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**Collection:** Culvahouse, Arthur B.: Files  
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# WITHDRAWAL SHEET

## Ronald Reagan Library

**Collection Name** CULVAHOUSE, ARTHUR B.:FILES

**Withdrawer**

DLB 4/1/2014

**File Folder** IRAN/ARMS TRANSACTION: NOTES FROM NSC MEETINGS

**FOIA**

S643

**Box Number** CFOA 1131

SYSTEMATIC

126

ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
164703	EMAIL	OLIVER NOTH TO JOHN POINDEXTER, RE: PRIVATE BLANK CHECK, PROJECT DEMOCRACY ASSETS	1	7/15/1986	B1
164704	LETTER	OLIVER NORTH TO ROBERT MCFARLANE, RE: RESPONSE TO LETTER FROM CONGRESSMAN MIKE BARNES	1	11/8/1985	B1
164705	LETTER	DRAFT LETTER - MCFARLANE TO CONGRESSMAN BARNES	1	ND	B1
164706	MEMO	DUPLICATE OF #164704	1	11/8/1985	B1
164707	LETTER	DUPLICATE OF #164705	1	ND	B1
164708	LETTER	EDITED DRAFT MCFARLANE TO CONGRESSMAN BARNES	1	ND	B1

The above documents were not referred for declassification review at time of processing

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]

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IRAN/ARMS TRANSACTION: CONTRAS - PROJECT  
DEMOCRACY

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164704	LETTER  OLIVER NORTH TO ROBERT MCFARLANE, RE: RESPONSE TO LETTER FROM CONGRESSMAN MIKE BARNES	1	11/8/1985	B1

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TAB

I

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IRAN/ARMS TRANSACTION: CONTRAS - PROJECT  
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<i>ID</i>	<i>Document Type</i> <i>Document Description</i>	<i>No of</i> <i>pages</i>	<i>Doc Date</i>	<i>Restric-</i> <i>tions</i>
I64705	LETTER  DRAFT LETTER - MCFARLANE TO CONGRESSMAN BARNES	1	ND	B1

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THE WHITE HOUSE  
WASHINGTON

The Honorable Michael D. Barnes  
House of Representatives  
Washington, D.C. 20515

TAB

II



DANTE B. FASCELL, Florida, Chairman

LEE H. HAMILTON, INDIANA  
GUS YATRON, PENNSYLVANIA  
STEPHEN J. SOLARZ, NEW YORK  
DON BONKER, WASHINGTON  
GERRY E. STUDDS, MASSACHUSETTS  
DAN MICA, FLORIDA  
MICHAEL D. BARNES, MARYLAND  
HOWARD WOLFE, MICHIGAN  
GEO. W. CROCKETT, JR., MICHIGAN  
SAM GEIDENSON, CONNECTICUT  
MERYNN M. DYMALLY, CALIFORNIA  
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CONNIE MACK, FLORIDA  
MICHAEL DEWINE, OHIO  
DAN BURTON, INDIANA  
JOHN MCCAIN, ARIZONA

Congress of the United States  
Committee on Foreign Affairs  
House of Representatives  
Washington, DC 20515

October 29, 1985

JOHN J. BRADY, JR.  
Chief of Staff

The Honorable Robert C. McFarlane  
Assistant to the President for  
National Security Affairs  
Executive Office of the President  
The White House  
Washington, D.C. 20500

Dear Mr. McFarlane:

I am writing with respect to my request for information and documentation on the activities of members of the staff of the National Security Council in connection with the Nicaraguan rebels.

I appreciate your willingness to share some such information and documentation with me. However, it is my belief that the procedures that you have suggested under which I would have access to this information would be inadequate to permit me to reach any confident conclusions regarding the relationship of the NSC staff with the rebels. Clearly, competent staff must have the opportunity to subject this information to serious analysis if any meaningful conclusions are to be drawn. I have consulted with the leadership of the House, which shares my belief on this matter.

