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*Class.
Chen*

THE WHITE HOUSE

WASHINGTON

January 7, 1976

EYES ONLY

MEMORANDUM FOR: THOMAS WOLF

FROM: PHILIP BUCHEN *P.W.B.*

In followup to our meeting, this is to request that you now turn in your White House pass to the Secret Service in Room 23 who will provide you with a permanent EOB pass. In addition, as part of the effort to limit the persons possessing White House passes to those whose duties require regular access to the East and West Wings, will you please direct any other White House passholders on your staff to turn their passes into the Secret Service for replacement EOB passes.

Thank you for your assistance.

bcc:



~~TOP SECRET~~
THE WHITE HOUSE

WASHINGTON

January 12, 1976

MEMORANDUM FOR: BRENT SCOWCROFT

FROM: PHIL BUCHEN *P.*

The attached memorandum sent to me by the Attorney General has been approved by the DOD. Do you agree? If so, we can prepare for the President's signature.

Attachment

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ATTACHMENTS



THE WHITE HOUSE

WASHINGTON

January 12, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: PHIL BUCHEN *P.*

SUBJECT: Warrantless Electronic Surveillance

I. Background

On December 19, 1974, you issued a memorandum on this subject to the Attorney General, a copy of which is attached at TAB A.

On September 12, 1975, the Attorney General sent you a memorandum dealing with new developments in the law and suggesting the possible need for revisions in your earlier memorandum (see TAB B).

Most recently, the Attorney General sent you a memorandum which appears at TAB C dated January 6, 1976.

II. Recommendation

I recommend that you sign the memorandum attached at TAB D which was drafted by the Attorney General and approved by the Secretary of Defense. Brent Scowcroft also concurs in this recommendation.

DECLASSIFIED • E.O. 12958 Sec. 3.6

NR 94-154 #17 NSC 117 5/15/98

E: KBH, NARA, Date 7/22/98



136
THE WHITE HOUSE

WASHINGTON

TOP SECRET/SENSITIVE
EXCLUSIVELY EYES ONLY

December 19, 1974

MEMORANDUM FOR

THE ATTORNEY GENERAL

I have carefully reviewed the issues raised in your request for confirmation of authority and delegation with respect to warrantless electronic surveillance within the United States for foreign intelligence (including counterintelligence) purposes. I am satisfied that programs requiring such surveillance are important to the national security, and therefore reaffirm and renew the delegation of power to you, and to your successors in office, and the authorization of you and them, to approve, without prior judicial warrant, specific electronic surveillances within the United States which may be requested by the Director of the Federal Bureau of Investigation.

It is my understanding and desire that this power and authority shall be exercised pursuant to the following standards and procedures: A warrantless electronic surveillance in the United States will only be authorized upon the personal approval of the Attorney General (or the Acting Attorney General), upon submission of a written request by the Director of the Federal Bureau of Investigation providing complete justification for the conduct of such surveillance, including identification of the agency and the Presidential appointee initiating the request. Authorization will not be granted unless the Attorney General (or the Acting Attorney General) has satisfied himself:

- A. That the requested electronic surveillance is necessary
1. To protect the nation against actual or potential attack or other hostile acts of a foreign power;
 2. To obtain foreign intelligence information deemed essential to the security of the nation;
 3. To protect national security information against foreign intelligence activities; or

TOP SECRET/SENSITIVE
EXCLUSIVELY EYES ONLY

DECLASSIFIED
E.O. 12958 (as amended) SEC 3.3
MR # 10-013-42
State Dept. Ltr 1/27/10
By del NARA, Date 8/26/10

4. To obtain information which the Secretary of State (or a Presidential appointee who is his personally designated representative) or the Assistant to the President for National Security Affairs has certified is necessary for the conduct of foreign affairs matters which are important to the national security of the United States.
- B. That the subject of the electronic surveillance is assisting a foreign power or foreign-based political group, or plans unlawful activity directed against a foreign power or foreign-based political group.
 - C. That the minimum physical intrusion necessary to obtain the information sought will be used.

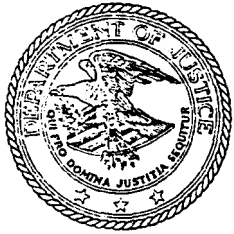
I have been advised by you and by the Department of State that such surveillance is consistent with the Constitution, Laws and Treaties of the United States.

