

Complaint

IN THE MATTER OF
SCHLUMBERGER LIMITED

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC.
5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE
CLAYTON ACT

Docket C-3025. Complaint, June 23, 1980—Decision, June 23, 1980

This consent order requires, among other things, a New York City multinational company, engaged in various activities, including the manufacture of electrical and electronic devices, to divest all stock it owns in the Unitrode Corporation ("Unitrode") within six months from the date of the order. Prior to such divestiture, the order requires that respondent treat Unitrode as an independent entity, and refrain from attempting to influence or control Unitrode. Respondent is further prohibited from acquiring any Unitrode stock or assets without prior Commission approval for a period of ten years.

Appearances

For the Commission: *Gordon Youngwood.*

For the respondent: *R. Bruce MacWhorter and Stanley I. Rubinfeld, Shearman & Sterling, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent, subject to the jurisdiction of the Commission, has acquired Fairchild Camera and Instrument Corp. ("Fairchild"), a corporation, in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18) and Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. DEFINITIONS

1. For purposes of this complaint, the following definitions shall apply:

- (a) "Respondent" shall mean Schlumberger Limited, a corporation, and its subsidiaries, affiliates, successors and assigns; and
- (b) "Diodes" shall mean semiconductor products consisting of a two-electrode device which passes current in one direction but not in the opposite direction.

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II. RESPONDENT

2. Respondent is a corporation organized and doing business under and by virtue of the laws of the Netherlands Antilles, with its principal executive offices at 277 Park Ave., New York, New York.

3. Respondent is a multinational company with significant operations in the United States and Europe. Its primary activities are wireline services of oil fields, the drilling and servicing of oil wells and the manufacture of a multitude of electrical and electronic devices. In 1978, Respondent had total foreign and domestic assets of \$2.95 billion and total sales of \$2.7 billion.

4. At all times relevant herein, Respondent has been and is now engaged in commerce within the meaning of the Clayton Act, as amended, and is a corporation whose business is in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

III. UNITRODE CORPORATION

5. Unitrode Corporation ("Unitrode") is a corporation organized and doing business under and by virtue of the laws of the State of Maryland, with its principal executive offices at 580 Pleasant St., Watertown, Massachusetts.

6. Unitrode is engaged in the manufacture of diodes and other electronic components. In fiscal year 1979, Unitrode had total assets of \$40.2 million and sales of \$48.4 million.

7. Since March 1978, Respondent has purchased approximately 496,000 shares of Unitrode common stock, which total constitutes 17.1% of all outstanding Unitrode shares. As of June 1979, Respondent was the largest holder of Unitrode common stock.

8. From March 1978 to date, Respondent has had and now has substantial opportunities to influence the business operations of Unitrode.

9. At all times relevant herein, Unitrode has been and is now engaged in commerce within the meaning of the Clayton Act, as amended, and is a corporation whose business is in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

IV. FAIRCHILD CAMERA & INSTRUMENT CORPORATION

10. At the time of the acquisition, Fairchild was a corporation organized and doing business under and by virtue of the laws of the

State of Delaware, with its principal executive offices at 464 Ellis St., Mountain View, California.

11. Fairchild's primary operations are in the manufacturing of diodes and other semiconductors, automatic test systems, and reconnaissance and surveillance systems. In 1978, its total assets were \$423 million and its total sales were \$534 million.

12. At all times relevant herein, Fairchild has been and is now engaged in commerce within the meaning of the Clayton Act, as amended, and is a corporation whose business is in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

V. ACQUISITION

13. On May 19, 1979, Schlumberger and Fairchild entered into an agreement under which Respondent agreed to the purchase by Schlumberger (California) Inc., a wholly-owned subsidiary of Respondent, of all outstanding Fairchild shares for \$66 per share. The transaction was valued at \$363 million as of June, 1979. More than 97% of Fairchild shares were tendered. Respondent purchased the shares on June 30, 1979. Schlumberger has since acquired the remaining outstanding Fairchild shares.

VI. TRADE AND COMMERCE

14. For purposes of this complaint, the relevant lines of commerce are the manufacture and sale of diodes and submarkets thereof, and the relevant section of the country is the United States as a whole.

15. Sales of diodes in the United States are substantial, amounting to an estimated \$343 million in 1977.

16. Fairchild and Unitrode are and have been for many years substantial and actual competitors in the manufacture and sale of diodes.