Accordingly, and after consultation with the Chairman of the Permanent Select Committee on Intelligence, The Honorable Lee H. Hamilton, I hereby request that you provide this information and documentation to the Intelligence Committee under that Committee's normal procedures for Member and staff access to and review of highly classified materials.

I believe that this proposal would surely resolve any concerns that the Administration might have about the security of the information, while at the same time fulfilling the responsibilities of the House.

As you requested during our recent meeting, I am attaching an outline of the information that we are requesting.

Once again, I appreciate your willingness to be forthcoming on this matter and trust that this proposal will resolve the issue of congressional access to this information to everyone's satisfaction.

Sincerely,

A handwritten signature in black ink that reads "Mike Barnes". The signature is written in a cursive, slightly slanted style.

Michael D. Barnes  
Chairman  
Subcommittee on Western  
Hemisphere Affairs

cc: The Honorable Thomas P. O'Neill, Jr.  
The Honorable Lee H. Hamilton  
The Honorable Dante B. Fascell

MDB:vj

ILLUSTRATIVE LIST OF INFORMATION REQUIRED OF THE NSC ON ITS RELATIONS WITH THE CONTRA

1. A complete list of all meetings or contacts between Lt. Col. North or any other member or official of the NSC staff and:
  - (a) "members of the Nicaraguan resistance since the opposition began to organize in 1982" (September 12 McFarlane letter, p. 1. third para.).
  - (b) "leaders of the Nicaraguan resistance" since October, 1984 (September 12 McFarlane letter, p. 2, first full para.).
  - (c) the Nicaraguan resistance that "have focused on ensuring that the \$27 million in humanitarian assistance is properly administered and fully compliant with the legal requirements contained in the legislation" (September 12 McFarlane letter, p. 2, last para.).
  - (d) paramilitary groups such as CMA, Soldiers of Fortune, etc.
  - (e) Friends of the Americas, a Louisiana group headed by Woody Jenkins.
  - (f) representatives of South Korea, Taiwan, Israel, or any other country, in July, 1984, or at any other time, pertaining to assistance for the Nicaraguan resistance.
  - (g) John Hull, an American rancher with land in northern Costa Rica,
  - (h) General Singlaub, or any other person involved in fundraising for the resistance, regarding fundraising plans or activities, military needs of the resistance, or any other matter relating to the Nicaraguan resistance.
  - (i) any person pertaining to the Nicaraguan refugee fundraising dinner that was held in April, 1985.
2. All information with respect to any meeting or other contact referred to above, including any memoranda, reports, minutes, meeting schedules, appointment calendars, memoranda of calls, phone logs, and any other information.
3. Any memoranda or other documents prepared by Lt. Col. North or any other member or officer of the NSC staff containing or discussing plans or programs with respect to aid for the Nicaraguan resistance, any supporting documentation or other information related to such documents, any records of NSC consideration or review of any such plans or programs, and any documents pertaining to the adoption or implementation of any such plans or programs.

Congress of the United States  
Committee on Foreign Affairs  
House of Representatives  
Washington, D.C. 20515

Official Business

*Ante B. Fascell*  
M.C.

The Honorable Robert C. McFarlane  
Assistant to the President  
for National Security Affairs  
Executive Office of the President  
The White House  
Washington, D.C. 20500

II

LA

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

November 8, 1985

MEMORANDUM FOR OLLIE NORTH

FROM: KARNA SMALL ✓  
SUBJECT: Cong. Barnes and the media

I wanted you to be aware that I just received a phone call from Bob Parry, AP, asking for comments, confirmation, on the following:

Parry says Cong. Barnes has written to McFarlane and has rejected NSC's offer to let Barnes look at documents pertaining to NSC involvement with special interest groups since the time of a cut-off of CIA funding for the contras.

He says he understands that NSC had said Barnes could come in by himself, look at some selected documents, could not take them with him, could not have staff with him. Barnes rejected that as too restrictive and suggested that instead, the NSC supply a whole range of documents pertaining to these questions to the House Intelligence Committee since that's the committee that has more of a tradition in dealing with sensitive matters of this type.

He says the letter was sent near the end of October. (I asked if he had the letter; he said he doesn't have it but generally knows its contents).

