

DECLASSIFIED UNDER AUTHORITY OF THE INTELLIGENCE
SECURITY CLASSIFICATION APPEALS PANEL
E.O. 13526, SECTION 5.3(b)(3)
ISCAP No. 2810-004 document 2

SUBJECT: Differences between the CIA and DOJ

BACKGROUND:

Throughout the various investigations of alleged abuses by the CIA and other intelligence agencies, you have taken the position that evidence of offenses against the ~~United~~ statutes of the United States should be submitted to the Department of Justice. For example, your order on January 4, 1975 establishing the Rockefeller Commission expressly provided:

Copy from p. 272

In San Francisco before the World Affairs Council luncheon on September 22, 1975, you stated:

"I can assure you . . . that etc
copy from p. 11

During the Church Committee investigation of alleged assassination plots involving foreign leaders, you made it clear to all of your staff who worked on responses to such Committee that on this subject you wanted material to be provided without regard to classification status or possible claims of executive privilege. You took this position ~~was~~ because of the possible criminality involved and the obvious misuse of power if the allegations ^{proved to be} ~~was~~ true.

This material included documents on CIA activities in Chile during 1970.

Now an impasse exists between the Justice Department and Director George Bush of the CIA over the calling of ^{certain} witnesses and use in evidence of documents that reveal their identification

and CIA connections for the purposes of ~~investigating~~ Grand Jury investigation and possible trial of cases involving alleged perjury previously committed by some of these same persons and by others connected with the CIA. The investigation involves

The ^{scope and} nature of requests made by Justice to the CIA and the reactions of Director Bush up to October 13, 1976 are described in a memo from George Bush to Jack Marsh which is attached as Tab A.

Subsequently, meetings were held to try to resolve the remaining differences between Justice and CIA.

PRESENT STATUS:

Near the end of negotiations, the CIA maintained its concern about 12 Agency employees, past and current, and two ~~past~~ other persons who had supplied information on Chile to the CIA. In deference to that concern, Justice ^{determined} that at least for Grand Jury purposes, its needs could be reasonably limited to 8 of the 19 persons involved, and that ~~the CIA~~ it would attempt to avoid disclosing the present location and position of one of those and for another would try to bring ^{another} ~~him~~ before the Grand Jury under an alias. So the issue now to be resolved is whether ~~there~~ the ~~stated~~ requirements of the Department of Justice, as ~~greatly~~ reduced to the 8 persons still in question, are to be respected by George Bush. He seeks your guidance because he believes his statutory responsibility "for protecting intelligence sources and methods from unauthorized disclosure" is in conflict with the needs of the

CIA operations in Chile during the late 1960's and early 1970's, including Agency relation with IIT, many details of which have been publicly disclosed in the proceedings and reports of the Church Committee (Volume on "Alleged Assassination Plots Involving Foreign Leaders" pp. 25-53, and Volume on "Covert Action" pp. 5-48, pp. 95-136, and pp 144-209)

the known ledger of such persons and their sworn statements

(emphasis added)

B

Justice Department and he has never had ^a directive from you on your policy as expressed in your statement ~~answer to a question~~ of the San Francisco World Affairs Council meeting on September 23, 1975 ^{which is} ~~as~~ quoted above in this memorandum. Jack Marsh and I believe that it is clearly ^{within} ~~with~~ the authority of George Bush to authorize the disclosures ~~of~~ issue on the basis of the ^{stated needs} ~~needs~~ of the Department of Justice and that your public statement is sufficient indication ~~to him~~ that for him to do so would not contravene any policy of yours but would be in keeping with your policy. However, Brent Scowcroft believes that George should have your guidance on this matter.

The most recent statement by George of the problem as he sees it, which was not provided me until late on this Friday afternoon, is attached at Tab B.

