 2903(c) or 2 U.S.C. § 191 as the authorization for the administration of the oath is that these statutes arguably act only to constitute local notaries and Members of Congress as persons who are "competent" within the meaning of 18 U.S.C. § 1621 to administer oaths. Section 2903(c) and section 191 arguably do not establish particular types of proceedings in which the administration of an oath is authorized. That argument can be rebutted, especially as to 2 U.S.C. § 191, which would seem to provide the authorization for the administration of the oath in a perjury prosecution based on false statements made in the course of a committee hearing. A third possible authorization for the administration of the oath in the deposition to be given to staff is S. Res. 495. Although 18 U.S.C. § 1621 requires that the oath be authorized by "a law of the United States," and although simple resolutions such as S. Res. 495 do not have the force of law (see Riddick, Senate Procedure, S. Doc. No. 93-21 (1974) at 761; Deschler's Procedure in the U.S. House of Representatives, 95th Cong., Chap. 24, § 1.3), S. Res. 495 was adopted as an exercise of the rule making power vested in each House of Congress by Art. I, Sec. 5, Cl. 2, of the Constitution, which is the "supreme Law of the Land." Art. VI, Sec. 2.

Objection might be made to the fact that questions will be posed by subcommittee staff rather than by the chairman or other members of the subcommittee. This factor may be significant in regard to whether a conviction under the statutory contempt procedure can be obtained if a witness fails to appear or, having appeared, refuses to answer one or more questions. Section 192 of Title 2, U.S. Code, provides for contempt proceedings against a person "summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any

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committee of either House of Congress...." A witness might contend that absent one or more Senators, the entity seeking to question him is not a "committee," or that even if it is a "committee," it lacks a quorum necessary to do business. There are two possible answers to this argument. The first is that the presence of a quorum is not an essential element of the Government's case in a prosecution under 2 U.S.C. § 192, although a person served with a subpoena can raise the absence of a quorum as a defense to a prosecution, at least if he made the point before the committee. United States v. Bryan, 339 U.S. 323 (1950). The second answer is that Congress has the authority to determine what constitutes a competent tribunal and a quorum. See Christoffel v. United States, 339 U.S. 84, 89 (1949) (invalidating a conviction for perjury on the ground that a quorum of the committee was not present when the false statement was made); United States v. Ballin, 144 U.S. 1 (1892) (House of Representatives can prescribe any method reasonably certain to ascertain the presence of a quorum). In this instance, the Senate has made a determination that questioning shall be by staff alone, unless objection is raised to a question, in which event the objection shall be referred to a Senator for a ruling. The "subcommittee shall not initiate procedures leading to civil or criminal enforcement unless the witness refuses to testify after he has been ordered and directed to answer by a member of the subcommittee." Subcommittee rule 6.4. The decision to have questioning at depositions conducted by staff is one within the province of the Senate to make, United States v. Ballin, *supra*, and given the demands on the time of Senators as well as the numerous responsibilities borne by congressional aides today, is a reasonable decision. See Gravel v. United States, 408 U.S. 606 (1972), in which the Supreme Court, in recognizing the importance of congressional staff, rejected the argument that an aide to Senator Gravel could not validly claim constitutional immunity based on

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the Speech or Debate Clause from a grand jury inquiry because the Clause expressly confers a privilege only upon Senators and Representatives. The Court stated, 408 U.S., at 616-17:

Both courts [below] recognized what the Senate of the United States urgently presses here: that it is literally impossible, in view of the complexities of the modern legislative process, with Congress almost constantly in session and matters of legislative concern constantly proliferating, for Members of Congress to perform their legislative tasks without the help of aides and assistants; that the day-to-day work of such aides is so critical to the Members' performance that they must be treated as the latter's alter egos... [emphasis added]

If a witness were to question the authority of the subcommittee to compel his attendance to give a deposition under oath before subcommittee staff, it seems likely that to challenge that authority he would have to fail to appear, or to appear and refuse to testify, and risk prosecution for contempt of Congress under 2 U.S.C. § 192. Courts generally will not quash a congressional subpoena. See Eastland v. United States Servicemen's Fund, 421 U.S. 491 (1975). Given the separation of powers doctrine and the Speech or Debate Clause, courts are reluctant to invoke their "judicial power to challenge the wisdom of Congress' use of its investigative authority." Id., 421 U.S. at 502, 510-11. If the witness raises objections to the subcommittee's procedure, the Senate could choose to institute enforcement proceedings pursuant to 28 U.S.C. § 1364.

Jay R. Shampansky

Jay R. Shampansky
Legislative Attorney
American Law Division
August 12, 1980

DOCUMENT 23

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

September 17, 1980

TO : Office of Senate Legal Counsel
Attn: Mr. Charles Tiefer

FROM : American Law Division

SUBJECT : Applicability of Right to Financial Privacy
Act of 1978 to Legislative Investigations

Reference is made to your inquiry of September 15, 1980, requesting information on the above matter. Specifically, you ask whether a bank may invoke the Financial Privacy Act of 1978, 12 U.S.C.A. 3401 et seq. to deny a congressional committee access to customer records in its possession.

The contention of the National Bank of Georgia that it is precluded by section 1102 of the 1978 Act, 12 U.S.C.A. 3402, from granting access to financial records as defined in section 1101 (2), 12 U.S.C.A. 3401 (2), to the Subcommittee of the Senate Judiciary Committee investigating individuals representing interests of foreign governments is without substantial merit.

Generally, speaking section 1102 of the Act, 12 U.S.C.A. 3402, provides that the financial records of a customer may be disclosed by a financial institution to a "Government authority" only if the financial records are reasonably described and only if the disclosure is authorized by the customer or if it is pursuant to an administrative subpoena or summons, search warrant, judicial subpoena or formal written request. Section 1103, 12 U.S.C.A. 3403, imposes a duty on financial institutions to maintain confidentiality of customer records. It prohibits financial

institutions, and their officers, employers and agents, from providing access to customer records, or to information contained in them, to any "Government authority" except as permitted by the Act. For a detailed analysis of the Act, see Additional Views of Mr. La Falce, House Report No. 95-1383 212, 217-230.

Section 1101 (3) of the Act, 12, U.S.C.A. 340 (3) defines "Government authority" to mean any agency or department of the United States, or any office, employee, or agent thereof. Briefly, the Act generally denies access to financial records of customers of financial institutions to agencies and departments of the United States. An examination of the United States Code does not immediately disclose any definition of these key terms to include the legislative department of the Federal Government. The definitions of departments and agencies are set out in 5 U.S.C.A. 101 and 105, respectively, and these definitions are basic to other relevant provisions of the Federal Code. See cross references following each of the mentioned sections.

Generally speaking, where Congress intends to include itself within the scope of "agency of the Federal Government", it so specifically provides. E.g. 31 U.S.C.A. 1201 (c); cf. 5 U.S.C.A. 551 (1)(A).

Similarly, Congress has been quite specific when on rare occasions it has denied to itself access to certain information. For example, only specified congressional committees can receive secret information regarding international agreements. 1 U.S.C.A. 112 (b). Income tax return data is similarly restricted 26 U.S.C.A. 6103 (f), 6104 (a)(2). Sensitive Defense Department and Central Intelligence Agency data is also specifically immune from congressional access or confined to specified congressional committees. 10 U.S.C.A. 1582; 50 U.S.C.A. 403g; 22 U.S.C.A. 2422.

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More significant for present purposes is the fact that a draft bill which would have clearly denied access to Congress of financial statements of customers of financial institutions was before the Congress during its consideration of the Right to Financial Privacy Act of 1978. The draft, which embodied the combined views of the Departments of Justice and the Treasury, defined the phrase "government authority" to mean "the Congress of the United States." In all other respects, the definition of "Government authority" followed word-for-word the definition found in section 1101 (3) of the Act, 12 U.S.C.A. 3401 (3). Electronic Funds Transfer and Financial Privacy. Hearings before the Subcommittee on Financial Institutions of the Committee on Banking, Housings and Urban Affairs, United States Senate, 95th Cong., 2d Sess. (1978) at 397). See Bill Comparison - Financial Privacy Legislation at 161 et seq. of the Hearing which indicates that the Justice-Treasury draft proposal was the only measure to extend the Right to Financial Privacy to legislative investigations. The implication from this being that omission of the phrase "the Congress" would not bring the legislature within the scope of the phrase "agency or department of the United States." This implication is reinforced by them Deputy Attorney General Civiletti's testimony and formal statement where he observed as follows:

We note that our posposal would extend these important procedures and privacy rights to cover investigations by the legislative as well as the executive branch. We believe the principle involved is similar and sound and the right of privacy is no less or greater depending upon the nature of the department or branch of Government seeking one's records. Hearings at 189. See also 194.

Obviously, the now Attorney General failed to persuade the Congress of the merits of his department's proposal in this regard. To include Congress within the meaning of the phrase "agency or department of the United States"

not only goes contrary to its usual meaning but would effectively write into the law a meaning that the Congress by necessary implication rejected.

The proposal that became the Right to Financial Privacy Act of 1978 is basically a House proposal. Accordingly most of the relevant legislative history was made in that body. Both the House report on the measure (H. Report 95-1383) and debate in the House Chamber refer to disclosures of financial statements of customers of financial institutions to executive branch departments and agencies. This is understandable since this was the circle of "Government authority" where the "problem" sought to be remedied by the legislation was perceived to be. Briefly, the "problem" was almost exclusively viewed in the context of administration of the laws and law enforcement.

The purpose of the 1978 Act was to reverse the effect of the Bank Secrecy Act and the decision in United States v. Miller, 425 U.S. 435 (1976) (a bank customer had no constitutionally protected right of privacy with respect to information about him in a bank's files) and to reestablish generally the confidential relationship between a financial institution and its customers. As explained in the House report on the legislation: H. Rept. No. 95-1153 at 34.

The title is a congressional response to the Supreme Court decision in the United States v. Miller which held that a customer of a financial institution has no standing under the Constitution to contest Government access to financial records. The Court did not acknowledge the sensitive nature of these records, and instead decided that since the records are the "property" of the financial institution, the customer has no constitutionally recognizable privacy interest in them.

Nevertheless, while the Supreme Court found no constitutional right of privacy in financial records, it is clear that Congress may provide protection of individual rights beyond that afforded in the Constitution. This was made clear by the Supreme Court in the recently decided case of Zurcher v. The Stanford Daily where the majority stated that "Of course, the Fourth Amendment does not prevent or advise against legislative or executive efforts to establish nonconstitutional protections against possible abuses . . ."

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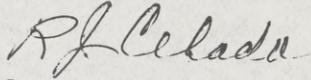
Although only the Miller case deals with privacy in the context of financial records maintained by a bank, both the cases cited in the report deal with law enforcement activities. Law enforcement is an executive function. Buckley v. Valeo, 424 U.S. 1, 138 (1976). There appears to be nothing in the legislative history of the Right to Financial Privacy Act that suggests that legislative investigations were the source or in any way contributed to infringements on privacy rights in this context.

As previously suggested, the report and debates on the measure refer exclusively to the executive branch in this regard. The additional views of Hon. Stewart McKinney, for example, state, in relevant part, that the legislation "limits... the ability of various departments or agencies in the executive branch to transfer records..." H. Rept. 95-1383 at 246. Similarly, the Minority Views on the legislation's provisions regarding the Right to Financial Privacy has a heading titled Law Enforcement. Id. at 245.