He wants to confirm that such a letter was sent or that this was our offer and that we were willing to let Barnes see such things; also wants to confirm that we were willing to make documents available to House Intelligence committee.

I wanted you to have this detail not because I am going to comment on the story (I don't believe we should be commenting on private correspondence between Bud and a Congressman) but because you can add into your calculus the obvious fact that Barnes, or his staff, is leaking everything to the Associated Press (or at least it certainly appears that way). I told Parry I'd have to get back to him. Any guidance?

Thanks.

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164706	MEMO  DUPLICATE OF #164704	1	11/8/1985	B1

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164707	LETTER  DUPLICATE OF #164705	1	ND	B1

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# Congress of the United States

## Committee on Foreign Affairs

House of Representatives

Washington, DC 20515

October 29, 1985

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Chief of Staff

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The White House  
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Chairman  
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cc: The Honorable Thomas P. O'Neill, Jr.  
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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

November 8, 1985

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Congress of the United States  
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Washington, D.C. 20515

Official Business

*Nanto B. Fascell*  
M.C.

The Honorable Robert C. McFarlane  
Assistant to the President  
for National Security Affairs  
Executive Office of the President  
The White House  
Washington, D.C. 20500



# United States Department of the Interior

OCT 7 1981

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

October 7, 1981

Honorable John D. Dingell  
Chairman, Subcommittee on Oversight  
and Investigations  
Committee on Energy and Commerce  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Dingell:

This is an interim response to the subpoena issued by your Subcommittee on September 28, 1981, and served on this Department on October 2, 1981.

As you are aware, the Department of the Interior is currently evaluating whether Canada should be determined to be a nonreciprocating nation for purposes of Mineral Lands Leasing Act. In my August 6 testimony before your Subcommittee, I stated that the Department of the Interior would attempt to make this determination within 120 days. Deliberations are now proceeding both within the Department of the Interior and among various Federal agencies regarding this question and other generally related issues. Certain documents which the Subcommittee has subpoenaed reflect the nature and details of these ongoing deliberations.

As you are also aware, the question of reciprocity carries important implications for the Nation's foreign policy generally and its relations with Canada in particular. A number of the documents which the Subcommittee has subpoenaed contain information the unauthorized disclosure of which reasonably could be expected to cause identifiable damage to our conduct of foreign policy.

It is our intention to make every reasonable accommodation to the legitimate needs of the Legislative Branch and your Subcommittee in this matter. We believe that the information which we have provided to date and which we have offered to provide at a future date will more than adequately meet the Subcommittee's stated need for information on this subject.

On September 24, 1981, we supplied to the Subcommittee a large percentage of the documents subsequently demanded by the subpoena. Our submission included a list of 36 published sources and copies of 160 documents. Only a small number of documents were withheld at that time because of the need to protect the deliberative processes and the effective conduct of the Nation's foreign policy. After receiving the Subcommittee's subpoena, we have initiated a process of interagency review of these documents, involving, in addition to the Department of the Interior, the Departments of Commerce, Treasury, and State and the United States Trade Representative. We are confident that we will be able to release a substantial amount of material to your Subcommittee once this review process is complete, by October 14 at the latest. In addition, we may well be able to release additional materials

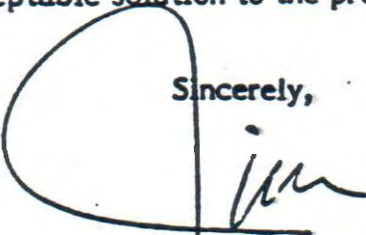
(CUP 10 1979)

N1980  
12/4/81

once this Department has completed its deliberations with respect to the status of Canada under the Mineral Lands Leasing Act.

I hope that during the coming week the release of additional documents to your Subcommittee will convince you that your needs have been satisfied, taking into account the Executive's need for confidentiality in its decisionmaking processes and the conduct of our foreign policy. Also, the affected Departments, including my own, stand ready to meet with you or your staff to work out an acceptable solution to the problems posed by the issuance of the subpoena.