17. In the year 1977, Fairchild had sales of diodes in the United States of \$20.8 million. Unitrode had sales of diodes in the United States of \$23.1 million in 1978.

18. Concentration in the manufacture and sale of diodes is high.

19. Barriers to entry into the manufacture and sale of diodes are substantial.

VII. EFFECTS OF THE ACQUISITION

20. The effect of the acquisition of Fairchild by Respondent may be substantially to lessen competition or tend to create a monopoly in the

manufacture and sale of diodes in the United States in the following ways, among others:

- (a) Substantial actual and potential competition between Fairchild and Unitrode and other firms in the manufacture and sale of diodes has been eliminated;
- (b) Already high concentration in the manufacture and sale of diodes has been increased; and
- (c) The likelihood of eventual deconcentration may be lessened.

VIII. THE VIOLATION CHARGED

21. The aforesaid acquisition constitutes a violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Respondent named in the caption hereof, and the Respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violation of the Federal Trade Commission Act and the Clayton Act; and

The Respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the Respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the Respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Schlumberger Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the Netherlands Antilles with its office and principal place of business located at 277 Park Ave., in the City of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

For purposes of this order, "Respondent" shall mean Schlumberger Limited, a corporation, and its subsidiaries, affiliates, successors and assigns.

I.

It is ordered, That Respondent, prior to a date not to exceed six (6) months from the date of service of this order, shall divest absolutely to an acquiror or acquirors, subject to the prior approval of the Commission, all stock and other share capital of Unitrode Corporation (Unitrode) held by Respondent, so as to establish Unitrode as a company independent of any other company manufacturing and selling diodes.

II.

It is further ordered, That prior to sixty (60) days from the date on which Respondent is served with this order, Respondent shall present to the Commission:

(a) A final executory contract with an acquiror or acquirors, consistent with Article I above, to divest all stock and other share capital of Unitrode held by Respondent, subject to the prior approval of the Commission; or

(b) a plan for a public offering of all stock and other share capital of Unitrode held by Respondent, subject to the prior approval of the Commission, and reasonably assuring that no more than one percent of the outstanding stock or other share capital of Unitrode is acquired by a person not acceptable to the Commission.

III.

It is further ordered, That, for a period of ten (10) years from the date on which Respondent is served with this order, Respondent shall not acquire, directly or indirectly, through subsidiaries or otherwise,

without prior Commission approval, any assets, stock or other share capital of Unitrode or its subsidiaries, affiliates, successors and assigns; *provided, however*, that this paragraph shall not apply to products manufactured by Unitrode in the normal course of its business that are held for sale by Unitrode to its customers and used by Respondent in the manufacture of its products.

IV.

It is further ordered, That prior to the divestiture of Unitrode stock and other share capital required by Paragraph I of this order, Respondent shall:

- (a) In all dealings with Unitrode, treat Unitrode on an arm's length basis as an entity independent of Respondent; and
- (b) not exercise or seek to exercise influence or control over Unitrode.

V.

It is further ordered, That Respondent notify the Commission at least thirty (30) days prior to any proposed change in Respondent which may affect compliance obligations arising out of the order, such as dissolution, assignment or sale resulting in the emergence of successor corporations or the creation or dissolution of subsidiaries.

Interlocutory Order

IN THE MATTER OF

EXXON CORP., ET AL.

*Docket 8934. Interlocutory Order, June 30, 1980*REGARDING SUBPOENAS TO CONGRESSIONAL RESEARCH SERVICE AND
TO THIRTEEN EXECUTIVE BRANCH AGENCIES AND THE GENERAL
ACCOUNTING OFFICE

Respondents in this matter, seeking discovery of documents relating to the oil production industry in the possession of thirteen Executive Branch agencies,¹ the Congressional Research Service of the Library of Congress, and the General Accounting Office, petitioned Administrative Law Judge James P. Timony for issuance of subpoenas to the above-named entities. Between February 15 and 21, 1980, Judge Timony issued the requested subpoenas pursuant to Commission Rule of Practice 3.36. We stayed the return date on the subpoenas on February 28, 1980, to consider whether the Commission has the authority to issue them.