It is not surprising, therefore that in its recent report on the first 6 months experience under the Act, the General Accounting Office did not include Congress in its detailed recital of Federal agencies affected by the Act. The report states as follows:

Federal agencies affected by the act can be grouped into three categories: law enforcement, banking supervisory, and other agencies. Law enforcement agencies frequently use financial records to investigate white collar and organized crime. Banking supervisory agencies (referred to as supervisory agencies in this report), which regulate financial institutions, have continuous contact with financial institutions and review customers' records. Other agencies is a category which includes a variety of agencies usually minimally affected by the act. Those agencies generally utilize customer financial records in administering agency programs such as loan guarantees or personnel security investigations.

Federal Agencies' Initial Problems With The Rights To Financial Privacy
Act of 1978, May 29, 1980 at 5.



Raymond J. Celada
Senior Specialist, in
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DOCUMENT 24

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 CHARLES E. MURPHY, JR., MD.
 PAUL LABAT, NEV.
 CURTIS D. HATCH, IOWA
 RUDOLPH W. DOLY, KANS.
 THAD COCHRAN, MISS.
 ALAN K. SIMPSON, WYO.

United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, D.C. 20510

1413 Dirksen Senate Office Building
 Washington, D.C. 20510
 September 17, 1980

Mr. Roy P.M. Carlson
 President, National Bank of Georgia
 34 Peachtree Street, N.W.
 Atlanta, Georgia, 30301

Dear Mr. Carlson:

As part of its investigation of Billy Carter's dealings with the Libyan government, the Senate Subcommittee on Activities Relating to Individuals Representing the Interests of Foreign Governments must develop a complete picture of Billy Carter's finances. This part of its investigation requires the Subcommittee to obtain bank records pertaining to Billy Carter. Enclosed you will find a subpoena requiring you to produce those records of your bank which pertain to Billy Carter. This subpoena supersedes the one with which you were previously served.

Counsel for your bank has raised in this context the issue of whether the Right to Financial Privacy Act of 1978 applies to the Subcommittee subpoenas. We do not advise private parties on their rights, but we can furnish you with information that we have compiled on this subject for such use as your own counsel sees fit to make of it. That act applies only to subpoenas by a "Government authority," defined as "any agency or department of the United States, or any officer, employee, or agent thereof." 12 U.S.C. § 3401(3). Traditionally, the terms "agency" and "department," unless otherwise indicated, have included only agencies of the executive branch, not the Congress or the Judiciary. See, e.g., 5 U.S.C. § 551(1)(A). On the rare occasions when Congress has decided to limit its access to information, it has done so in express terms. See, e.g., 26 U.S.C. § 6103(f) (tax information).

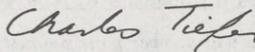
Mr. Roy P.M. Carlson
September 17, 1980
Page 2

We have examined the legislative history of the Right to Financial Privacy Act of 1978 and have found no indication that it intended to limit Congressional, as opposed to executive, access to information. Indeed, there is a rather strong indication of an opposing intention. The executive branch, in a draft bill combining the views of the Departments of Justice and the Treasury, proposed that "government authority" mean "the Congress of the United States." See Electronic Funds Transfer and Financial Privacy, Hearings Before the Senate Subcommittee on Financial Institutions of the Committee on Banking, Housing, and Urban Affairs, 95th Cong., 2d Sess. 397 (1978). Deputy Attorney General Benjamin R. Civiletti testified that this "proposal would extend these important procedures and privacy rights to cover investigations by the legislative as well as the executive branch." *Id.* at 189; see also *id.* at 194. In rejecting that proposal, Congress decided not to view legislative investigations as posing the same problem as investigations by the far larger and less accountable executive branch.

Pursuant to the enclosed subpoena, we anticipate production of your records pertaining to Billy Carter on Monday, September 22, 1980. If you have an objection to production, you must appear in person on Tuesday, September 23, 1980, to state it to the Subcommittee.

Your assistance in this matter is appreciated.

Cordially,



Charles Tiefer
Assistant Senate Legal Counsel

CT/bl
Enclosure

UNITED STATES OF AMERICA
Congress of the United States

To Mr. Roy P. M. Carlson

President, National Bank of Georgia

34 Peachtree St., Atlanta, Ga., Greeting:

Pursuant to lawful authority, **YOU ARE HEREBY COMMANDED** to
appear before the Sub Committee on ^{Activities Relating to} Individuals Representing the
Interests of Foreign Governments
of the Senate of the United States, on September 23, 1980,
at 11 o'clock a.m., at their committee room 1413 Dirksen
Senate Office Bldg., Washington, D.C., then and there
to testify what you may know relative to the subject matters under con-
sideration by said committee.

and to bring with you the materials described in Attachment A.
A personal appearance will be unnecessary if the materials are
delivered to Charles Tiefer at the aforesaid committee room no
later than 24 hours in advance of the scheduled return.

*Hereof fail not, as you will answer your default under the pains and pen-
alties in such cases made and provided.*

To any Subcommittee staff member or U.S. Marshal.

to serve and return.

Given under my hand, by order of the committee, this
18th day of September, in the year of our
Lord one thousand nine hundred and eighty.

Bush Bugh
Sub Activities Relating to
Chairman, Committee on Individuals Representing the
Interests of Foreign Gov'ts

Steven D. ...
Vice Chairman

ATTACHMENT A

For purposes of the specifications in this subpoena duces tecum, the word "materials" includes any and all materials, files, records, documents, correspondence, and memoranda, whether on paper, film, tape, or other medium, in your possession, custody, or control, or available to you.

The materials to be supplied are:

1. Any and all materials relating in any way whatsoever to William Carter, III (Billy Carter), Sybil Carter, or Randy Coleman, or any business entities, including trusts, sole proprietorships, partnerships, or corporations, other than those which are publicly held, in which William Carter, III, Sybil Carter, or Randy Coleman have at any time since January 1, 1977 had any financial interest. The sole exception to this is the Carter family peanut warehouse business.

The foregoing includes, but is not limited to, materials relating to checking accounts, other bank accounts of any type, loans, mortgages, applications for any of the foregoing and memoranda of discussions or communications. For checking accounts: (1) only checks paid out in amounts over \$1,000 need be provided; (2) with regard to deposits, all checks of whatever amount which were deposited must be provided.

These materials are to be furnished in an organized and labeled form.

DOCUMENT 25



Congressional Research Service
The Library of Congress

Washington, D.C. 20540

August 20, 1980

TO : Senate Legal Counsel
Attention: Charles Tiefer

FROM : American Law Division

SUBJECT : Congress' Power to Subpoena Bank Records Including Bank Records
of a Diplomatic Agent

The "Congressional power to investigate and acquire information by subpoena, is on a firm constitutional basis" United States v. American Tel. & Tel. Co., 551 F.2d 384, 393 (D.C. Cir. 1976). The "power of inquiry - with process to enforce it - is an essential and appropriate auxiliary to the legislative function." McGrain v. Daugherty, 273 U.S. 135, 174-175 (1927). See Eastland v. United States Servicemen's Fund, 421 U.S. 491, 504-506 (1975). The power is not confined to the framing and passing of laws, but extends to "inquiries concerning the administration of existing laws...[,] surveys of defects in our social, economic or political system [, and] comprehensive probes into departments of the Federal Government to expose corruption, inefficiency or waste." Watkins v. United States, 354 U.S. 178, 187 (1957). "The scope of the power of inquiry, in short, is as penetrating as the potential power to enact and appropriate under the Constitution." Barenblatt v. United States, 360 U.S. 109, 111 (1959).

Since the subject of any inquiry is one "on which legislation could be had", Congress "is not invested with a 'general' power to inquire into private affairs." McGrain v. Daugherty, 273 U.S. at 173, quoted in Eastland v. United States Servicemen's Fund, 421 U.S. at 505 n.15. "[N]o interest legitimately

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protected by the Fourth Amendment' is implicated by governmental investigative activities unless there is an intrusion into a zone of privacy, into 'the security a man relies upon when he places himself or his property within a constitutionally protected area.'" Hoffa v. United States, 385 U.S. 293, 301-302 (1966) quoted in United States v. Miller, 425 U.S. 435, 440 (1976).

Bank records do not fall within "a zone of privacy" protected by the Constitution. Checks, deposit slips, financial statements, and monthly statements are not "private papers." United States v. Miller, 425 U.S. at 440. "[T]hese are the business records of banks." Ibid. Accordingly, a depositor "can assert neither ownership nor possession." Ibid.

There is no legitimate "expectation of privacy" in the contents of such documents, whether originals or copies thereof. United States v. Miller, 425 U.S. at 442-443:

Even if we direct our attention to the original checks and deposit slips, rather than to the microfilm copies actually viewed and obtained by means of the subpoena, we perceive no legitimate "expectation of privacy" in their contents. The checks are not confidential communications but negotiable instruments to be used in commercial transactions. All of the documents, including financial statements and deposit slips, contain only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business. The lack of any legitimate expectation of privacy concerning the information kept in bank records was assumed by Congress in enacting the Bank Secrecy Act, the expressed purpose of which is to require records to be maintained because they "have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings." ...

The depositor takes the risk, in revealing his affairs to another, that the information will be conveyed by that person to the Government. ...This Court has held repeatedly that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed. ...

CRS-3

The subpoena of bank records as part of an inquiry into the sources of funds used to carry on activities being investigated by a subcommittee of Congress for a legitimate legislative purpose is entirely proper. Eastland v. United States Servicemen's Fund, 421 U.S. at 506.

The Department of State has stated "that while bank records maintained by an embassy or its diplomatic agents would be immune from subpoena, those records maintained by a bank for a variety of purposes are not entitled under international law to immunity from jurisdiction of U.S. courts." It concluded that "customary and conventional international law immunities relating to archives and documents of a diplomatic agent do not extend to a commercial bank's records maintained by the bank itself for its purposes." 1976 Digest of United States Practice in International Law at 196.

Raymond J. Celada
Raymond J. Celada
Senior Specialist In
American Public Law

IV. DEPOSITIONS

A major legal innovation by the Subcommittee was its extensive use of depositions. From the outset, it was clear that the Subcommittee needed a mechanism to question witnesses quickly and privately. All the witnesses could not be questioned initially in public hearings: many witnesses had information only of marginal importance, or had allegations which should not be aired publicly prior to checking. Moreover, the limited time available for public hearings precluded the wasteful expenditure of questioning time in pursuit of false leads, and that limit on hearing time also precluded extensive use of executive session hearings as preparation for public hearings.

Accordingly, the Subcommittee employed staff depositions for gathering evidence. In all, the Subcommittee took thirty-five depositions totaling 2,646 pages, many of which are listed on the Subcommittee's subpoena log, Document 26. In each deposition, a witness was questioned under oath by the Subcommittee staff, while a court reporter kept a record of the questions and answers. Such depositions served as an immediate source of leads for further investigation. Depositions of persons who then testified at public hearings served as a basis to frame the public questioning; depositions of persons who did not testify served as the record of their information for use in the Subcommittee's report.

Because of the importance of depositions in its work, the Subcommittee prepared a full legal predicate for taking depositions. The Senate adopted Senate Resolution 495, Document 17, whose preamble noted that "for the expeditious conduct of the subcommittee investigation it is necessary that its staff members examine witnesses under oath and gather evidence." Section one of the resolution authorized the Subcommittee to notice depositions; section four provided that the Subcommittee could delegate the authority to authorize and issue deposition notices to the Chairman and Vice Chairman, or to staff officers designated in writing by them. Section three of the resolution recognized there was existing authority for committees to notice depositions, but clear supplementary authority was provided through this resolution out of an abundance of caution.