Sincerely,

A handwritten signature in black ink, appearing to be 'JG Watt', written over a horizontal line. A large, loopy flourish extends from the left side of the signature, looping back up and around the word 'Sincerely,'.

James G. Watt  
SECRETARY



*file*

MATERIAL ON

EXECUTIVE PRIVILEGES

1. Attorney General Opinion - October 13, 1981
2. Memorandum for the Secretary of the Interior -  
October 13, 1981
3. Memorandum for Heads of  
Executive Departments and Agencies  
March 24, 1969



Office of the Attorney General

Washington, D. C. 20530

13 OCT 1981

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

Dear Mr. President:

You have requested my advice concerning the propriety of an assertion of executive privilege in response to a subpoena issued by the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce (Subcommittee). The subpoena was issued on September 28, 1981, and served on the Department of the Interior on October 2, 1981. It demands the production of certain documents by October 14, 1981. It seeks "all documents relative to the determination of reciprocity under the Mineral Lands Leasing Act, 30 U.S.C. § 181, including documents relating to the general matter of reciprocity and the specific question of the status of Canada, utilized or written by officials and staff of the Department of Interior on or before September 18, 1981." <sup>1/</sup> The Office of Legal Counsel of the Department of Justice has examined documents embraced by the subpoena and identified by the Department of the Interior as being potentially subject to a claim of executive privilege, and has concluded that a proper claim of privilege may be asserted with respect to all of the documents identified in the attachment hereto. I concur in that conclusion. I believe that the documents identified are properly subject to a claim of executive privilege and that the privilege should be asserted with respect to those documents.

I.

I understand that on September 24, 1981, the Department of the Interior supplied the Subcommittee with a large number of the materials presently demanded by the subpoena, including a list of 36 published sources and copies of 143 documents.

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<sup>1/</sup> - The Mineral Lands Leasing Act (Act) provides, in pertinent part, that "citizens of another country, the laws, customs or regulations of which deny similar or like privileges to citizens of this country, shall not by stock ownership, stock holding, or stock control, own any interest in any lease acquired under the provisions of this Act."

Once the subpoena was issued, the Department of the Interior, in consultation with other Departments having an interest in the matter, including the Departments of State, Commerce, Treasury, Justice, and the Offices of the United States Trade Representative and the White House Counsel, once again reviewed the documents which had not previously been provided to the Subcommittee. In an effort to make every reasonable accommodation to the legitimate needs of the Legislative Branch, the Department of the Interior released an additional 31 documents to the Subcommittee on October 9, 1981. One document was shown to the Subcommittee staff at that time but was not released. In addition, the Subcommittee was provided with a written list and oral description of the 31 documents which had been withheld. The Subcommittee staff was permitted to ask questions concerning the nature of those documents, a procedure designed to provide the Subcommittee with enough information to assure itself that the documents are not essential to the conduct of the Subcommittee's legislative business. Finally, the Subcommittee was informed that an additional 5-10 documents would be released once the Department of the Interior had concluded its deliberations regarding the status of Canada under the Act.

All of the documents in issue are either necessary and fundamental to the deliberative process presently ongoing in the Executive Branch or relate to sensitive foreign policy considerations. Several of the documents reflect views of officials of the Canadian Government transmitted in confidence to United States officials as well as statements regarding the status of Canada by officials of the Department of State. Other documents, prepared for the Cabinet Council on Economic Affairs and the cabinet-level Trade Policy Committee, are predecisional, deliberative memoranda which have been considered by officials at the highest levels of government. Both the Cabinet Council and the Trade Policy Committee prepare recommendations for Presidential action; in addition, you personally attend some Cabinet Council meetings and chair these meetings when you do attend. Finally, a large portion of the documents being withheld reflect internal deliberations within the Department of the Interior regarding the status of Canada under the Act. Some of these documents are staff level advice to policymakers containing recommendations regarding decisions which have not yet become final. Others contain internal Interior Department deliberations regarding its participation in the Trade Policy Staff Committee and the Cabinet Council on Economic Affairs. Still other documents reflect tentative legal judgments regarding questions arising under the Act. In addition, the subpoena encompasses preliminary drafts of congressional testimony by the Secretary of the Interior. These latter documents, although generated at levels below that of the Cabinet and subcabinet, are of a highly deliberative nature and involve an on-going decisional process of considerable sensitivity.