Both respondents and complaint counsel contend that Section 9 of the FTC Act authorizes the subpoenas issued by Judge Timony. The Department of Justice, in a brief filed on behalf of all subpoena recipients, except the Federal Energy Regulatory Commission, the Department of the Treasury, and the Congressional Research Service, disagrees and asserts that Section 8 of the Act is the sole authority for the Commission to obtain information from Executive Branch agencies, and that Section 9 may not be exercised for that purpose. The Congressional Research Service takes yet another view, and argues that its documents are not subject to Commission process because they are privileged under the congressional immunity for speech or debate.

In brief, we have determined that a request under Section 8 must be made before a subpoena to an Executive Branch agency may be issued, though we hold that the Commission has the authority to issue such a subpoena pursuant to Section 9 if necessary and appropriate, and if a prior request for the material under Section 8 has proved unavailing. We further hold that the documents sought from the Congressional Research Service are beyond the Commission's subpoena authority.

¹ The thirteen agencies are the Departments of Defense, Energy, Commerce, Interior, Justice, Transportation, State and Treasury, the Interstate Commerce Commission, Environmental Protection Agency, General Services Administration, Central Intelligence Agency, and the Executive Office of the President. We assume that the brief filed by the Department of Justice embodies the position of the President in the matter.

I.

The Justice Department's argument rests upon its belief that Section 8 of the FTC Act² is the exclusive grant of authority by which the Commission may obtain access to records of Executive Branch agencies. It finds support for its conclusion in the legislative history of the FTC Act. In pointing out that Section 8 was added to enable the Commission to obtain materials possessed by agencies, the Justice Department cites House of Representatives debates on that section of the bill:

It appears that in time past there have been jealousies in various departments and bureaus, and at times it was difficult to obtain information from one department of great value to another in work of investigation. 51 Cong. Rec. 8858 (1914) (remarks of Rep. Knowland).

During further debate in the House, concern was expressed that confidential tax returns and census data submitted by companies would be made public under this section. In response, Representative Covington (a member of the committee that drafted the bill) conceded that this was true, but added that presidential control would provide an adequate protection against inappropriate disclosure of the information. He stated that the first draft of the section did not contain the phrase, "when directed by the President," but that the committee had reconsidered:

We then determined, however, that by limiting the authority to turn over such information by direction of the President, all the safeguards that ought to surround any class of information would be in the possession of the government. 51 Cong. Rec. 9045 (1914).

It appears that Congress intended that the Commission have access to information it needed to carry out its mission, but that the President should serve as a "mediator" of interagency disputes and as a decisionmaker regarding the Commission's need for the information. Based on its belief that this represents Congress' intent, the Justice Department argues that Section 8 is an exclusive-grant of authority and, therefore, that Section 9 cannot be used as an alternate means of obtaining government documents because Section 9 contains no similar provision for presidential discretion. It sets up instead a system of judicial enforcement of Commission subpoenas. Thus, if the Commis-

² Section 8 of the FTC Act states:

The several departments and bureaus of the Government when directed by the President shall furnish the Commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and shall detail from time to time such officials and employees to the Commission as he may direct.

sion were able to compel production of documents pursuant to Section 9, the safeguard established by Executive review could be avoided by the Commission, and Congress' intent frustrated.

This analysis has much force, and we agree that the grant of authority in Section 9 may not be exercised so as to make the Presidential prerogative in Section 8 a nullity. However, the Justice Department's conclusion—that Section 8 is therefore the *exclusive* means by which the Commission may obtain information from Executive Branch agencies—does not necessarily follow. Indeed, such a conclusion would be inconsistent with Congress' intention in granting the Commission quasi-judicial authority and with the rights of respondents in an adjudication.

The Supreme Court long ago established that:

The Federal Trade Commission is an administrative body created by Congress to carry into effect legislative policies embodied in the statute in accordance with the legislative standard therein prescribed, and to perform other specified duties as a legislative or as a judicial aid. Such a body cannot in any proper sense be characterized as an arm or an eye of the Executive. Its duties are performed without Executive leave and, in the contemplation of the statute, must be free from Executive control. *Humphrey's Executor v. U.S.*, 295 U.S. 602, 628 (1935).

