April 3, 1950

My dear Mr. President:

I am enclosing a subpoena, dated March 26, 1950, which has been served upon me, directing me to appear before the Subcommittee established by the Committee on Foreign Relations of the Senate pursuant to S. Res. 231, 81st Congress, on April 4, 1950, and there to produce certain documents and papers with regard to a number of persons whose names appear on a confidential list attached to the subpoena.

I am also enclosing a copy of my answer to the Chairman of the Subcommittee stating that I am referring the matter to the President.

Respectfully,

[Signature]

The President,

The White House.
Senator Tydings has asked John F. Ehrlichman that he be advised by
Monday, March 20th, of the terms and conditions under which the
loyalty and security files in connection with Senator McCarthy's
charges of Communists in the State Department will be made avail-
able to the Committee. He stated that on two different occasions
the President had informed him that pertinent files would be
furnished to the Committee at the White House. The Senator indicated
also that the files would be made available to the Committee's
investigative staff. It is, therefore, important, in the event
that a commitment has in fact been made for voluntary disclosure,
to consider the nature of the agreement that was entered into by
the President and Senator Tydings and just what method of procedure
should be followed in making the files available.

1. If a commitment has not been made by the President, it is
believed that consideration should be given as to whether, under
any circumstances, the files should be made available to the
Committee. The arguments for not making any disclosure are as
follows:

(1) Derogatory information necessarily appearing in investi-
gative reports will be subject to disclosure or to leaks by the
Committee members with the result that persons who have already
been cleared will be needlessly injured.

(2) Much of the derogatory information in the files is based
on rumor, gossip and hearsay.
(3) A few of the files contain secret information.

(4) Some of the files disclose the investigative processes of both the Federal Bureau of Investigation and the State Department Security Division.

(5) Some of the files disclose the identity of informants or agents of the investigating agency. In some cases the files disclose that such informants have been and may now be located in strategically important positions.

(6) The files will reveal that in a number of the cases where substantial derogatory information was obtained by the State Department, the employee involved was retained in his position for a period of two or three years before it was determined he was not a security risk. In some cases it appears that the State Department might not have conducted investigations with sufficient dispatch even though substantial derogatory information was obtained.

(7) Senator McCarthy and his associates will never be satisfied that all the pertinent files have been disclosed to the Committee. Furthermore, he will probably assert that the files that were made available were stripped down. He has mentioned "loose-leaf" files that we cannot identify.

(8) Senator McCarthy has stated on many occasions that the Committee must examine the State Department loyalty and security files, the Civil Service Commission files, the Federal Bureau of
Investigation files, and the files of any Department in which a subject of his charges might have been employed at a later date. Senator Tydings has apparently adopted this suggestion.

(9) A precedent would be established whereby other committees of Congress would likewise demand access to loyalty files from other agencies of the Government. The Senate Appropriations Committee, particularly Senators Ferguson and Brewster, has recently requested file information from the State Department regarding the loyalty of employees. Likewise, the Senate Commerce Committee is anxious to investigate the loyalty of some Commerce Department employees. Other committees may follow their example.

(10) Senator Tydings has staffed his Committee with present or former FBI agents who may not be properly qualified, by reason of training and experience, to evaluate objectively the decisions of the Loyalty Board. We have, in this connection, been given to understand that labor groups are opposed to Edward Morgan who was selected by Tydings as Committee counsel. These labor groups advise in addition that Morgan has made substantial contributions to Smathers' campaign in Florida against Pepper. In this connection Senator McCarthy has repeatedly stated that the FBI investigations were excellent but the Loyalty Board's decisions on the cases were what he questioned. It would hardly seem that FBI agents would be the proper individuals to pass judgment on the evaluation of the files.
(11) Staff members would of necessity be required to prepare memoranda and reports on the material in the files. These might get into the hands of unauthorized persons. The assistant counsel who will be appointed by the Republicans may report to many persons. Indeed, Senator McCarthy's charges against 81 persons were apparently based entirely on just such memoranda prepared by House Appropriations Committee staff members in 1947, when the State Department granted that Committee voluntary access to its files. It is entirely possible that similar reports by staff members of the Tydings Subcommittee could be utilized for political purposes in the future by other members of the minority party. Once made such reports remain in existence.

(12) There are some controversial individuals who have been cleared by the Loyalty Board. People like Senator Brewster will argue that such individuals should never have been retained by the State Department. Perhaps there will be a strong disagreement on such cases within the subcommittee. Republican Senators will claim that they forced the President to make the files available to the Committee. This might be serious if the Committee disagrees in any case with the action taken by the Loyalty Board.

If the Committee could be persuaded to issue a subpoena for the files the President could answer with a powerful refusal pointing out the constitutional objections as well as commenting on McCarthy's testimony and the type of evidence he is relying upon. He could also point out some of the additional reasons for not
disclosing the file which had been previously mentioned.