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## II.

The Office of Legal Counsel of the Department of Justice has examined each of these documents and has concluded that they may properly be withheld from the Congress at this time. These documents are quintessentially deliberative, predecisional materials. Each of the agencies which generated the documents has stated that their release to the Subcommittee would seriously interfere with or impede the deliberative process of government and, in some cases, the Nation's conduct of its foreign policy. Because the policy options considered in many of these documents are still under review in the Executive Branch, disclosure to the Subcommittee at the present time could distort that decisional process by causing the Executive Branch officials to modify policy positions they would otherwise espouse because of actual, threatened, or anticipated congressional reaction. Moreover, even if the decision at issue had already been made, disclosure to Congress could still deter the candor of future Executive Branch deliberations, because officials at all levels would know that they could someday be called by Congress to account for the tentative policy judgments which they had earlier advanced in the councils of the Executive Branch. As the Supreme Court has noted, "human experience teaches that those who expect dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process." United States v. Nixon, 418 U.S. 683, 705 (1974). You must have access to complete and candid advice in order to provide the soundest basis for presidential decisions. I have concluded that release of these documents would seriously impair the deliberative process and the conduct of foreign policy. There is, therefore, a strong public interest in withholding the documents from congressional scrutiny at this time.

Against this strong public interest I must consider the interest of Congress in obtaining these documents. The Subcommittee, in its letter to Secretary Watt of August 13, 1981, stated that it was conducting a "legislative oversight inquiry" into the impact of Canadian energy policies upon American companies. The Subcommittee's next formal communication to Secretary Watt, the subpoena issued on September 28 and served October 2, did not further explain the Subcommittee's need for the information. I therefore presume that the

Subcommittee's interest in obtaining these documents is one of legislative oversight. 2/

Congress does have a legitimate interest in obtaining information to assist it in enacting, amending, or repealing legislation. This interest extends beyond information bearing on specific proposals for legislation; it includes, as well, the congressional "oversight" function of being informed regarding the manner in which the Executive Branch is executing the laws which Congress has passed. Such oversight enables the Legislative Branch to identify at an early stage shortcomings or problems in the execution of the law which can be remedied through legislation.

While I recognize the legitimacy of the congressional interest in the present case, it is important to stress two points concerning that interest. First, the interest of Congress in obtaining information for oversight purposes is, I believe, considerably weaker than its interest when specific legislative proposals are in question. At the stage of oversight, the congressional interest is a generalized one of ensuring that the laws are well and faithfully executed and of proposing remedial legislation if they are not. The information requested is usually broad in scope and the reasons for the request correspondingly general and vague. In contrast, when Congress is examining specific proposals for legislation; the information which Congress needs to enable it to legislate effectively is usually quite narrow in scope and the reasons for obtaining that information correspondingly specific. A specific, articulated need for information will weigh substantially more heavily in the constitutional balancing than a generalized interest in obtaining information. See United States v. Nixon, supra; Senate Select Committee on Presidential Campaign Activities v. Nixon, 498 F.2d 725, 731-33 (D.C. Cir. 1974)(en banc).

Second, the congressional oversight interest will support a demand for predecisional, deliberative documents in the possession of the Executive Branch only in the most unusual circumstances. It is important to stress that congressional oversight of Executive Branch actions is justifiable only as a means of facilitating the legislative task of enacting,

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2/ The House Committee on Energy and Commerce does have pending before it several bills, H.R. 4033, H.R. 4146, and H.R. 4186, which would amend the Act in certain respects. The pendency of these bills has not been formally asserted as a reason for obtaining the documents. Moreover, the documents requested appear to have a tangential relevance at best to the subject matter of the bill.