Foremost among the Commission's "quasi-judicial" powers is the conduct of adjudications under Section 5(b) of the FTC Act. These proceedings are, of course, conducted strictly in accordance with the framework for adjudicatory decisionmaking later prescribed by Congress in the Administrative Procedure Act. The FTC Act and APA alike ensure that all decisions in an adjudication are made by an administrative law judge, the Commission itself, or a Federal court in an enforcement or review action. Presidential involvement in any aspect of adjudicatory decisionmaking would be fundamentally inconsistent with this statutory scheme. Yet if the Justice Department's position were adopted, a President's decision to deny access to information necessary to a proceeding would amount to just such involvement.

Such Presidential involvement in an adjudication is the more problematic because it may infringe upon the rights of private parties. The Commission's discovery rules reinforce and amplify a respondent's right under the APA to exercise the agency's subpoena authority in aid of its defense. See 5 U.S.C. 555(d). If, however, Section 8 were the exclusive means for access to Executive Branch information, a respondent would be able to obtain potentially exculpatory information only by grace of an exercise of Presidential discretion, the refusal of which would evidently be a discretionary act beyond judicial review.

Cf. *Chicago & Southern Air Lines v. Waterman S.S. Corp.*, 333 U.S. 102 (1948).

In these circumstances, we think that a proper reading of the interrelationship between Sections 8 and 9 must harmonize the competing considerations, so that Congress' intent be fully preserved, that is with Presidential prerogative and adjudicatory independence alike maintained. This end may be achieved, we believe, if Section 8 is understood as a *prerequisite* to the potential use of Section 9. In this way the President will be afforded the opportunity initially to determine the extent to which requested documents will be made available. Should he decline to direct the furnishing of certain information or decline to involve himself in deciding one way or the other whether the requested material should be furnished, the Commission may thereafter determine, in its adjudicatory capacity, whether to issue a subpoena to the particular agency to obtain the information.

We emphasize that such a subpoena will be issued only in the most compelling circumstances. The applicable rule requires that a subpoena to another governmental agency not be issued unless the motion for issuance of the subpoena makes not only the showing required for any use of discovery but also "a specific showing that the information or material sought cannot reasonably be obtained by other means." Rules of Practice Section 3.36(b). If a party requests information of another government agency, the administrative law judge shall carefully consider the relevance of the requested information and its availability through other means. If, after consideration of these and other factors properly within his discretion, see Rules of Practice Section 3.31(c), the law judge believes that the request should be sent pursuant to Section 8, he shall certify the matter to the Commission. In the event that material requested by the Commission under Section 8 is not made available, and if a party thereupon moves for issuance of a subpoena, the law judge may issue such subpoena if the requirements of the rule are met.

II.

We next consider whether Section 9 can be read to authorize subpoenas to the agencies served in this matter. With the exception of the Congressional Research Service, we decide that it can. Section 9 authorizes the Commission to issue subpoenas to "persons, partnerships or corporations." Thus, service on an agency head brings such subpoenas within the scope of the statute. See, *e.g.*, *Machin v. Zuckert*, 316 F.2d 336 (D.C. Cir.), *cert. denied*, 375 U.S. 896 (1963) (Secretary of

the Air Force served with subpoena under Federal Rule of Civil Procedure 45) and *Boeing Airplane Co. v. Coggeshall*, 280 F.2d 654 (D.C. Cir. 1960) (Chairman of the Renegotiation Board served).

Although agencies are not, and could never be, proper subjects of FTC investigations, it is settled that that is not a prerequisite to issuance of a subpoena. See *FTC v. Cockrell*, 431 F. Supp. 561 (D.D.C. 1977). Further, we can see no reason why a distinction should be drawn between agencies and any other third party holding relevant evidence for purposes of subpoenas.³ Accordingly, we agree with complaint counsel and respondents that Section 9 authorizes the subpoenas issued here, with the exception of the subpoena to the Congressional Research Service (CRS).

III.

Our interlocutory order In the Matter of Grand Union, Docket No. 9121, issued today, sets out our conclusion that the subpoena issued to a congressional committee must be quashed. The reasoning provided there applies equally to the subpoena issued to the CRS, a dependent branch or arm of Congress. In transforming the Legislative Reference Service into the CRS in 1970, Congress specified that CRS' duties were primarily to assist Congress and its committees in the "analysis, appraisal, and evaluation of legislative proposals." 2 U.S.C. 166(d). The legislative history of the statute further reflects the view that Congress envisioned a close relationship between itself and CRS, in which CRS would play a supporting role for Congress' legislative function. The House Report states: "These analyses and appraisals [supplied by CRS] will be directed toward assisting committees in determining the advisability of enacting legislative proposals, of estimating the probable results of such proposals and alternatives thereto, and of evaluating alternative methods for accomplishing the results sought." H.R. Rep. No. 91-1215, 91st Cong., 2d Sess. (1970), reprinted in 1970 U.S. Code Cong. & Ad. News 4417, 4434.