I will expect you to keep the electronic surveillances you approve under regular review to assure that they continue to meet the aforementioned criteria. I also will expect you to advise me of any changes in the statutes or of relevant judicial decisions bearing on these matters.

This delegation and authorization is intended to subsist until revoked by my order acting as President, or the order of a successor President of the United States. Should you have a serious question as to the validity of the claim of importance to the national security in any particular case presented to you for approval, I request that you forward the matter to me for my consideration.

Ronald R. Ford





Office of the Attorney General
Washington, D. C. 20530

January 6, 1976

MEMORANDUM FOR

The President
The White House

Pursuant to your instructions, we have been reviewing two operations being conducted by the National Security Agency in collecting intelligence communications. As I described to you in my memorandum of September 12, 1975, the two operations are (1) the monitoring of the Soviets' interception of American telephone calls, and (2) the direct interception of radio communications between terminals abroad and between a terminal in the United States and a terminal abroad.....

As to the first operation, we have developed a procedure to minimize the retention and dissemination of information intercepted. We have been assured by the Director of the National Security Agency that the procedures are feasible and that the Agency will comply with them. In my view these limitation procedures bring the operation clearly within the reasonableness requirement of the Fourth Amendment. They are very strict. The only information that is retained or disseminated is that which bears on the security of telephone conversations of government employees. Dissemination of information obtained in this operation is made only to secure telephone lines over which classified information is discussed or to cope with the compromise of classified information.

As I indicated in my memorandum to you, I believe this operation could be considered included in the term "electronic surveillance" as it is used in your memorandum of December 19, 1974. The December 19th memorandum delegated to the Attorney General the authority to authorize such electronic surveillance. Nevertheless, I believe it is important to have your confirmation of this interpretation of the December 19th memorandum [and therefore my authority to authorize] before authorizing this and any similar operation.


12356 1,3
DECLASSIFIED • E.O. 12958 Sec. 1.3
With PORTIONS EXEMPTED
E.O. 12958 Sec. 1.3
12356 1.3 b.(1)

TOP SECRET

Classified by the Attorney General
Declassification Indefinite

MR 94-154, #19; DOT letter 1/14/97
By let NARA, Date 3/12/97

We are attempting to bring an early resolution to the questions presented by the National Security Agency operation which covers the direct interception of radio communications between the United States and abroad. We are in active consultation with the National Security Agency on this matter. I will report to you on our conclusions at the earliest possible date.


Edward H. Levi
Attorney General

~~TOP SECRET~~
Classified by the Attorney General
Declassification Indefinite

~~TOP SECRET~~

THE WHITE HOUSE

WASHINGTON

not submitted

MEMORANDUM FOR

THE ATTORNEY GENERAL

In response to your memorandum of January 6, it is my desire that the operation there described as.....
..... henceforth be subject to your authorization, pursuant to the delegation of authority and procedures set forth in my December 19, 1974, memorandum to the Attorney General with such additional safeguards concerning minimization and subsequent use as the special nature of those activities may in your opinion require.

I also direct you to continue your consultations with the

.....
.....
.....

revised form of the December 19, 1974, memorandum, as you have suggested.

DECLASSIFIED • E.O. 12958 Sec. 3.6
With PORTIONS EXEMPTED
E.O. 12958 Sec. 1.5 (c)

NR 94-154 #20 NSC Ltr. 5/15/98

By KBH, NARA, Date 7/22/98

THE WHITE HOUSE

WASHINGTON

January 12, 1976

MEMORANDUM FOR

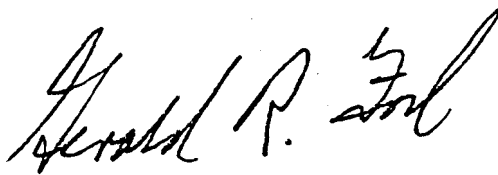
THE ATTORNEY GENERAL

In response to your memorandum of January 6, 1976,
it is my desire that operations described as.....

.....
delegation of authority set forth in my memorandum
of December 19, 1974, to the Attorney General. In
the event you decide to withhold or terminate an
authorization for such an operation or a disagree-
ment arises as to the required procedures, I direct
that you forward the matter to me for my consideration.

I also direct you to consult with the Secretary of
Defense to determine whether the.....