Providing that a definite commitment has been made to show the
files to the Committee the President could simultaneously or
subsequently offer to show the files on certain terms and conditions.

A subsequent voluntary offer to show the files might leave the
President open in the interim to criticism in the press but at
the same time he might find considerable support for his refusal
to reveal the files, especially considering the reckless nature
of the McCarthy charges.

II. If, on the other hand, a binding commitment has been made
the question arises as to whether it would be advisable to
disclose the files after a subpoena had been issued and declined,
or whether the disclosure should be entirely voluntary on the
part of the President. In this connection, Senator Tydings has
taken the position on the floor of the Senate and at Committee
hearings that he will first request the files in a gentlemanly
way and then if necessary, fall back on the subpoena directive
contained in the Senate resolution. It is possible that he might
be persuaded to change his position in this respect if he thought
that he might expose himself to criticism by failing to subpoena
the files first. The following criticisms might be made of
Tydings for not having a subpoena issued:

(a) He would be acting contrary to an express order of
the Senate.
(b) He would be neglecting to do the one thing that Senator McCarthy insisted repeatedly was necessary in order to prove his charges.

(c) He was not obtaining everything from the Executive Departments, that he could by the use of the committee's subpoena power.

(d) That he had entered into some behind-the-scenes agreement with the President to "whitewash the investigation."

The above, however, might be impossible to accomplish in view of statements made by Senator Tydings at a press conference today. Tydings told reporters that he had talked to John F. Prentice and that the State Department had indicated complete willingness to let the Committee have all the files in question upon request and without the necessity of subpoenas. Tydings also said that it had not yet been determined who, what, where or how the files will be examined, but that he was sure the Committee would have free and unlimited access to them.

III. The arguments in favor of voluntarily disclosing the files without first issuing a subpoena include the following:

(1) This may be the understanding between the President and Senator Tydings.

(2) No animosity will be created between the President and the members of the Subcommittee.

(3) Without such animosity the Subcommittee might perform a more objective job of evaluating the information appearing
in the files.

(1) Criticisms that the administration has something to hide with respect to the loyalty of State Department employees will be reduced.

IV. The next question to be considered is the procedure to be followed in making voluntary disclosure of the files to the Committee. The State Department has made the following tentative suggestions in this regard which are now being explored more fully for possible improvements. (The final document will be sent you separately):

(1) The President will make available to the Subcommittee, under the conditions outlined below, the full files of all persons who are, or have recently been employed by the State Department and as to whom a charge has been made, backed by substantial evidence that they are disloyal to the United States.

(2) Before requesting to see a file the Subcommittee will be prepared to state whether it regards the charge of disloyalty as being based on substantial evidence.

(3) The loyalty files will not be permitted to leave the control of the President and for that reason they will be made available for inspection only in the White House, where a special room will be set aside for that purpose.

(4) The loyalty files will be made available for inspection only to members of the Subcommittee and not to staff members of that body.
(5) In any case in which the Committee requests, a special representative of the President will prepare a summary of the file which, when it is agreed upon by the committee, will be made available to the committee for its official records. The State Department has suggested the names of several men, one of whom might perform this function.

We would like to call attention in connection with any controlled disclosure of the files that Senator Tydings has given every indication that he expects to have free and unlimited access (a) to the files of all individuals named publicly by Senator McCarthy, (b) to the files of the twenty-five individuals whose names were given to the Committee by Senator McCarthy but not made public and against whom no charges whatsoever have been made, and (c) the files of the individuals involved in the 61 cases discussed by McCarthy on the floor of the Senate. The names of these 61 individuals have not yet been given to the Subcommittee by Senator McCarthy. It means that Senator Tydings intends to request the files of any individual named by McCarthy even though no charges are made against such individuals.

We understand that Peyton Ford feels it would be far better not to disclose the files. At the very least he feels that no files should be made available to the Committee until Senator McCarthy has completed all of his charges against all individuals in the State Department.
It is Ford’s position that if disclosure is necessary it should be done only in executive session and the same should be true of any summaries or digests. An important factor in this picture is whether the committee contained any terms with respect to exactly when files would be made available. If this point was not definitely agreed upon, we should refrain from disclosing any of the files until we knew exactly what each and everyone of Senator McCarthy’s charges were. And it would likewise appear to be advisable to condition any final decision on how the files would be disclosed upon the completion of Senator McCarthy’s testimony.

One further consideration might be weighed in connection with a controlled disclosure of the files. If the controls or restrictions are considered too burdensome by the members of the Committee, even though they might have originally agreed to them, they would probably have no trouble in creating a clamor in the press for a relaxation of the controls. Such a clamor might become very difficult to combat.