Subcommittee Rule 6 established the procedure for depositions. Pursuant to S. Res. 495 and Subcommittee Rule 6, staff officers were designated to authorize and issue deposition notices, by a designation which is Document 27. A form was created for noticing depositions; a copy of the form is Document 28. Frequently, depositions were accompanied by Subcommittee subpoenas requiring the appearance of witnesses at the deposition, or by specifications for the production of documents at the deposition. Various other flexible uses were made of deposition notices, as

illustrated by a deposition notice and subpoena duces tecum, Document 29, which provided that an affidavit attesting to the matters of interest could serve as a substitute for appearance at the deposition.

Two major legal issues were posed by the Subcommittee's extensive use of depositions. One issue was whether witnesses were bound to appear at depositions when subpoenaed to do so; this was treated in the previously mentioned CRS memorandum that is Document 22. The other issue was whether witnesses faced legal sanctions for making false material statements in depositions. It was of critical importance for the Subcommittee to be able to rely on evidence developed in depositions, and for the Subcommittee to so rely, witnesses had to be bound to be truthful in depositions. A CRS memorandum of August 18, 1980, by Jay R. Shampansky, Document 30, canvassed this issue, indicating that a witness making false material statements in depositions under oath risked liability under the general federal perjury statute, the District of Columbia perjury statute, and the criminal contempt of Congress statute.

DOCUMENT 26

SUBPOENA LOG

<u>Person Served</u>	<u>Method</u>	<u>Date & Time Given to 1st Server</u>	<u>Date & Time Served</u>	<u>Date & Time Received Return</u>
1. Raymond Mason Charter	Cert. mail	7/25/80	7/30/80	
2. Custodian of Records So. Bell Telephone Co.	Molly Moll	8/7/80 5:30 p.m.	8/9/80 6:15 p.m.	8/15/80 12:00
3. Mario Leanza with depo	Leigh/Barker	8/7/80 5:00 p.m.	8/12/80 10:00 a.m.	8/13/80 5:30 p.m.
4. Floyd Hudgins with depo	Leigh/Barker	8/7/80 5:00 p.m.	8/10/80 2:15 p.m.	8/15/80 12:00 p.m.
5. Randy Coleman with depo	U.S. Marshal	8/7/80 5:00 p.m.	8/9/80 6:15 p.m.	8/15/80 12:00 p.m.
6. Billy Carter with depo	Leigh/Barker	8/7/80	N.A.	Not Served
7. Donny Roland with depo	U.S. Marshal	8/7/80 3:50 p.m.	8/8/80 10:00 a.m.	8/14/80
8. National Bank of GA	U.S. Marshal	8/7/80 3:50 p.m.	8/8/80 2:00 p.m.	8/12/80 11:15 a.m.
9. Riggs Nat'l Bank	U.S. Marshal	8/7/80 3:50 p.m.	8/8/80 10:55 a.m.	8/12/80 12:00 p.m.
10. Bank of Commerce (GA)	U.S. Marshal	8/7/80 3:50 p.m.	8/8/80 10:00 a.m.	8/15/80 10:30 a.m.
11. Citizens' Bank of Americus, GA	U.S. Marshal	8/7/80 3:50 p.m.	8/8/80 10:00 a.m.	8/15/80 3:15 p.m.
12. People's Bank of LaGrange, GA	U.S. Marshal	8/7/80 3:50 p.m.	8/8/80 2:00 p.m.	8/13/80 2:30 p.m.
13. Columbus GA Bank & Trust Co.	U.S. Marshal	8/7/80 3:50 p.m.	8/8/80 4:00 p.m.	8/11/80 12:10 p.m.
14. Gainesville Nat'l Bank	U.S. Marshal	8/7/80 3:50 p.m.	8/8/80 4:00 p.m.	8/11/80 11:00 a.m.
15. First Fed. Savings & Loan Assoc. of Americus	U.S. Marshal	8/7/80 3:50 p.m.	8/8/80 11:00 a.m.	8/12/80 12:00 p.m.
16. Bank of Webster	U.S. Marshal	8/7/80 3:50 p.m.	8/8/80 4:00 p.m.	8/12/80 12:00 p.m.
17. Sybil Carter	Jacques	8/8/80	N.A.	Not Served.

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	<u>Person Served</u>	<u>Method</u>	<u>Date & Time Given to 1st Server</u>	<u>Date & Time Served</u>	<u>Date & Time Received Return</u>
18.	Jimmy Murray	Jacques	8/8/80	N.A.	Not Served
19.	Arthur Cheokas	Jacques	8/8/80	N.A.	Not Served
20.	John Parks	Jacques	8/8/80	N.A.	Not Served
21.	Donald Carter	Barker	8/8/80	8/11/80	8/16/80
22.	Thomas Jordan	Barker	8/8/80 7:30 p.m.	8/11/80	8/16/80
23.	Henry Russell	Jacques	8/8/80	N.A.	Not Served
24.	Leonard Long	Jacques	8/8/80	N.A.	Not Served
25.	J.C. Long	Jacques	8/8/80	N.A.	Not Served
26.	Citizens' Tel. Co. (1) Leslie, GA.	Cert. mail	8/11/80 6:00 p.m.	N.A.	8/21/80
27.	Gen. Tel. Co. of (2) Southeast	Cert. mail	8/11/80 6:00 p.m.	N.A.	8/16/80
28.	Buena Vista Savings (3) & Loan Assoc.	U.S. Marshal	8/12/80	8/12/80 2:00 p.m.	8/13/80 2:30 p.m.
29.	Randy Coleman (5)	Turner	8/15/80	8/15/80 10:15 a.m.	8/15/80 11:15 a.m.
30.	Billy Carter (6)	Turner	8/14/80	8/14/80 5:55 p.m.	8/14/80 6:30 p.m.
31.	Mario Leanza (7)	Tetzlaff	8/11/80	8/12/80 10:00 a.m.	8/13/80 5:30 p.m.
32.	Jack McGregor (8)	U.S. Marshal	8/13/80	8/14/80 2:00 p.m.	8/26/80
33.	Lewis Nasife (9)	Marsha	8/11/80	8/15/80 12:05 p.m.	8/18/80 9:00 a.m.
34.	Floyd Hudgins (10)	U.S. Marshal	8/15/80	8/16/80	9/2/80 3:00 p.m.
35.	Ronald Sprague (11) hearing	U.S. Marshal & express mail	8/15/80	8/15/80	8/21/80
36.	Ronald Sprague (12) depo	express mail	8/15/80	8/16/80	8/21/80
37.	Bank of Manchester (13)	U.S. Marshal	8/15/80	8/16/80	8/19/80
38.	Jack Donnell (14) Charter Oil	Marsha	N.A.	N.A.	Not Served

	<u>Person Served</u>	<u>Method</u>	<u>Date & Time Given to 1st Server</u>	<u>Date & Time Served</u>	<u>Date & Time Received Retu</u>
39.	Raymond Mason Charter Oil (16)	Marsha	8/19/80	8/19/80 5:00 p.m.	8/19/80
40.	Robert Perry	N.A.	N.A.	N.A.	Not Served
41.	Jack McGregor (depo)	N.A.	N.A.	N.A.	Not Served
42.	Lewis Nasife (depo)	N.A.	N.A.	N.A.	Not Served
43.	Charles Kirbo (depo)	N.A.	N.A.	N.A.	Not Served
44.	Helen Medlin depo	U.S. Marshal	8/21/80	8/22/80	9/4/80 10:00 a.m.
45.	Bank of Warm Springs	U.S. Marshal	8/21/80	8/22/80	9/4/80
46.	Billy Carter	Personally	8/22/80	8/22/80	8/22/80
47.	Robert Schwind depo	Barker	8/25/80	9/4/80	9/16/80
48.	G. Belluomini depo	U.S. Marshal	8/26/80	8/28/80	9/2/80
49.	John Parks depo	Tetzlaff	8/25/80	8/26/80 4:00 p.m.	8/29/80
50.	Arthur Cheokas depo	Tetzlaff	8/25/80	8/27/80 4:00 p.m.	9/2/80
51.	Robert Perry (depo)	Tetzlaff	8/25/80	N.A.	Not Served
52.	Jimmy Murray depo	Tetzlaff	8/25/80	8/27/80 1:30 p.m.	9/2/80 4:30 p.m.
53.	Bert Lance depo	U.S. Marshal	8/25/80	9/2/80 10:00 a.m.	9/10/80 2:30 p.m.
54.	Sybil Carter (depo)	Barker	8/25/80	N.A.	Not Served
55.	B. Belluomini (hearing)	Turner	8/26/80	N.A.	Not Served
56.	Helen Medlin (hearing)	Barker	8/25/80	N.A.	Not Served
57.	Arthur Cheokas (hearing)	Tetzlaff	8/25/80	N.A.	Not Served

<u>Person Served</u>	<u>Method</u>	<u>Date & Time Given to 1st Server</u>	<u>Date & Time Served</u>	<u>Date & Time Received Return</u>
58. John Parks (hearing)	Tetzlaff	8/25/80	N.A.	Not Served
59. Bert Lance (hearing)	U.S. Marshal	8/25/80	9/2/80	9/10/80
60. Robert Schwind	Barker	8/25/80	N.A.	Not Served
61. Pacific Tel. Co.	Express mail	8/26/80	8/26/80	8/27/80
62. Continental Tel. Corp.	Express mail	N.A.	N.A.	Not Served
63. Indiana Bell (21)	McQueen	9/2/80 3:50 p.m.	9/2/80 4:30 p.m.	9/5/80 4:45 p.m.
64. South Central Tel. Co. (22)	McQueen	9/2/80 3:50 p.m.	9/2/80 4:30 p.m.	9/5/80 4:45 p.m.
65. New Jersey Bell (23)	McQueen	9/2/80 3:50 p.m.	9/2/80 4:30 p.m.	9/5/80 4:45 p.m.
66. South Central Bell (24)	McQueen	9/2/80 3:50 p.m.	9/2/80 4:30 p.m.	9/5/80 4:45 p.m.
67. Southern Bell (25)	McQueen	9/2/80 3:50 p.m.	9/2/80 4:30 p.m.	9/5/80 4:45 p.m.
68. South Central Bell (26)	McQueen	9/2/80 3:50 p.m.	9/2/80 4:30 p.m.	9/5/80 4:45 p.m.
69. New Jersey Bell (27)	McQueen	9/2/80 3:50 p.m.	9/2/80 4:30 p.m.	9/5/80 4:45 p.m.
70. C&P Tel. Co. (28)	McQueen	9/2/80 3:50 p.m.	9/2/80 4:30 p.m.	9/5/80 4:45 p.m.
71. C&P Tel. Co. (29)	McQueen	9/5/80 3:50 p.m.	9/5/80 4:30 p.m.	9/5/80 4:45 p.m.
72. N.Y. Tel. Co. (30)	McQueen	9/2/80 3:50 p.m.	9/2/80 4:30 p.m.	9/5/80 4:45 p.m.
73. N.Y. Tel. Co. (31)	McQueen	9/2/80 3:50 p.m.	9/2/80 4:30 p.m.	9/5/80 4:45 p.m.
74. Southern Bell (32)	McQueen	9/5/80 3:50 p.m.	9/5/80 4:30 p.m.	9/5/80 4:45 p.m.
75. Southern Bell (33)	McQueen	9/2/80 3:50 p.m.	9/2/80 4:30 p.m.	9/5/80 4:45 p.m.
76. C&P Tel. Co. (34)	N.A.	N.A.	N.A.	Not Served