Secret

Attached at Tab C is ~~a~~ ^{document} prepared for me by the Justice Department in justification of its requirements for the disclosures it seeks. This has not been shown to CIA or anyone else at the White House except Jack Marsh, because it explains ~~reveals matters concerning~~ details about various targets ~~and admits~~ why the persons in question are targets of ~~the~~ investigation or are essential witnesses. ^{This document shows} ~~The only purpose of this is to show the clear importance~~ ^{which the Department of Justice puts upon} ~~relevance~~ ^{upon the} of their testimony and ~~of~~ documents concerning which ~~reveal~~ ^{of} their knowledge and involvement, prior CIA activities. Even without having seen this document, it is incumbent on the CIA, I believe I believe it overcomes any argument that the Department ^{of Justice} has gone farther in its requests to the CIA than is necessary for ~~its~~ ^{criminal} proper investigatory and prosecutorial purposes.

RECOMMENDATION

4

I strongly recommend that you authorize me to advise George Bush as follows:

a) That your policy as it should guide his actions is the same as you stated it to be on September 1, 1975.

b) That his authorizing disclosure of the names and CIA connections of the persons identified at Tab C and of documents ^{requested by the Department of Justice for the purposes described which} contain such names and descriptions of their showing the knowledge and involvement of such persons in relevant CIA activities is consistent with your policy.

Arguments in favor of such recommendation

are:

1. While there may be instances when prosecutorial discretion ~~would require~~ disclosure of information damaging to the national security would ~~be~~ justify using prosecutorial discretion not to investigate or prosecute for an alleged crime, (as the Attorney General does concede) ~~the~~ exercise of such discretion to protect ^{the confidentiality of human} ~~only the~~ sources of information when ^{that information} ~~which~~ is otherwise already known or ~~which~~ would not itself be presently damaging to the national security would not appear to be justified. This is particularly true where ^{some of the} ~~the~~ sources ^{are} themselves ~~are~~ the targets of investigation and where there is no claim that ~~the~~ personal damage to any of the ^{innocent of any crime who are} ~~criminally innocent people~~ would be ^{involved} very serious or irreparable.

• No one outside of the ~~Department~~ Attorney General ought to substitute his judgment on a matter like this

unless ~~the case~~ there appears to be an abuse of discretion in proceeding with an investigation or prosecution or there is an evident failure to take into account an overriding ~~national~~ public interest vital to the security of the nation.

- Failure to permit disclosure of the requested information would ~~force the hand~~ about the pending investigation and lead to no prosecution, with the consequence that otherwise prosecutable persons ~~will be~~ ^{will be} saved from prosecution merely to protect their identities and CIA connections from disclosure.

Such an outcome would be interpreted by knowledgeable ^{people} as setting a precedent for never ~~for~~ investigating or prosecuting a confidential source ~~over~~ of information even ~~if~~ ~~he~~ ^{though} ~~she~~ when he may have committed perjury; also for not prosecuting anyone if the evidence to do ^{would} ~~so~~ involve ^{disclosing} confidential CIA sources or methods.

for any crime

Arguments against such recommendation are:

- CIA secret informants and employees for undercover activities will be difficult to recruit if they have to worry about the possibility that their ^{identity and} activities ~~might~~ ^{may} ~~be~~ ^{later} disclosed in connection with a criminal case. ^{or will bc inhibited in their work}
- The morale of ~~the~~ people in the agency will be adversely affected.

- b. That his authorizing disclosure of the names and CIA connections of the persons identified at TAB C and of documents requested by the Department of Justice for the purposes described which contain such names and show the knowledge and involvement of such persons in relevant CIA activities is consistent with your policy of making an exception for investigation and prosecution of alleged criminal acts.

Arguments in favor of such recommendation are:

- °While there may be instances when disclosure of information damaging to the national security would justify using prosecutorial discretion not to investigate or prosecute for an alleged crime (as the Attorney General does concede) the exercise of such discretion to protect the confidentiality of human sources of information when that information is otherwise already known or would not itself be presently damaging to the national security would not appear to be justified. This is particularly true where some of the sources are themselves targets of investigation and where there is no claim that personal damage to any of the people innocent of any crime who are involved would be very serious or irreparable.
- °No one outside of the Attorney General ought to substitute his judgment on a matter like this unless there appears to be an abuse of discretion in proceeding with an investigation or prosecution or there is an evident failure to take into account an overriding public interest vital to the security of the nation.
- °Failure to permit disclosure of the requested information would abort the pending investigation and lead to no prosecution, with the consequence that otherwise prosecutable persons will be saved from prosecution merely to protect