amending, or repealing laws. When such "oversight" is used as a means of participating directly in an ongoing process of decision within the Executive Branch, it oversteps the bounds of the proper legislative function. Restricted to its proper sphere, the congressional oversight function can almost always be properly conducted with reference to information concerning decisions which the Executive Branch has already reached. Congress will have a legitimate need to know the preliminary positions taken by Executive Branch officials during internal deliberations only in the rarest of circumstances. Congressional demands, under the guise of oversight, for such preliminary positions and deliberative statements raise at least the possibility that the Congress has begun to go beyond the legitimate oversight function and has impermissibly intruded on the Executive Branch's function of executing the law. At the same time, the interference with the President's ability to execute the law is greatest while the decisionmaking process is ongoing.

Applying the balancing process required by the Supreme Court, it is my view that the Executive Branch's interests in safeguarding the integrity of its deliberative processes and its conduct of the Nation's foreign policy outweigh the stated interest of the Subcommittee in obtaining this information for oversight purposes. It is, therefore, my view that these documents may properly be withheld from the Subcommittee at the present time.

### III.

Finally, a brief word is in order concerning the negotiations between the Department of the Interior and the Subcommittee during this dispute. In cases in which the Congress has a legitimate need for information that will help it legislate and the Executive Branch has a legitimate, constitutionally recognized need to keep information confidential, the courts have referred to the obligation of each Branch to accommodate the legitimate needs of the other. See United States v. American Tel. & Tel. Co., 567 F.2d 121, 127, 130 (D.C. Cir. 1977); see generally United States v. Nixon, *supra*. The accommodation required is not simply an exchange of concessions or a test of political strength. It is an obligation of each Branch to make a principled effort to acknowledge, and if possible to meet, the legitimate needs of the other Branch.

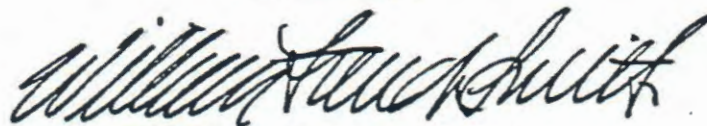
It is my view that the Executive Branch has made such a principled effort at accommodation in the present case. Prior to the issuance of the subpoena, the Department of the Interior supplied the Subcommittee with a large number of the documents subsequently requested by the subpoena. In response to the subpoena, the interested Executive Branch departments reviewed those documents which had been withheld and identified documents

that could be supplied in an effort to further accommodate the Subcommittee's needs. Substantial additional materials were released to the Subcommittee on October 9, 1981, despite the fact that at least some of these materials were deliberative in nature and therefore presumptively subject to a claim of privilege. Moreover, the Department of the Interior has promised to release additional material once its deliberations regarding the status of Canada under the Act are completed. Finally, members of the Subcommittee staff were provided a comprehensive list of the materials being withheld from disclosure, and were briefed orally by the various federal agencies regarding the nature of those documents.

In contrast, the Subcommittee has not to date shown itself sensitive to the legitimate needs of the Executive Branch. As noted, it has never formally stated its need for the materials beyond a generalized interest in "oversight." It responded to the submission of documents by the Executive Branch on September 24 by issuing a subpoena four days later -- a subpoena which was broader in scope than the Subcommittee's original August 13 request. To date, the Subcommittee has shown little interest in accommodating legitimate interests of the Executive Branch in safeguarding the privacy of its deliberative processes and conducting the Nation's foreign policy. This lack of accommodation on the Subcommittee's part lends further support to my conclusion that the documents in question may properly be withheld.

In conclusion, it is my opinion that the documents now being withheld are well within the scope of executive privilege. The process by which the President makes executive decisions and conducts foreign policy would be irreparably impaired by production of these documents at this time. I recommend that executive privilege be asserted.