<u>Person Served</u>	<u>Method</u>	<u>Date & Time Given to 1st Server</u>	<u>Date & Time Served</u>	<u>Date & Time Received Return</u>
77. Robert Schwind	U.S. Marshal	9/4/80	9/5/80	
78. First Fed. Sav. & Loan of Columbus (17)	U.S. Marshal	9/9/80 9:15 a.m.	9/11/80	9/15/80 4:00 p.m.
79. Trust Co. Bank of GA (18)	U.S. Marshal	9/11/80 9:30 a.m.	9/12/80	9/16/80 4:00 p.m.
80. Randy Coleman (36) depo	U.S. Marshal	9/9/80 9:15 a.m.	9/12/80 12:40 p.m.	9/24/80
81. Al Cahill (19) depo	U.S. Marshal	9/9/80 9:30 a.m.	9/12/80	9/17/80
82. Bankers Trust Co. of NY depo (38)	U.S. Marshal	9/12/80 4:45 p.m.	9/15/80	9/24/80
83. UBAF Arab Bank, NY depo (37)	U.S. Marshal	9/12/80 4:45 p.m.	9/15/80	9/23/80
84. Southern Bell (39)	McQueen	9/15/80 10:00 a.m.	9/15/80 11:00 a.m.	9/15/80 12:00 p.m.
85. Nat'l Bank of GA (40)	U.S. Marshal	9/18/80	9/19/80	9/24/80
86. Southern Bell (41)	McQueen	9/18/80	9/19/80	9/19/80
87. Jack McGregor (42)	Marsha	9/22/80	9/23/80	9/23/80

DOCUMENT 27

MICHAEL DAVIDSON
COUNSEL

ROBERT K. KELLEY
DEPUTY COUNSEL

PAULA A. SWEENEY
CHARLES TIEFER
ASSISTANT COUNSEL

PHONE: 202-224-4435

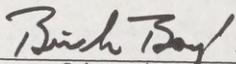
United States Senate

OFFICE OF SENATE LEGAL COUNSEL

WASHINGTON, D.C. 20510

DESIGNATION OF STAFF OFFICERS
TO NOTICE DEPOSITIONS

Pursuant to the authority vested in me by Rule 6. 1 of the Rules of the Subcommittee to Investigate the Activities of Individuals Representing the Interests of Foreign Governments, I designate Michael Davidson, Senate Legal Counsel, and Robert Kelley, Deputy Senate Legal Counsel, as staff officers, either of whom may authorize the issuance of notices for the taking of depositions.



Chairman, Subcommittee to Investigate the Activities of Individuals Representing the Interests of Foreign Governments.

UNITED STATES OF AMERICA
Congress of the United States

Notice of
Senate Deposition

To _____

_____, Greeting:

Please take notice that at _____ o'clock _____ m., on _____, 19_____,
at _____, of the staff of the _____ committee
on _____ of the Senate of the United States, will
take your deposition on oral examination concerning what you may know relative to the subject
matters under consideration by said _____ committee. The deposition will be taken before a
notary public, or before some other officer authorized by local law to administer oaths; it will
be taken pursuant to the _____ committee's rules, a copy of which are attached.

Given under my hand, by authority vested in me by
the _____ committee, on _____,
19_____

UNITED STATES OF AMERICA

Congress of the United States

To President UBAF Arab American Bank, 345 Park Avenue
New York, New York 10154
c/o Alfred J. Schrang, First V.P. and Controller

Greeting:

Pursuant to lawful authority, YOU ARE HEREBY COMMANDED to
appear before the Sub Committee on Activities Relating to
Individuals Representing the
Interests of Foreign Governments
of the Senate of the United States, on September 24, 1980,

at 2:00 o'clock P. m., at their committee room 1413 Dirksen
Senate Office Building, Washington, D.C. 20510, then and there

to testify what you may know relative to the subject matters under con-
sideration by said committee.

Pursuant to Subcommittee Rule 6, this subpoena directs appearance
at the deposition whose notice accompanies it. You must bring
with you the materials listed on Attachment A to that notice.
A personal appearance will be unnecessary if the materials
listed on Attachment A and an affidavit attesting to the matters
described in Attachment A are delivered to Michael Davidson at
the aforesaid committee room no later than 24 hours in advance
of the scheduled return.

Hereof fail not, as you will answer your default under the pains and pen-
alties in such cases made and provided.

To any Subcommittee staff member or U.S. Marshal.

to serve and return.

Given under my hand, by order of the committee, this
12th day of September, in the year of our
Lord one thousand nine hundred and eighty

30, 21-21
229

Richard Boyle
Sub Chairman, Committee on Activities Relating to
Individuals Representing the
Interests of Foreign Gov'ts
Vice Chairman

RECEIVED
SEP 25 1980

UNITED STATES OF AMERICA
Congress of the United States

Notice of
Senate Deposition

To President, UBAF Arab American Bank, 345 Park Avenue
New York, New York 10154
c/o Alfred J. Schrang, First V.P. and Controller

....., Greeting:

Please take notice that at 2:00 o'clock P.m., on September 24, 1980,
1413 Dirksen Senate Office Building
at Washington, D.C. 20510 of the staff of the sub committee
on Activities Relating to Individuals
on Representing the Interests of of the Senate of the United States, will
Foreign Governments
take your deposition on oral examination concerning what you may know relative to the subject
matters under consideration by said sub committee. The deposition will be taken before a
notary public, or before some other officer authorized by local law to administer oaths; it will
be taken pursuant to the sub committee's rules, a copy of which are attached.

.....

.....

.....

.....

Given under my hand, by authority vested in me by
the sub committee, on September,
1980.

Michael Davidson

ATTACHMENT A

This subpoena requires the production of the documents and knowledge listed below. "Documents" include: all handwritten, typed, printed and photostated matter; and all graphically, magnetically, or mechanically recorded matter. The authentic copy of each original of each document and each copy that is not identical to the original (because, for example, of notations on the copy or original) should be provided. This definition includes letters, correspondence, telegrams, memoranda, publications, minutes, agreements, contracts, notes, records or notations of telephone or personal conversations or conferences, inter-office communications, vouchers, receipts, cancelled checks, bills, microfilm, bulletins, circulars, pamphlets, studies, notices, summaries, reports, teletype messages, tape recordings, logs, diaries, appointment calendars, transcripts, worksheets, telexes and money drafts.

"Knowledge" includes recollections of Bank employees regardless of whether they have been reduced to writing.

Documents and knowledge relating to the following should be produced:

1. The nature and extent of the Bank's dealings with the Libyan Arab Foreign Bank ("LAFB"), including the location of accounts of LAFB or its affiliated banks with the Bank, including any overseas branch of the Bank; joint participation by LAFB and the Bank in other banks, loans, guarantees, or investments; and meetings between Bank employees and employees of LAFB, including Abdulla A. Saudi and Mohammed Leyas, from March 31, 1979 to the present.
2. Any and all communications, including meetings, discussions, letters or telephone conversations between Bank employees and the following: Libyan government officials (including Ahmed Shahati, Ali El-Houderi, Abdul Latif Kikhia, Mohammed H. Burki, Ali M. El-Ramram, and Gibril Shalouf), LAFB employees, Ronald Sprague, Helen Medlin, Donald Roland, Randy Coleman and Billy Carter, from March 31, 1979 to the present.
3. Any payment to or for the benefit of Billy Carter from LAFB's account or any LAFB affiliate's account with the Bank, including any overseas branch of the Bank, from March 31, 1980 to the present.

1754

DOCUMENT 30



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POSSIBLE SANCTIONS AGAINST A WITNESS WHO MAKES A FALSE MATERIAL
STATEMENT IN A SWORN DEPOSITION GIVEN BEFORE SUBCOMMITTEE STAFF

Jay R. Shampansky
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August 18, 1980

POSSIBLE SANCTIONS AGAINST A WITNESS WHO MAKES A FALSE MATERIAL STATEMENT IN A SWORN DEPOSITION GIVEN BEFORE SUBCOMMITTEE STAFF

This report examines the possible applicability of various sanctions to a witness who makes a false material statement in a sworn deposition given before staff of the subcommittee of the Senate Judiciary Committee established by order of the Senate on July 24, 1980, to investigate "activities relating to individuals representing the interests of foreign governments...." 126 Cong. Rec. S9779 (daily ed. July 24, 1980). Although the report emphasizes arguments that can be used to support the proposition that the various sanctions cited below would be applicable if a witness were to make a false material statement in his deposition, where appropriate, possible objections to the applicability of these sanctions are noted.

Section 1 of S. Res. 495, 96th Cong. (126 Cong. Rec. S10510 daily ed. August 1, 1980) authorizes the subcommittee to "issue commissions and to notice depositions for staff members to examine witnesses and to receive evidence under oath administered by an individual authorized by local law to administer oaths." Section 4 of S. Res. 495 authorizes the subcommittee to establish rules governing examinations and depositions. Rule 6.4 of the rules of the subcommittee provides:

Witnesses shall be examined upon an oath administered by an individual authorized by local law to administer oaths. Questions shall be propounded orally by committee staff. Objections by the witness as to the form of questions shall be noted for the record. If a witness objects to a question and refuses to testify, the committee staff may proceed with the deposition, or may, at that time or at a subsequent time, seek a ruling by telephone or otherwise on the objection from a member of the subcommittee. If the member overrules the objection, he may refer the matter to the subcommittee or he may order and direct the witness to answer the question, but the subcommittee shall not initiate procedures leading to civil or criminal enforcement unless the witness refuses to testify after he has been ordered and directed to answer by a member of the subcommittee.

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If a witness were to make a false material statement in a deposition taken under authority of Rule 6.4, he might possibly be prosecuted under the general Federal perjury statute or under several other statutes. The general Federal perjury statute, 18 U.S.C. § 1621, provides:

§ 1621. Perjury generally

Whoever—

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined not more than \$2,000 or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

In a prosecution brought under the first paragraph of section 1621, it must be shown that an oath was taken before a competent tribunal, officer, or person, and that the oath was taken in a case in which a law of the United States authorizes the administration of an oath. As to the first of these requirements, Rule 6.4 provides that the oath is to be "administered by an individual authorized by local law to administer oaths." This procedure seems to be permitted under 5 U.S.C. § 2903(c), which specifies that "an oath authorized or required under the laws of the United States may be administered by--(1) the Vice President; or (2) an individual authorized by local law to administer oaths in the State, District, or territory or possession of the United States where the oath is administered." In United States v. Morehead, 243 U.S. 607 (1917), the Court upheld the validity

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of a regulation of the Land Department which provided that soldiers' declaratory statements, when filed by an agent, covering public lands under the Homestead Law, could be executed before any officer having a seal and authorized to administer oaths generally. According to the Court, 243 U.S. at 617:

Ever since the decision in United States v. Bailey, 9 Pet. 238, 255, it has been held that an oath administered by a state magistrate, in pursuance of a valid regulation of one of the departments of the Federal Government, though without express authority from Congress, subjects the affiant to the penalties of the federal statute against false swearing. See Caha v. United States, 152 U.S. 211, 218.