The Fourth Circuit has noted that CRS performs a legislative function, even though the Library of Congress, of which CRS is a separate department, may have other nonlegislative functions. *Eltra v. Ringer*, 579 F.2d 294, 301 (4th Cir. 1978). See also *Kissinger v.*

³ We think that the principle stated by the Supreme Court in *United States v. Nixon*, 418 U.S. 638, 709 (1974), where it held that the President was subject to a third party judicial subpoena, is as pertinent in this context as well:

The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the Rules of Evidence. To ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed either by the prosecution or by the defense.

Reporter's Committee for Freedom of the Press, 48 U.S.L.W. 4223, 4225 (March 3, 1978) (Lower court holding that Library of Congress not an "agency" for purposes of the Freedom of Information Act not disturbed by Supreme Court).

Because of its essentially legislative function, documents requested by the Commission's subpoena would most likely be those produced by CRS on request of Congress and in aid of its legislative role. There can be little argument that documents produced to aid Congress in making decisions regarding proposed or anticipated legislation are an integral part of Congress' lawmaking function, or that they would reveal motives behind individual legislators' votes. Therefore, we agree with CRS and decide that these documents are privileged under the doctrine of separation of powers and the speech or debate clause, and unobtainable by Commission subpoena.⁴

Accordingly, *it is ordered*, That the subpoena issued to the Congressional Research Service is hereby quashed.

It is further ordered, That the subpoenas issued to the thirteen Executive Branch agencies and to the General Accounting Office are hereby quashed. The matter is remanded to the law judge with instructions to treat the parties' requests for subpoenas as motions that the information be requested pursuant to Section 8. The law judge shall consider these motions in accordance with this order. This consideration shall take into account the arguments raised by the thirteen Executive Branch agencies and the General Accounting Office in their papers filed with the Commission, particularly as they concern the burden of compliance, the relevance of the documents sought, and claims of privilege such as national security privilege. The law judge may order additional briefing if he deems it necessary. Should the law judge conclude that certain information ought to be requested under Section 8, he shall certify his recommendation in that regard to the Commission.

Finally, we note that respondent oil companies have again taken the opportunity to urge that this matter be withdrawn from adjudication to permit the Commission to reassess the merits of the current complaint.⁵ Complaint counsel observe in reply that the administrative

⁴ The General Accounting Office also holds a position in the government different from that of the other subpoena recipients. It performs its duties of *inter alia*, auditing all executive branch agencies and reporting specially to Congress as an "agency of the Congress." 31 U.S.C. 65.

In spite of this apparent role as a supporting arm of Congress and with a duty to inform legislators concerning government expenditures, GAO, unlike CRS, has not asserted any form of congressional immunity. Instead, it has aligned itself with the Executive Branch agencies in submitting a joint brief opposing the subpoenas on Section 8 grounds only.

For purposes of the subpoena issued here, then, we conclude that GAO should be categorized with the Executive agencies that received subpoenas.

⁵ Certain respondents have also moved for placement on the public record of "all written and oral communications received or generated by the Commission which relate to the Commission's February 28 Order." We have,

law judge, in ordering respondents to make discovery in this matter, has also established an October 31, 1980 deadline by which complaint counsel are to re-assess and narrow the issues in the adjudication, based upon the results of their discovery. It would appear that any reassessment of this matter by the Commission, whether it take the form of withdrawal from adjudication or modification of the complaint upon motion by a party, would be best undertaken shortly after complaint counsel's review of respondents' documents and October filing of the Statement of Issues required by paragraph 2(a) of Judge Timony's Order Re Pretrial Procedures, dated March 12, 1980. Therefore, the motions to withdraw from adjudication are denied.

simultaneously with issuance of this order, as a matter of discretion, placed on the public record, memoranda from personnel in the Commission's Office of General Counsel that recite conversations—none in any respect violative of the Commission's Rules of Practice or otherwise improper—in connection with this matter. Internal communications between the Commission and its advisory personnel are, of course, not a proper subject for disclosure to either side in an adjudication.