Sincerely,



William French Smith  
Attorney General



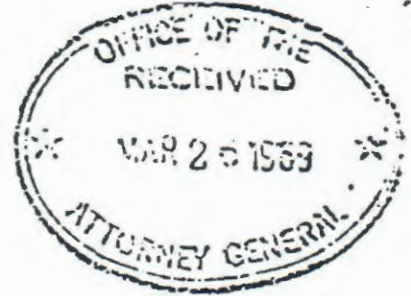
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THE WHITE HOUSE  
WASHINGTON

MAR 27 9 36 AM '69

OFFICE OF LEGAL COUNSEL

March 24, 1969



MEMORANDUM FOR THE HEADS OF

EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: ESTABLISHING A PROCEDURE TO GOVERN COMPLIANCE  
WITH CONGRESSIONAL DEMANDS FOR INFORMATION

The policy of this Administration is to comply to the fullest extent possible with Congressional requests for information. While the Executive branch has the responsibility of withholding certain information the disclosure of which would be incompatible with the public interest, this Administration will invoke this authority only in the most compelling circumstances and after a rigorous inquiry into the actual need for its exercise. For those reasons Executive privilege will not be used without specific Presidential approval. The following procedural steps will govern the invocation of Executive privilege:

1. If the head of an Executive department or agency (hereafter referred to as "department head") believes that compliance with a request for information from a Congressional agency addressed to his department or agency raises a substantial question as to the need for invoking Executive privilege, he should consult the Attorney General through the Office of Legal Counsel of the Department of Justice.
2. If the department head and the Attorney General agree, in accordance with the policy set forth above, that Executive privilege shall not be invoked in the circumstances, the information shall be released to the inquiring Congressional agency.
3. If the department head and the Attorney General agree that the circumstances justify the invocation of Executive privilege, or if either of them believes that the issue should be submitted to the President, the matter shall be transmitted to the Counsel to the President, who will advise the department head of the President's decision.

4. In the event of a Presidential decision to invoke Executive privilege, the department head should advise the Congressional agency that the claim of Executive privilege is being made with the specific approval of the President.
5. Pending a final determination of the matter, the department head should request the Congressional agency to hold its demand for the information in abeyance until such determination can be made. Care shall be taken to indicate that the purpose of this request is to protect the privilege pending the determination, and that the request does not constitute a claim of privilege.

*Richard Nixon*

THE WHITE HOUSE

WASHINGTON

October 13, 1981

MEMORANDUM FOR THE SECRETARY OF THE INTERIOR

SUBJECT: Congressional Subpoena for Executive  
Branch Documents

I have been advised that the Subcommittee on Oversight and Investigations of the Energy and Commerce Committee of the House of Representatives has issued a subpoena requiring you to produce documents relating to the issue of reciprocity under the Mineral Lands Leasing Act. I understand that you have provided both documents and testimony on this subject to the Subcommittee.

Nevertheless, it has been brought to my attention that thirty-one documents that may be covered by the subpoena have not been furnished to the Subcommittee. It is my decision that you should not release these documents, since they either deal with sensitive foreign policy negotiations now in process or constitute materials prepared for the Cabinet as part of the Executive branch deliberative process through which recommendations are made to me. Therefore, I am compelled to assert Executive privilege with respect to these documents and to instruct you not to produce them to the Subcommittee. I request that you advise the Subcommittee of my decision in this matter. ;

I also request that you remain willing to meet informally with the Subcommittee to provide such information as you can, consistent with your obligations of confidentiality to the President, and without creating a precedent that would violate the Constitutional doctrine of separation of powers.

Ronald Reagan

Items Not Being Released

1. Memorandum from William Brock, United States Trade Representative to members of the Trade Policy Committee, regarding options paper on Canadian Investment Policy dated July 6, 1981, and attached options paper.
2. Memorandum from the Assistant Secretary for Energy and Minerals to the Director of the Bureau of Land Management and the Solicitor of the Department of Interior regarding Canadian reciprocity determination under Mineral Lands Leasing Act, dated July 2, 1981
3. Portions of meetings of Trade Policy Meetings dated July 7, and July 24, 1981.
4. Undated memorandum to the Secretary from the Solicitor of Interior regarding reciprocity determination.
5. Classified telegrams from U.S. Embassy in Canada dated July 17 and July 22, 1981.
6. Classified State Department memoranda from commercial officer AMCONGEN Calgary dated July 27, 1981.
7. Minutes of meeting of United States/Canada consultations on operations of the Foreign Investment Review Agency, dated June 12, 1981.
8. Drafts of testimony for Secretary of the Interior concerning foreign investment policy dated July 17, 1981, July 31, 1981 and August 5, 1981.
9. Undated paper prepared for Secretary of the Interior's use in Cabinet Council discussion entitled "Foreign Investment in the U.S. Energy and Mineral Industries."