Despite the specific statutory authorization for an oath to be administered by a person authorized by local law to administer oaths, and despite the case law in support of this proposition, it is possible that the local law relied on might not contemplate the administration of oaths for use in congressional proceedings and thus the person administering the oath would not be "competent" to do so where the deposition is taken before subcommittee staff. Section 1-511 of the D.C. Code, which may be the local law referred to by Rule 6.4 for depositions taken within the District of Columbia, is slightly ambiguous in this regard. That section provides that "each notary public shall have power to take and to certify the acknowledgment or proof of powers of attorney, mortgages, deeds, and other instruments of writing, to take depositions and to administer oaths and affirmations and also to take affidavits to be used before any court, judge, or officer within the District." (emphasis added) The underlined phrase in § 1-511 clearly modifies "to take affidavits." However, the statute might be read so that the underlined phrase also modifies "to take depositions and to administer oaths and affirmations...." If the statute is read in this manner, then it would authorize a District of Columbia notary public to take depositions and administer oaths

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only if such were to be used before a court, judge, or officer within the District. The subcommittee, its members, and its staff clearly do not constitute a "court" or a "judge" and it seems doubtful that they would qualify as an "officer" within the meaning of § 1-511. However, it may be that, despite the somewhat ambiguous and possibly restrictive wording of § 1-511, the broad language of 5 U.S.C. § 2903(c) would permit a District of Columbia notary public to administer an oath to a person for the purpose of giving a sworn deposition to subcommittee staff.

The second requirement under the general Federal perjury statute is that the oath be taken in a "case in which a law of the United States authorizes an oath to be administered..." Several different arguments can be fashioned to support the proposition that there is a law of the United States which authorizes an oath to be administered in the case of a deposition given before staff of the subcommittee. First, it can be argued that 5 U.S.C. § 2903(c) authorizes the administration of the oath. Second, 2 U.S.C. § 191 arguably authorizes the oath to be administered. That section authorizes the President of the Senate, the Speaker of the House, or any committee chairman to administer oaths "to witnesses in any case under their examination." That section also permits any Member of either House to administer oaths "to witnesses in any matter depending in either House of Congress of which he is a Member, or any committee thereof." An objection that might be raised to the use of either 5 U.S.C. § 2903(c) or 2 U.S.C. § 191 as the authorization for the administration of the oath is that these statutes arguably act only to constitute local notaries and Members of Congress as persons "competent" within the meaning of 18 U.S.C. § 1621 to administer oaths. Section 2903(c) and section 191 arguably do not establish particular types of proceedings in which the administration of an oath is authorized. That argument can be rebutted, especially as to 2 U.S.C. § 191, which would seem to provide

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the authorization for the administration of the oath in a perjury prosecution based on false statements made in the course of a committee hearing.

A third possible authorization for the administration of the oath in the deposition is S. Res. 495. Although 18 U.S.C. § 1621 requires that the oath be authorized by "a law of the United States," and although simple resolutions such as S. Res. 495 do not have the force of law (see Riddick, Senate Procedure, S. Doc. No. 93-21 (1974) at 761; Deschler's Procedure in the U.S. House of Representatives, 95th Cong., Chap. 24, § 1.3), S. Res. 495 was adopted as an exercise of the rule-making power vested in each House of Congress by Art. I, Sec. 5, Cl. 2, of the Constitution, which is the "supreme Law of the Land." Art. VI, Sec. 2. Even if S. Res. 495 does not constitute "a law of the United States," it might still be relied on as the authorization for the administration of the oath in that it is in essence a rule or regulation of the Senate. According to the Supreme Court in United States v. Hvas, 355 U.S. 570, 575 (1958), "the phrase 'a law of the United States,' as used in the perjury statute, is not limited to statutes, but includes as well Rules and Regulations which have been lawfully authorized and have a clear legislative base [citations omitted], and also decisional law." The Senate resolution may be a "rule" within the meaning of Hvas, but it is not clear that it has been "lawfully authorized" and has a "clear legislative base" as Hvas also requires. The authorization for S. Res. 495 would seem to be Art. I, Sec. 5, Cl. 2, which allows each House to determine the rules of its proceedings. Although the Constitution is not a law in the conventional sense of that word, as noted above it is the supreme law of the land, and therefore one can argue that the Constitution lawfully authorizes S. Res. 495. However, it is questionable whether the Constitution provides a "clear legislative base" for S. Res. 495 in that the Constitution is not a legislative enactment.

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Perjury committed before a congressional committee in the District of Columbia can be prosecuted under either the general Federal perjury statute (18 U.S.C. § 1621) or under the District of Columbia perjury statute (D.C. Code, § 22-2501). Meyers v. United States, 171 F.2d 800 (D.C.Cir.), cert. denied, 336 U.S. 912 (1948). The District's perjury statute is similar to, and was apparently generally patterned upon, the Federal statute. See notes following § 22-2501 in District of Columbia Code Encyclopedia (1967). Section 22-2501 provides:

Every person who, having taken an oath or affirmation before a competent tribunal, officer, or person, in any case in which the law authorized such oath or affirmation to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, wilfully and contrary to such oath or affirmation states or subscribes any material matter which he does not believe to be true, shall be guilty of perjury; and any person convicted of perjury or subornation of perjury shall be punished by imprisonment in the penitentiary for not less than two nor more than ten years. Any such false testimony, declaration, deposition, or certificate given in the District of Columbia, but intended to be used in a judicial proceeding elsewhere, shall also be perjury within the meaning of this section. Mar. 3, 1901, ch. 854, § 858, 31 Stat. 1329.

The D.C. perjury statute, like its Federal counterpart, specifies that the oath is to be taken "before a competent tribunal, officer, or person...." Whereas the Federal statute requires that the oath must have been taken "in any case in which a law of the United States authorizes an oath to be administered," the local statute provides that the oath must have been taken "in any case in which the law authorized such oath...to be administered...." The difference is that under the Federal statute, it is a law of the United States which must authorize administration of the oath, whereas the local statute specifies only that "the law" must authorize administration of the oath. Thus, it would appear that under the District perjury statute, it would be sufficient if a D.C. law authorized the

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administration of an oath. Section 1-511 of the D.C. Code authorizes each notary public "to administer oaths and affirmations...." Although this may be read as merely making a notary public a "competent" person within the meaning of § 22-2501, it might be interpreted more broadly as constituting authorization for administration of an oath. (See the discussion above of § 1-511 as to whether that provision would be applicable in the case of an oath administered to a witness giving a deposition in a congressional proceeding.)

An issue that may arise in a prosecution under either the Federal or the District perjury statute is whether the material false statement was made before a competent tribunal, that is, before a quorum of the committee. A defendant, relying on Christoffel v. United States, 338 U.S. 84 (1949), might argue that the subcommittee was not competent to hear his testimony in the absence of a quorum. Rule 6 of the rules of the subcommittee permits a deposition to be taken by staff in the absence of any Senators. Subcommittee rule 6.4 permits the subcommittee staff to "seek a ruling by telephone or otherwise" from a member when a witness objects to a question. Under the procedure set forth in rule 6, it would be possible for a witness to make a false material statement at a time when no member of the subcommittee is present.

In Christoffel, the Supreme Court reversed a conviction for perjury under the District of Columbia perjury statute. Under that statute, it is an essential element of the offense that it be committed before "a competent tribunal." For a congressional committee to be a competent tribunal, a quorum must be "actually and physically present" at the time a perjurious statement is made. See 338 U.S. at 89, 90. The Court reversed the conviction in Christoffel because the trial court had erroneously instructed the jury that it could find that a quorum was present simply by determining that a majority of the members of the committee

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were present when the committee was convened, rather than at the time the statement was made.

Christoffel can arguably be distinguished from the procedure contemplated by subcommittee rule 6.4. The problem in Christoffel was that the committee did not follow applicable rules and customs governing the quorum requirement. Lacking a quorum under applicable rules, the committee was not a "competent" tribunal within the meaning of the perjury statute. However, by rule 6, the subcommittee has established a procedure for taking depositions from witnesses. The rule was adopted pursuant to authorization by the full Senate in S. Res. 495. There is language in the Christoffel decision itself which supports Congress' authority to establish rules governing its proceedings. The Court stated, 338 U.S. at 88-89:

Congressional practice in the transaction of ordinary legislative business is of course none of our concern, and by the same token the considerations which may lead Congress as a matter of legislative practice to treat as valid the conduct of its committees do not control the issue before us. The question is neither what rules Congress may establish for its own governance, nor whether presumptions of continuity may protect the validity of its legislative conduct. The question is rather what rules the House has established and whether they have been followed. It of course has the power to define what tribunal is competent to exact testimony and the conditions that establish its competency to do so.
[emphasis added]

Mr. Justice Jackson, in a dissenting opinion in Christoffel joined in by the Chief Justice and Justices Reed and Burton, discussed the variety of quorum requirements which the House might establish. He stated, 338 U.S. at 91:

Similarly, each House may spell out a formal rule that a Committee shall constitute a competent tribunal to take sworn testimony if a majority of its members shall be present at the beginning of the session at which the testimony is taken, and that such competency shall continue although the attendance of committee members

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may drop, during the Committee's session, to some smaller number. The reasonableness of such a rule is apparent because the value of the testimony taken by such a Committee is measured not so much by the number of people who hear it spoken at the session as it is by the number and identity of those who read it later. [emphasis added]

The last sentence of the portion of the dissenting opinion quoted above is clearly applicable to the subcommittee's rule. Although only staff may be present at a deposition, the statements made there can be read by all members of the subcommittee, and indeed by all members of the Senate. Depositions taken before the staff are considered by the Senate as having been taken before the subcommittee. Section 2 of S. Res. 495 provides: "The subcommittee shall have authority to place in the record of its public or executive sessions sworn testimony and evidence obtained at examinations and depositions, but testimony and evidence so obtained shall be deemed to have been taken before the subcommittee once filed with the clerk of the subcommittee, whether or not placed in the subcommittee record." (emphasis added)

Support for the Senate and its committees to determine their own requirements concerning the taking of testimony or depositions can be found in an early decision of the Supreme Court rejecting a challenge to a quorum rule in the House of Representatives. In United States v. Ballin, 144 U.S. 1, 5 (1892), the Court observed:

The question...is as to the validity of this rule [the quorum rule], and not what methods the Speaker may of his own motion resort to for determining the presence of a quorum, nor what matters the Speaker or clerk may of their own volition place upon the journal. Neither do the advantages or disadvantages, the wisdom or folly, of such a rule present any matters for judicial consideration. With the courts the question is only one of power. The Constitution empowers each house to determine its rules of proceedings. It may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations all matters of method are

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open to the determination of the house, and it is no impeachment of the rule to say that some other way would be better, more accurate or even more just. It is no objection to the validity of a rule that a different one has been prescribed and in force for a length of time. The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house, and within the limitations suggested, absolute and beyond the challenge of any other body or tribunal.

In accordance with the language quoted above in Christoffel and Ballin, the Senate and the subcommittee have established rules governing the taking of depositions. Although in subcommittee rule 2.4 it is specified that for the purpose of taking sworn testimony a quorum shall consist of one Senator, the subcommittee has determined in rule 6 that unless a witness raises an objection to a particular question, no members of the subcommittee need be present during the taking of a deposition by staff. This determination is a reasonable one in view of the numerous demands on the time of Members and in view of the fact that, as the Supreme Court recognized in a decision extending Speech or Debate Clause protection to congressional staff, Gravel v. United States, 408 U.S. 606, 616-17 (1972), "the day-to-day work of such aides is so critical to Members' performance that they must be treated as the latter's alter egos..." (emphasis added) For purposes of taking a deposition, the subcommittee has no quorum requirement and therefore the holding of Christoffel is arguably inapplicable. Furthermore, if the oath for the deposition is administered by a person authorized by local law to administer oaths, and if the deposition is given in the presence of that person, then the deposition arguably has been given before a "competent" officer or person within the meaning of either the Federal or the District of Columbia perjury statute. If the subcommittee follows this procedure, it would be essentially the same as that governing depositions under the Federal Rules of Civil Procedure. Rule 28(a)

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of the Federal Rules of Civil Procedure provides:

Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

See also Rule 30(c), Fed. R. Civ. P.

