

MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

September 23, 1975

MEMORANDUM FOR JACK MARSH

FROM: HENRY A. KISSINGER

SUBJECT: Administration Position toward the Handling of  
Classified Information with the Pike Committee

On September 11, the House Select Committee, by a majority vote, declassified and made public classified information without the approval of the Executive Branch.

This action constitutes a challenge to the President's constitutional responsibility to conduct foreign affairs and protect the national security of the United States. Inherent in this responsibility is the authority to assure the protection of sensitive information associated with the execution of this responsibility.

Under the Constitution, the Congress is charged with making appropriations which enable the President to execute the above responsibilities. Historically, the Congressional oversight role has been carried out under an accommodation between the two branches which has provided for the exchange of information under conditions of mutual respect for its sensitivity. That good faith relationship has now been breached by a single committee of the Congress. In determining the Administration position for resolving this dispute, I believe it is important to make clear that the traditional ground rules remain a valid basis for doing business and that there is no objection--indeed we fully respect--the practices being followed by the other committees of the Congress. This is not to say that we will not face challenges of a similar nature from other committees. However, I believe that it would be unwise to broaden the confrontation unnecessarily.

The basic issue is the asserted right of the Pike Committee unilaterally to declassify classified information.

Ford Papers: Prez Handwriting File: Noel Security Series, b. 30, f: "Incl (3)."  
Photocopy from Gerald R. Ford Library



The Issues

All classified information or sensitive information

The nature of the classification system, by definition, makes clear that there are gradations of sensitivity. It is an Executive responsibility to assure that information is not classified frivolously. Pursuant to that criterion, however, once information is classified there must be the presumption that it should not be made public. Over time, information formerly classified may lose its sensitivity. Current regulations (Executive Order 11652) recognize this and provide a means for the downgrading of classification. In special circumstances, such as are represented by the Select Committee investigations, the regulations may be excepted to provide for urgent declassification in exigent cases. During the course of these investigations, I would concur in a position of responsiveness to Committee requests for declassification on a case-by-case basis.

More specifically, I believe that the Administration should respond to Committee requests by providing information under its current classification, expressing concurrently a willingness to deal promptly with Committee requests for declassification. When disagreements arise, however, over the declassification of certain information, I believe that the final determination must reside in the Executive branch. It is this question which is now at issue with the Pike Committee. It is my firm belief that Executive authority in this area is accepted by the Congress, as witnessed in statutes and the absence of challenge through the years.

The question then is how to bring the Pike Committee into conformity with traditional Congressional practice in this area.

I cannot comment on the legal merits of the case, although, as implied above, I believe that the President's constitutional authority is clear and the derived power to preserve classification obvious.

In the days ahead, I believe the Administration should seek the Committee's recognition of those rules which have traditionally been observed. These rules should provide for:



-- full and deliberate consultation between the Committee and the classifying Agency to include the highest level.

-- if the issue cannot be resolved in this manner, it should be referred to the Leadership of the House in question for a decision on the merits or further referral to the President.

-- if, following the President's decision, the leadership is dissatisfied, the matter could be referred to the courts.

Strategy

In the instant case, I believe that the approach outlined above should be presented to the House leadership in an early meeting with the President. If the House leadership is unwilling to accept such an approach, I believe that the President's current proscription against providing classified information to the House Select Committee should be maintained and that the Committee should be left to consider an early court test of its position on this issue.



WH: NSC Staff: Memo, Henry Kissinger (security advisor) - John O. Marsh  
(Counsellor to prez)

Sept 23, 1975

Re: advice to reject Pike Committee stand + refuse  
to provide information - unless HSC accepts admin inules

SOURCE: on front



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