Interlocutory Order

95 F.T.C.

IN THE MATTER OF
THE GRAND UNION COMPANY, ET AL.

Docket 9121. Interlocutory Order, June 30, 1980

QUASHING SUBPOENA ISSUED TO THE JOINT ECONOMIC COMMITTEE OF
CONGRESS

On January 20, 1980, Chief Administrative Law Judge Ernest G. Barnes acting on respondent's request issued a subpoena *duces tecum* to Dr. John Albertine, staff director of the Joint Economic Committee of Congress. The subpoena sought data in the Committee's possession that had been used by its consultant, Dr. Bruce Marion, in writing his report for the Committee entitled *The Profit and Price Performance of Leading Food Chains, 1970-1974*. Respondents sought the data for the purpose of cross-examining Dr. Marion, who has been designated by complaint counsel as one of its trial witnesses in the field of economics. On January 22, 1980, the Commission, acting pursuant to its Rule of Practice 3.23, stayed the subpoena to consider whether the Commission has jurisdiction to subpoena a congressional committee.

In Section 9 of the FTC Act, Congress granted the Commission broad subpoena power to compel testimony of witnesses and production of documents. We do not believe, however, that in drafting that section Congress intended to make its own documents subject to Commission process.

The "Commission is an administrative body created by Congress to carry into effect legislative policies embodied in the statute in accordance with the legislative standard therein prescribed ***." *Humphrey's Executor v. United States*, 295 U.S. 602, 628 (1935). It would be anomalous indeed if Congress were to compromise its independence under the constitutional separation of powers by subjecting itself, its committees or its staff to any form of compulsion by the agency it created to carry out its will or by the courts in enforcement of agency process. We will not infer such an intention absent a clear, affirmative indication in Section 9's language or legislative history that Congress extended the Commission's subpoena authority to its own legislative activities. We find no such indication.

The absence of such an indication is hardly surprising. For in conferring subpoena power on the Commission, Congress legislated in light of the immunities assured it by the speech or debate clause in Article 1, Section 6, Clause 1 of the Constitution.¹ "In our system, 'the

¹ The Senators and Representatives . . . shall . . . be privileged from arrest during their attendance at the session of their respective Houses . . . ; and for any speech or debate in either House, they shall not be questioned in any other place.

clause serves the additional function of reinforcing the separation of powers so deliberately established by the founders.” *Eastland v. United States Serviceman’s Fund*, 421 U.S. 491, 502 (1975).

The clause has been held to protect various facets of the legislative process including a report issued by a congressional subcommittee, *Doe v. McMillan*, 412 U.S. 306 (1973), and issuance of an investigatory subpoena by a subcommittee, *Eastland v. United States Serviceman’s Fund*, *supra*. The Supreme Court has also held that it prevents Grand Jury questioning of a Senator’s aide (or the Senator himself) concerning legislative acts of the Senator’s subcommittee, *Gravel v. United States*, 408 U.S. 606 (1972).

These precedents also indicate that a Commission subpoena to Congress would be unenforceable by a court. See, e.g., *Eastland, supra* at 502 (“the purpose of the [speech or debate] clause is to insure that the legislative function the Constitution allocates to Congress may be performed independently,”); *Gravel, supra* at 617 (“central role” of the speech or debate clause is the prevention of “intimidation of legislators by the Executive and accountability before a possibly hostile judiciary”).

The congressional immunity defined by these precedents applies to the documents sought by Grand Union, materials used in preparation of a committee report and obtained by legislative subpoena. The Joint Economic Committee’s investigation was patently a proper subject of congressional interest, and the report itself is therefore an integral part of the legislative process. It is in any event beyond the scope of our authority under Section 9.²

Accordingly, *it is ordered*, That the subpoena issued by Judge Barnes to the Joint Economic Committee of Congress on January 20, 1980, is hereby quashed.

² In deciding the reach of our subpoena authority under Section 9, we are not authorized to determine whether the information sought relates to a legitimate legislative function. Our point is rather that Congress never intended to authorize us to make such an inquiry because it legislated on the assumption that the doctrine of separation of powers and the speech or debate clause foreclose the issuance of Commission subpoenas to the Congress.