In lieu of using the perjury statutes, a prosecution under 18 U.S.C. § 1001 might be possible. That section provides:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

Under § 1001, unlike the District and the Federal general perjury statutes, there is no requirement that the false statement be made under oath. Hence, no problem arises as to whether there is a law of the United States which authorizes the administration of an oath or as to whether the person administering the oath is "competent" to do so. However, other difficulties may exist in any prosecution brought under that statute. First, that provision applies to statements made or acts done "in any matter within the jurisdiction of any department or agency of the United States...." It is not clear whether a congressional committee would be considered a department or agency of the United States within the meaning of § 1001. The Court in United States v. Bramblett, 348 U.S. 503 (1955), found that the statute did apply in a case involving the Disbursing Office of the House of Representatives. There is language in Bramblett which suggests that § 1001 is

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applicable to the entire legislative branch. 348 U.S. at 509. However, our research has not revealed any decision which specifically deals with the applicability of §1001 to congressional committees.

A second difficulty in proceeding under § 1001 is that that statute has been held in several cases to be inapplicable to false statements where there was no fraud upon the Government or a deception of a Government agency in regard to a matter within the jurisdiction of the agency. Among the decisions finding § 1001 to be inapplicable are United States v. D'Amato, 507 F.2d 26 (2d Cir. 1974) (false statement made in affidavit filed in civil action in Federal district court); United States v. Abrahams, 604 F.2d 386 (5th Cir. 1979) (false statements made in judicial proceeding before a United States Magistrate); Friedman v. United States, 374 F.2d 363 (8th Cir. 1967) (false unsworn written statement given to FBI); United States v. Bedore, 455 F.2d 1109 (9th Cir. 1972) (false unsworn oral statement to FBI). The decisions holding § 1001 to be inapplicable rest on several different grounds. A leading decision finding § 1001 to be inapplicable, Friedman v. United States, *supra*, was based in part on a reading of the legislative history of the statute, the court finding that the statute was intended to facilitate the proper functioning of regulatory agencies. In discussing a 1934 amendment to the statute, the Court of Appeals observed, 374 F.2d at 366: "Obviously, the immediate and primary purpose in amending the old 'fraudulent claims' statute was to curtail the flow of false information to the newly created regulative agencies. Though the statute was drafted in broad inclusive terms, presumably due to the numerous agencies and the wide variety of information needed, there is nothing to indicate that Congress intended this statute to have application substantially beyond the purposes for which it was created." The court found that regulatory agencies generally had "jurisdiction" of the type contemplated by § 1001, whereas

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investigative agencies did not necessarily have such "jurisdiction." According to the court, 374 F.2d at 367:

In discussing jurisdiction, we must recognize the fundamental difference between the naked authority of a body to act and the power to make final or binding determinations. On one hand there exists a power to make monetary awards, grant governmental privileges, or promulgate binding administrative and regulative determinations. From this 'jurisdiction' indicating a positive power, we must differentiate the mere authority to conduct an investigation in a given area without the power to dispose of the problems or compel action....

The Friedman view is not universally accepted. In United States v. Adler, 380 F.2d 917 (2d Cir.), cert. denied 389 U.S. 1006 (1967), which also involved false statements made to the FBI, the court found that such statements were within the jurisdiction of the agency. The court explained, 380 F.2d at 922:

Consistent, therefore, with the view that § 1001 was broadly drawn to protect the "authorized functions" of federal agencies from "perversion," the word "jurisdiction" as used in the statute must mean simply the power to act upon information when it is received. The making of intentionally false statements to the F.B.I., calculated to provoke an investigation by that agency may cause more "perversion" of authorized agency functions--and more harm to individuals--than false pecuniary and property claims which are clearly covered by the statute. There is nothing to suggest, either in legislative history or in the cases, that Congress in enacting § 1001 intended to conserve the energies of only certain agencies. Accordingly, a technical construction of the word "jurisdiction" which would exclude from the scope of § 1001 all matters strictly criminal in nature, is rejected....

See also United States v. Gilliland, 312 U.S. 86, 93 (1941), the first case to reach the Supreme Court after § 1001 was amended into substantially its present form, in which the Court stated: "The [1934] amendment indicated the congressional intent to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described. We see no reason why this apparent intention should be frustrated by construction."

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One commentator has suggested that 18 U.S.C. § 1505 (which prohibits any person from inter alia, corruptly influencing, obstructing, or impeding any agency proceeding or a congressional investigation) might be used "to prosecute one who obstructs a congressional inquiry by providing false and evasive oral answers." Hamilton, The Power to Probe (1976) at 78. However, of the cases he cites, only United States v. Alo, 439 F.2d 751 (2d Cir.), cert. denied 404 U.S. 850 (1971), provides any real support for such a reading of § 1505. In that case, the court affirmed defendant's conviction under the statute, finding that in claiming a memory lapse some 134 times during testimony lasting one and a half hours before the SEC, he obstructed or impeded the due and proper administration of the law. 439 F.2d at 753. According to the court, "the gist of [the] offense was not the falsehood of his statements, but the deliberate concealment of his knowledge." Id. at 754. The case indicates that § 1505 may be used to prosecute an evasive witness. It does not provide support for the use of § 1505 against a witness who simply makes a false material statement before a committee. See United States v. Essex, 407 F.2d 214 (6th Cir. 1969), cited by the Alo court (439 F.2d at 754 n.4) for the proposition that 18 U.S.C. § 1503, the judicial counterpart of § 1505, does not apply to deliberate lying by a witness where the essence of the offense was false statements, not evasiveness.

Proceedings for contempt of Congress might be instituted where a witness makes a false material statement. The statutory contempt provision (2 U.S.C. § 192) makes it an offense for a witness to refuse to answer pertinent questions. There do not appear to be any reported judicial decisions construing § 192 which discuss the applicability of that section to making false statements. However, it might be argued that making false statements amounts to a refusal to answer. But it might be noted that false swearing before a court has been held to be

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insufficient of itself to constitute contempt. Ex Parte Hudgins, 249 U.S. 378 (1919). Only where the purpose of the perjury is to obstruct justice does it appear that the perjury amounts to contempt. United States v. Brown, 116 F.2d 455 (7th Cir. 1940). Applying these cases which relate to contempt of court to the matter of contempt of Congress, it might be argued that if the purpose of the false statements submitted to a congressional committee was to frustrate the performance by Congress of its legislative responsibilities, then that perjury might be punished as contempt of Congress under the inherent authority of a legislative body to punish for contempts that are committed in its presence. (See Jurney v. MacCracken, 294 U.S. 125, 150 n.7 (1935), where the Court lists instances in which witnesses before the House of Commons who were found guilty of lying before investigating committees were imprisoned, apparently as an exercise of the contempt power.) A trial under the inherent contempt power would be conducted before the full Senate, or perhaps before a committee of the Senate with the full Senate then voting on the committee's recommendation. It is questionable whether perjury committed to frustrate Congress' performance of its legislative responsibilities could be prosecuted under the statutory contempt provision. However, in plea bargaining agreements, defendants have pleaded guilty to a misdemeanor charge under § 192 rather than stand trial for perjury. Threatened with a felony prosecution for perjury in regard to statements he made during his confirmation hearing as Attorney General, Richard Kleindienst pleaded guilty to § 192, "admitting that he had refused to answer fully and accurately certain questions put to him" during the hearing. Hamilton, The Power to Probe (1976) at 74.

Since subcommittee rule 6 provides for the taking of evidence by means of deposition, note might be made of Dunn v. United States, 442 U.S. 100 (1979). In that case, the Court reversed a conviction under 18 U.S.C. § 1623, which prohibits

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false declarations that are made under oath "in any proceeding before or ancillary to any court or grand jury of the United States." The prosecution rested in part on oral statements made by defendant under oath in the office of an attorney. After reviewing the language and the legislative history of the statutory provision, the Court concluded that an interview in a private attorney's office did not constitute a "proceeding ancillary to a court or grand jury" within the meaning of the statute. The legislative history of the act indicated that a deposition would constitute an ancillary proceeding, but the Court found that in the circumstances of that case the interview in the attorney's office was not a deposition because various procedural safeguards specified in the Federal Rules of Criminal Procedure and in 18 U.S.C. § 3503 had not been complied with. Arguably, the Court took notice of whether procedural safeguards were afforded to the defendant only for the purpose of determining whether the interview possessed "the degree of formality" required by § 1623. 442 U.S. at 111. Dunn does not suggest that any particular procedural safeguards are required for a deposition before a congressional committee where the prosecution would not be based on § 1623.

Jay R. Shampansky

Jay R. Shampansky
Legislative Attorney
American Law Division
August 18, 1980

V. REPRESENTATION OF WHITE HOUSE OFFICIALS AND PERSONNEL

Early in the investigation Subcommittee counsel and White House counsel discussed whether Counsel to the President, members of his staff, or Special Counsel to the President for this investigation, should be permitted to represent White House officials and personnel at interviews and depositions conducted by Subcommittee staff. Subcommittee counsel wished to assure that there was an environment in which White House officials and personnel could communicate freely to Subcommittee investigators; White House counsel wished to protect the interests of prospective White House witnesses, and the interest of the President in the possible assertion of privileges belonging to him. An arrangement satisfactory to the Subcommittee and White House counsel was arrived at following the submission of a memorandum from the Office of Legal Counsel to the Counsel to the President, Document 31. White House counsel arranged for the participation at depositions of Deanne Siemer, then at the Department of Energy, to represent the interests of the United States in the possible assertion of Presidential privileges.

DOCUMENT 31



ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

United States Department of Justice
Washington, D. C. 20530

27 AUG 1980

MEMORANDUM FOR HONORABLE LLOYD N. CUTLER
Counsel to the President

Re: Representation of White House Employees

This responds to the oral request from Deputy Counsel to the President, Michael H. Cardozo, for our views concerning the propriety of providing legal representation for White House employees who are questioned by either the Justice Department's Office of Professional Responsibility (OPR), or the Senate Judiciary Committee in connection with the investigations presently underway into the relationship and activities of the President's brother, Billy Carter, with respect to the Government of Libya. We recognize that timely advice on this question is of the essence, since the OPR and Senate investigations are currently in progress. Accordingly, we have briefly described our conclusions in this memorandum, and where available, we have attached supporting materials that were prepared in connection with other inquiries.

Our conclusions can be summarized as follows:

- (1) White House employees should be discouraged from accepting offers of free or discounted professional service from private lawyers because of the appearance that the service has been offered because of their employment at the White House, and because of the limitations imposed by 3 CFR 100.735-14.
- (2) OPR Investigation: No government attorney, and no private attorney retained at government expense may represent White House employees in connection with the OPR investigation. Employees may choose to retain counsel at their own expense to represent their individual interests before OPR.

- (3) Senate Investigation: No government attorney, and no private attorney retained at government expense may represent the personal interests of White House employees in connection with the Senate investigation. Employees may choose to retain private counsel to represent their personal interest before the Senate Committee.
- (4) A government attorney may and should represent governmental interests in connection with the questioning of White House employees by the Senate Committee. A government attorney may be "detailed" from an agency which otherwise has no involvement in the matter under investigation, or a private attorney may be retained by the White House as a special government employee to perform this function.
- (5) Private counsel retained by employees may not represent governmental interests before OPR or the Senate Committee.