RR

10. Undated memorandum to the Undersecretary of Interior <sup>from</sup> ~~to~~ the Solicitor, regarding legal issues on Canadian reciprocity.

11. Memorandum from Perry Pendley to Secretary Watt dated July 23, 1981, regarding Mineral Leasing Act.

12. Memorandum from Roger Porter to Cabinet Council on Economic Affairs, dated July 21, 1981, regarding Mineral Lands Leasing Act.

13. Memorandum from Roger Porter to James G. Watt regarding Cabinet Council on Economic Affairs meeting, July 22, 1981.

14. Cabinet Council on Economic Affairs agenda and issue paper on Canadian Foreign Investment Policy, dated July 21 and 23, 1981.

15. Memorandum for the Cabinet Council on Economic Affairs from Roger P. Porter, dated July 21 and 27, 1981.

16. Memorandum from Donald Hodel to Roger Porter and attached Cabinet Council issue paper on Canadian foreign investment policy, dated July 24, 1981.

17. Untitled, undated paper on Foreign Investment in the U.S. Energy and Minerals Energy.

18. Untitled, undated State Department paper on Mineral Lands Leasing Act of 1920.

19. Memorandum from William Brock to Trade Policy Committee, dated July 6, 1981, regarding attached paper on Canadian investment policy.

20. Memorandum to Director of Bureau of Land Management and Solicitor of Interior, dated July 2, 1981, regarding Canadian reciprocity determination under 1920 Mineral Leasing Act.

RR

21. Memorandum from Jack Campbell to Mark Santucci, dated September 4, 1981, regarding comments on early papers for TPSC response to Canada.

22. Undated memorandum to Secretary of Interior from Solicitor of the Interior regarding reciprocity determinations.

23. Memorandum from Jack Campbell to Frank Vukmanic dated July 14, 1981, regarding issues of concern to the Department of the Interior in foreign (Canadian) investment in U.S. companies.

24. Memorandum from Ligia Salcedo, July 14, 1981, regarding limited reciprocal status in Canada within the meaning of the Mineral Leasing Act.

25. Cabinet Council issue paper, July 24, 1981, regarding Canadian foreign investment policy.

26. Interior Department memorandum regarding issues concerning the Mineral Lands Leasing Act reciprocity provision.

27. Interior Department memorandum from Jack Campbell dated September 9, 1981, regarding further issues concerning the Mineral Leasing Lands Act reciprocity provision.

28. Interior Department memorandum from Jack Campbell, dated August 11, 1981, regarding first stage review of reciprocity provision of the Mineral Act.

29. Paper entitled "Legal Questions concerning the Non-Reciprocal Provision of the Mineral Lands Leasing Act of 1920."

30. Paper entitled "Options for Making Reciprocity Provisions under the Authority of the Mineral Lands Leasing Act of 1920."

31. Untitled Interior Department Options paper on foreign investments.

RR

# WITHDRAWAL SHEET

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The above documents were not referred for declassification review at time of processing  
Freedom of Information Act - [5 U.S.C. 552(b)]

- B-1 National security classified information [(b)(1) of the FOIA]
- B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
- B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

As I have stated in earlier correspondence,  
the involvement of members of the USC has been  
within the letter and the spirit of the law.

I have personally ~~appeared~~ <sup>briefed</sup> the HPSCT  
and have answered follow-up questions to the  
members satisfaction on all of these issues raised  
by them. I have also met w/ you and discussed  
in detail our actions as documented.

Beyond that offer I am not at liberty nor how  
it be appropriate to provide items to members of  
your staff.

N1982  
12/15/80  
KC