A prefatory summary of the pertinent background facts is useful in order to place the representation issues raised by your opinion request in a proper context. Two investigations are pending at this time: (1) an investigation undertaken by this Department's Office of Professional Responsibility pursuant to a special direction from Acting Attorney General Renfrew focused on whether any employee of this Department, the White House, or any other person is chargeable with criminal, civil, or administrative wrongdoing growing out of the Administration's activities concerning Billy Carter's contacts with Lybia (see 45 Fed. Reg. No. 155, 52946 (Aug. 8, 1980)); and (2) an investigation conducted by a subcommittee of the Senate Judiciary Committee which presumably will focus on the legislative consequences, if any, of the matter, rather than on governmental sanctions. See Cong. Record July 24, 1980, S 9780. You have advised us that both investigations are now consuming the time of White House employees, and that several have inquired whether they are entitled to legal representation by the Government in responding to either investigation. You have also informed us that, pursuant to an agreement with the Senate Committee, your Office has agreed not to represent any employee in the Senate's

investigation, presumably to avoid even the appearance of collusion or other wrongdoing. There remain, then, several possible sources of representation, including Justice Department lawyers, detailees from other departments to the White House, special government employees, private counsel retained under the Justice Department's Representation Guidelines, or donated private counsel. We will address first the acceptance of legal services donated by private counsel. */

Donation of Legal Services. The acceptance of free or discounted legal services is within the parameters of the White House Standard of Conduct dealing with gifts, entertainment and favors. 3 CFR 100.735-14. Subsection (a) of this regulation prohibits the acceptance of anything of monetary value from a person (defined to include a firm) who:

- (1) Has, or is seeking to obtain, contractual or other business or financial relations with his agency;
- (2) conducts operations or activities which are regulated by his agency; or
- (3) has interests which may be substantially affected by the performance or non-performance of his official duty.

The text of subsection (b) of the regulation would appear to permit the acceptance of gifts prohibited by the above criteria if the gift is given by a friend or close relative when the circumstances make it clear that the personal relationship involved is the motivating factor. However, in light of the more general requirement to avoid appearances of impropriety (see 3 CFR 100.735-4), we would caution against the acceptance of donated legal ser-

*/ We recognize that it will be necessary for some White House employees to spend considerable time gathering and assembling materials in response to the OPR and Senate inquiries. We view this as a proper governmental function which may be performed by government employees, be they lawyers or non-lawyers. However, your inquiry seems to be directed at the more traditional role of lawyers as personal representatives and advocates for a particular client. It is this latter role that we will address in this memorandum.

VICES from any law firm which has or is likely to do business with the Government, or from any firm which may appear to have offered the services because of the employee's White House employment.

Representation before OPR. This Office has long held the view that the Government may not participate on both sides of a federal criminal investigation. The attached memoranda explain in some detail the basis for our conclusion that Executive agencies lack the authority to provide counsel for employees in federal criminal matters.

The opinions of the Comptroller General support our conclusion, although they do not address the precise question of representation in a federal criminal matter. In determining whether particular expenses were "necessary" as that term is used in various appropriation Acts, the Comptroller General has consistently distinguished between governmental interests and personal interests, concluding that expenditures were only authorized to the extent that they serve governmental interests. See, for example, 54 Comp. Gen. 1075 (1975) (television set); 54 Comp. Gen. 976 (1975) (gifts to seminar attendees); 47 Comp. Gen. 657 (1968) (coffee equipment). The Comptroller General reiterated the importance of this distinction between personal and governmental interests in an opinion dealing with the retention of private counsel to defend federal judicial officers in instances where Justice Department representation is unavailable. 53 Comp. Gen. 301. Although the opinion does not address the question of representation in a federal criminal matter, it does find limited authority for the payment of counsel. However, one clear limitation stated in the opinion is that appropriated funds are to be used "only to the extent necessary to protect the judiciary's interest in the outcome of the subject litigation, rather than the judicial officer's personal interest in having his decision upheld, and that such funds are not used, in effect, merely to defend a private litigant's position where, as is the case in most appeals of judicial rulings, the judiciary and the United States have no real interest in the outcome of the appeal." Supra, p. 306. */ The opinion also notes

*/ Another explicit prerequisite set by the Comptroller General in this opinion was that the Administrative Office of the U.S. Courts "advise fully the appropriate legislative and appropriations committees of the Congress of your plans and the estimated cost thereof." Supra, p. 306.

that Justice Department representation should be sought as an initial matter and would be available in many cases. However, the opinion recognizes that private counsel may be necessary when there are conflicts presented by Justice Department representation, as in the case of a mandamus action brought by the Attorney General.

In a more recent decision, B193636, June 18, 1979, the Comptroller General held that the SEC could not reimburse employees for legal fees incurred as a result of its own misconduct investigation, despite the fact that the initial charges were made by a private party and the investigation was ultimately resolved in favor of the employees. The Comptroller General explained his reasoning as follows:

Under these circumstances, the cost of providing counsel may not be considered a proper expenditure of appropriated funds. Upon SEC's determination that the matter should be further investigated with respect to three of the SEC employees, the situation was no longer one in which the Government's interest was aligned with the interests of the three employees against charges pressed by a third party, and thus it was no longer in the Government's interest to provide them with legal counsel. The SEC hearing was a formal agency fact-finding inquiry to determine whether its employees were guilty of misconduct. In fact, at that point, the situation was indistinguishable from that in which an agency itself initiates an investigation into the conduct of its own employees. That the employees were ultimately vindicated does not change the character of the proceeding, at p. 7.

Read together, the Comptroller's decisions regarding representation of Judicial and SEC employees support a conclusion that absent express congressional authorization, counsel may not be provided to defend Executive Branch employees in an investigation or proceeding being pursued within the Executive Branch.

Since the direction to the Counsel on Professional Responsibility leaves no room for doubt that the OPR inquiry has potential criminal ramifications, that conclusion controls with respect to the OPR inquiry. Moreover, even absent the criminal ramifications, the same considerations would preclude providing representation for employees in connection with an investigation of wrongdoing that may result only in some form of administrative or civil sanction by the Government (such as a fine,

reprimand or discharge). Therefore, it is our conclusion that no representation at federal expense is permissible in responding to the OPR investigation. Of course, employees may retain counsel to represent their personal interests at their own expense. */

Representation in the Congressional Inquiry. Representation before the Senate Committee is a more complicated problem. It is important first to distinguish between the representation of the personal interests of employees, and the representation of official governmental interests, because we believe that in this case the Government may provide counsel to represent governmental but not personal interests. The distinction between official and individual interests is made frequently in connection with the representation of employees in litigation, and the Justice Department's Representation Guidelines (attached) anticipate that this distinction will be made in connection with the representation of employees before Congress. As we noted earlier, this distinction is also made by the Comptroller General in determining the availability of appropriated funds to cover a particular expense.

Although we recognize that the official and personal interests of employees may overlap to a large extent, there are also interests which are purely personal or entirely governmental. For example, the interests in avoiding federal criminal prosecution, civil liability to the United States or adverse administrative action by a federal agency are clearly personal rather than governmental interests. On the other hand, the interests in asserting a governmental privilege or defending official policies and procedures are governmental interests. The interests in presenting information correctly and clearly are both personal and governmental.

The personal interests of employees in regard to the congressional investigation tend to parallel the purposes of

*/ We have not precluded the possibility of counsel to represent direct governmental interests which may arise in connection with the OPR investigation. If such governmental interests arise, they may be represented. We have described this possibility and the mechanics of such representation in connection with the congressional inquiry.

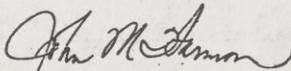
the OPR investigation. Generally, it will serve the personal interests of employees to avoid making statements to the Senate that would result in adverse criminal, civil or administrative action by OPR. As discussed above, there is no existing statutory authority for the Executive Branch to protect these personal interests through the provision of counsel. To the extent that these interests are implicated by the Senate investigation, we think that it would be inappropriate for the Government to provide counsel to represent them. */

However, there are also legitimate governmental interests which arise whenever Executive Branch employees are called to testify before the Congress. Ordinarily, these interests are monitored by agency counsel who accompany Executive Branch employees called to testify before congressional committees. We do not believe that your acquiescence in the Senate Committee's demand not to serve as counsel should preclude all representation of governmental interests in connection with the Senate investigation. The attached memorandum, dated January 16, 1974, concluded that it would be proper to "detail" government attorneys to the White House to provide legal services in connection with the Watergate investigation so long as the lawyer's employing agency did not have conflicting responsibilities in the case. On this basis, an attorney from any agency which is not involved in the Billy Carter matter, could be "detailed" to the White House to represent governmental interests in connection with the Senate investigation. We also see no reason why the White House may not retain a lawyer from a private firm as a special government employee to perform this function, since the

*/ The attached Department of Justice Representation Guidelines do appear to contemplate cases in which it would be proper for this Department to provide representation to employees called before congressional committees "in their individual capacities." See § 50.15(a), at p. 2. Heretofore, this section has become operable when a present or former federal employee has been a defendant in a private civil suit and has simultaneously been called as a witness before a congressional committee. In such a case, the retention of counsel may be necessary to protect the employee from providing testimony that would unnecessarily compromise the defense of the civil case.

1980 White House Appropriation, P.L. 96-74, Sept. 29, 1979, 93 Stat. 563, leaves ample discretion to hire counsel for this purpose. */ The alternatives of detailed or retained counsel should respond to the legitimate concerns of the Senate investigators, without undermining your responsibility to protect legitimate governmental interests in this matter.

In our view, any counsel directed to represent governmental interests must be controlled by the Government, and private counsel retained by employees to represent personal interests should not be permitted to assert governmental interests or privileges. Although it can become difficult to distinguish between personal and governmental interests, this point is one of considerable importance. Any employee detailed by the Government to serve as counsel in this matter, first, must clearly understand that he is the Government's lawyer and not private counsel for the represented employee, and, second, that he reports to and is responsible to the Government. We cannot foresee all of the particular ways in which this distinction will apply, but care must be taken throughout the course of any representation to assure that the interests of the Government control the decisions that are made.



John M. Harmon
Assistant Attorney General
Office of Legal Counsel

Attachments **/

*/ Technically, representation of this limited nature might be provided by this Department, but in light of the potential for conflicts -- or at least the appearance thereof -- we doubt that such representation should be considered.

**/ Subcommittee note: Attached to the Office of Legal Counsel memorandum were several documents which were not immediately germane to the question of representation of White House personnel before Congressional committees. Those attachments have been omitted.



Office of the Attorney General
Washington, D. C. 20530

Title 28--Judicial Administration

CHAPTER 1--DEPARTMENT OF JUSTICE

[Order No.

PART 50--STATEMENTS OF POLICY

Limitation for Representation of Federal
Employees

AGENCY: Department of Justice

ACTION: Statement of policy.

SUMMARY: This statement amends the policy of the Department on representation of Federal employees when they are sued individually for actions performed within the scope of their employment. This amendment is necessary in order to clarify and expand upon existing procedures.

EFFECTIVE DATE:

FOR FURTHER INFORMATION CONTACT: Barbara Allen Babcock,

Assistant Attorney General, Civil Division, Department of
Justice, Washington, D.C. 20530 (202-739-3301).

By virtue of the authority vested in me by 28 U.S.C.
509, Part 50 of Chapter I of Title 28 of the Code of
Federal Regulations is hereby amended by revising §§50.15
and 50.16 thereof to read as follows:

§50.15 Representation of Federal Employees by Department
of Justice Attorneys or by Private Counsel Furnished by
the Department in State Criminal Proceedings and in Civil
Proceedings and Congressional Proceedings in Which Federal
Employees Are Sued or Subpoenaed in Their Individual
Capacities.

(a) Under the procedures set forth below, a federal
employee (herein defined to include former employees) may
be provided representation in state criminal proceedings
and in civil and Congressional proceedings in which he is
sued or subpoenaed in his individual capacity, not
covered by §15.1 of this chapter.

(1) When an employee believes he is entitled
to representation by the Department of Justice in a

proceeding, he must submit a written request that representation, together with all process and pleadings served upon him, to his immediate supervisor or whom-ever is designated by the head of his department or agency, forthwith. The employee's employing federal agency shall submit to the Civil Division, the Civil Rights Division, the Criminal Division, the Lands and Natural Resources Division or the Tax Division, (hereinafter referred to as "the litigating division"), as appropriate, in a timely manner a statement, with all available supporting data, as to whether the employee was acting within the scope of his employment, together with its recommendation as to whether representation should be provided. The communication between the employee and any individual acting as an attorney at his employing agency, with regard to the request for representation, shall be treated as subject to the attorney-client privilege. In emergency situations the litigating division may initiate conditional representation after communication by telephone with the employing

agency. In such cases, appropriate written data must be subsequently provided.

(2) Upon receipt of the agency's notification of request for counsel, the litigating division shall determine whether the employee's actions reasonably appear to have been performed within the scope of his employment and whether providing representation is in the interest of the United States. In circumstances where considerations of professional ethics prohibit direct review of the facts by attorneys of the litigating division (e.g. because of the possible existence of inter-defendant conflicts) the litigating division shall delegate the fact-finding aspects of this function to other components of the Department or to a private attorney at federal expense.

(3) Attorneys employed by any component of the Department of Justice who participate or assist in either the representation of employees under this section or any process utilized for the purpose of determining whether the Department should provide representation to a federal

employee, undertake full and traditional attorney-client relationship with the employee including application of the attorney-client privilege. Any adverse information gained by an attorney during the course of such attorney-client relationship shall not be disclosed to anyone, either inside or outside the Department, other than attorneys responsible for representation of the employee, unless such disclosure is authorized by the employee. Adverse information shall continue to be fully protected whether or not representation is provided, and even though representation may be discontinued.

(4) Where there appears to exist the possibility of a federal criminal investigation or indictment relating to the same subject matter for which representation is sought, the litigating division shall contact a designated official in the Criminal, Civil Rights or Tax Division or other prosecutive authority within the Department (hereinafter "prosecuting division") to determine whether the employee is either a subject of a

federal criminal investigation or a defendant in a federal criminal case. An employee is the subject of an investigation if, in addition to being circumstantially implicated by having the appropriate responsibilities at the appropriate time, there is some evidence of his specific participation in a crime.

(5) If a prosecuting division of the Department indicates that the employee is not the subject of a criminal investigation concerning the act or acts for which he seeks representation, then representation may be provided. Similarly, if the prosecuting division indicates that there is an ongoing investigation, but into a matter other than that for which representation has been requested, then representation may be provided.

(6) If the prosecuting division indicates that the employee is the subject of a federal criminal investigation concerning the act or acts for which he seeks representation, the litigating division shall inform the employee that no representation by Justice Department attorneys will be provided. But, if in such

a case no decision to seek an indictment or issue an information has been made, a private attorney may be provided to the employee at federal expense under the procedures of § 50.16.

(7) In any case where it is determined that Department of Justice attorneys will represent a federal employee, the litigating division shall promptly inform the employee and the agency which employs him (i) that in actions where the United States, any agency, or any officer in his official capacity thereof is also named as a defendant, the Department of Justice is required by law to represent the United States and/or such agency or officer and will assert all appropriate legal positions and defenses to establish the non-liability of such agency, officer and/or the United States; (ii) that the Department of Justice will not assert any legal position or defense deemed not to be in the interest of the United States to assert; and (iii) where appropriate, that neither the Department of Justice nor any agency of the United States Government has authority to pay or to indemnify the defendant employee for any judgment for money damages which may be rendered against such employee.

(8) If a determination not to provide representation is made, the litigating division shall inform the agency and/or the employee that no representation will be provided.

(9) If conflicts exist between the legal or factual positions of various employees in the same case which make it inappropriate for a single attorney to represent them all, the employees may be separated into as many groups as is necessary to resolve the conflict problem and each group may be provided with separate representation. Some situations may make it advisable that private representation be provided to all conflicting groups and that direct Justice Department representation be withheld so as not to prejudice particular defendants. In such situations, the procedures of § 50.16 will apply.

(10) If providing representation to the employee is otherwise determined to be appropriate but the adequate representation of the employee requires the making of an argument which conflicts with a governmental position, the employee shall be fully advised regarding the nature and extent of the conflict. If, after being fully advised of the conflict, the employee agrees to be represented by a Department of Justice attorney, governmental representation may continue at the option of the litigating division. Similarly, if the employee does not consent to continued governmental representation, a private attorney may be provided to the employee at federal expense under the procedures of section 50.16.

(11) Once undertaken, representation of federal employee under this subsection will continue until either all appropriate proceedings, including applicable appellate procedures, have ended, or until any of the bases for declining or withdrawing from representation set forth in this section is found to exist, including without limitation the basis that representation is not in the interest of the United States. If representation is discontinued for any reason, the representing Department attorney on the case will seek to withdraw but will ensure to the maximum extent possible that the employee is not prejudiced thereby.

(12) Review and approval ^{OR DENIAL} of a request ^{OR DENIAL} for representation shall be made by the Assistant Attorney General of the appropriate litigating division or his designee. ~~A denial of a request for representation or a decision to terminate representation shall be made personally by the Assistant Attorney General of the appropriate litigating division.~~ Questions regarding action to be taken on a request for representation may be forwarded to the Associate Attorney General or his designee. A person whose request for representation has been denied or whose representation has been terminated, may request reconsideration of the denial or termination from the Associate Attorney General.

(13) At the beginning of each quarter of the fiscal year, each litigating division which has received requests for representation or terminated representation in the previous quarter, shall submit a report to the Associate Attorney General listing the number of representation requests or terminations handled in that quarter according to the requester's status (i.e., federal civil defendant, state civil defendant, state criminal defendant, or congressional witness), and for each category of defendant or witness, the number of requests approved, denied, or terminated.

(b) Representation is not available to a federal employee whenever:

- (1) The act or acts with regard to which the employee desires representation do not reasonably appear to have been performed within the scope of his employment with the federal government;
- (2) It is otherwise determined by the Department that it is not in the interest of the United States to provide representation to the employee.

50.16 Representation of Federal Employees by Private Counsel at Federal Expense.

(a) Representation by private counsel at federal expense is subject to the availability of funds and may be provided to a federal employee only in the instances

described in §50.15(a)(6), (9) and (10), and in appropriate circumstances, for the purposes set forth in §50.15(a)(2).

(b) Where private counsel is provided, the following procedures shall apply:

- (1) The Department of Justice must approve in advance any private counsel to be retained under this section. Where national security interests may be involved, the Department of Justice will consult with the agency employing the federal defendant seeking representation.
- (2) Federal payments to private counsel for an employee will cease if the Department of Justice (i) decides to seek an indictment of or to issue an information against that employee on a federal criminal charge relating to the act or acts concerning which representation was undertaken; (ii) determines that the employee's actions do not reasonably appear to have been performed within the scope of his employment; (iii) resolves any conflict described herein and tenders representation by Department of Justice attorneys; (iv) determines that continued representation is not in the interest of the United States; (v) terminates the retainer

for any reasons.

(c) In any case in which the employee is not represented by a Department of Justice attorney, the Department of Justice may seek leave to intervene or appear as amicus curiae on behalf of the United States to assure adequate consideration of issues of governmental concern.

Date:

GRIFFIN B. BELL
Attorney General

RGD:LU:MG:jh

JAN 16 1974

cc: Files
Gauf ✓
Grunewald

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Detailing of Attorneys to the White House
(Summary of Two Attached Memoranda)*to Lindenbaum*
1/16/74

I. Section 107 of title 3, United States Code, provides:

"Employees of the executive departments and independent establishments of the executive branch of the Government may be detailed from time to time to the White House Office for temporary assistance."

In response to White House inquiries, we have considered whether this provision may be relied upon to staff a temporary legal group to represent the President's interests in judicial and congressional proceedings relating to Watergate matters. Although the language of section 107 is unrestricted on its face and our research has not uncovered any specific limitation, there may be two implicit limitations:

1. Congress probably did not contemplate this provision being used in the unique situation in which there existed a conflict of interest, real or apparent, between the executive component from which an employee is detailed and the White House. Given the broad law enforcement responsibility of the Department presently being implemented in regard to Watergate matters by the Special Prosecution Force, it is possible to suggest the existence of a conflict for any Justice Department attorney detailed to the White House to represent the President's interests in these matters.

2. It is certainly unlikely that Congress contemplated detailed employees being used for personal rather than official matters. Utilizing the services of government attorneys on matters such as the President's income tax would appear to be outside the scope of section 107.

II. Apart from section 107, we have considered two additional statutory provisions:

A. Section 3106 of title 5, United States Code, provides in part:

"Except as otherwise authorized by law, the head of an executive department or military department may not employ an attorney or counsel for the conduct of litigation in which the United States, an agency, or employee thereof is a party, or is interested, or for the securing of evidence therefor, but shall refer the matter to the Department of Justice."

It has been suggested that this provision might preclude the White House from utilizing attorneys serving in the White House to conduct litigation involving the President, regardless of whether they were employed independently by the White House or detailed from an executive department. In regard to three categories of attorneys, our views are as follows:

1. Attorneys employed directly by the White House - Section 3106 on its face applies only to the employment of attorneys by the head of an executive or military department. Thus, the statute does not restrict the White House, i.e., the President.

2. Attorneys detailed from departments other than Justice - It could be argued that section 3106 permits executive departments, other than Justice, to employ an attorney on detail to the White House even though the attorney would "conduct litigation," on the theory that the attorney is not being employed by his department "for the conduct of litigation," but merely is being employed under a general detail which is amplified at the discretion of the White House to include litigation. This argument, however, may be said to distort the spirit, if not the letter, of section 3106.

3. Attorneys detailed from Justice - Section 3106 is inapplicable on its face to Justice Department employment of attorneys to conduct litigation. However, if a Department attorney were detailed to the White House to conduct litigation on behalf of the President, the problem of conflict and appearances noted earlier in this memorandum would arise.*

*/ Nevertheless, it should be recognized that there are presently three Justice Department attorneys on detail to the White House, who were detailed during the tenure of Attorney General Richardson.

3. Section 516 of title 28, United States Code, provides:

"Except as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or officer thereof, is a party, or is interested and securing evidence therefor, is reserved to officers of the Department of Justice, under the direction of the Attorney General."

It has been suggested that this provision, which corresponds affirmatively to section 3106, might obligate the Department to conduct the subject litigation, thus precluding alternative forms of White House attorney staffing. Although a literal reading of section 516 might lead to this conclusion, it is anomalous, in light of the conflict and appearances problem discussed earlier, to construe this provision as requiring Justice Department representation of the President's interests in Watergate matters.

III. Recommendation:

1. Because of the Special Prosecutor activity and the activity of the House Committee on impeachment, it may be inadvisable to detail additional Justice attorneys because of the conflict of interest situation on any matter of an arguably criminal nature.
2. Consideration should be given to delineating with more clarity the permissible role of the Justice attorneys now detailed to the White House.

Attachments (2)

Robert G. Dixon, Jr.
Assistant Attorney General
Office of Legal Counsel