..... should come.....
under a revised form of my December 19, 1974,
memorandum, as you have suggested.



CLASSIFIED - E.O. 12958 Sec. 3.6
With PORTION EXEMPTED
E.O. 12958 (c)(1)

MR 94-154 #21 NSC ltr 5/15/98

By KBH, NARA, Date 7/22/98

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134
134
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THE WHITE HOUSE
WASHINGTON

January 7, 1976

MEMORANDUM FOR: THE PRESIDENT
FROM: PHILIP BUCHEN *P.*
SUBJECT: Warrantless Electronic Surveillance

I. Background

On December 19, 1974, you issued a memorandum on this subject to the Attorney General, a copy of which is attached at Tab A.

On September 12, 1975, the Attorney General sent you a memorandum dealing with new developments in the law and suggesting the possible need for revisions in your earlier memorandum (see Tab B).

Most recently, the Attorney General sent you a memorandum dated January 6, 1976, which appears at Tab C.

II. Recommendation

I recommend that you sign the memorandum attached at Tab D which was drafted by the Attorney General. Brent Scowcroft concurs in this recommendation.

DECLASSIFIED

AUTHORITY RAC NLF-PR-1-10-12-5 7/30/01
BY John *use guidelines* NLF, DATE 6/29/09



THE WHITE HOUSE

WASHINGTON

January 13, 1976

*Clear
Chen*

MEMORANDUM FOR: MIKE DUVAL

FROM: PHIL BUCHEN *P.*

Attached are comments on the decision memorandum of January 12, 1976, on the Intelligence Community which was given to the President:

1. I would change the part of the sentence appearing at the top of page 2 to read as follows:

". . . for even minimum covert actions, overt actions ultimately required may have to be drastic, leading to increased possibility of paramilitary action or war."
2. I do not understand the first full paragraph on page 2 unless you mean that "accountability" means responsible handling of confidential information by Members of Congress.
3. An alternate name for "the Foreign Intelligence Community" might be "National Intelligence Board." That would be consistent with the designation of one of the DCI deputies as being "Deputy Director of Central Intelligence for National Intelligence Affairs."
4. On page 4, I am not entirely clear as to what items 5 and 6 are intended to cover and what is meant by "including binding decisional approval authority."
5. I think neither item 8 on page 4 nor item 9 on page 5 is appropriate for the newly proposed Foreign Intelligence Committee. I think that the "Oversight Subcommittee"



described at pages 14 and 15 could be made a free standing committee.

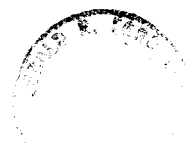
On the matter of producing national intelligence estimates, I suggest that consideration be given to reviving the "Board of National Estimates," this time to be chaired by the DCI rather than by his Deputy.

6. In the section dealing with "agency charters," no mention is made of the role of the NSC or its staff. In that connection, I call attention to the omission of the "net assessment" responsibilities which under the Nixon memo of November 5, 1971, on page 6 are vested in a "Net Assessment Group" created within the National Security staff. Also, I think there should be mention of the role of the FBI and its relationship to the rest of the intelligence community.

In defining the functions of the respective agencies, you mention that certain functions may be too sensitive for public announcement, but I think that there probably are more functions to be assigned to each agency than you have disclosed which, by general language, could be set forth without revealing sensitive information. I think one of our purposes is to present as full a picture as possible of the magnitude and diversity of the operations and responsibilities of the intelligence community.

Moreover, it may be desirable to emphasize specific limitations on the jurisdictions of the respective agencies, partly to show we are avoiding duplication where it is unnecessary and partly to restrain abuses which arise when one agency intrudes upon the functions of another.

7. In connection with the description of the Director of Central Intelligence on page 6, you may want to spell out his relationship to the FBI and also his authority to obtain contributions to national intelligence from other government organizations not directly part of the Intelligence Community such as CEA and the Departments of Agriculture and Commerce.



8. In view of the fact that terrorism has foreign roots with domestic consequences or may be purely domestic, I am somewhat concerned that giving this Board counter-terrorism responsibilities, having it supported by the NSC staff, and having it recommend steps to the NSC may cause concern that this operation will have a domestic involvement. If it does not, it may be handicapped in dealing with the problem of terrorism within the U. S. Also, I would worry about dealing with terrorism through the same organizational structure that deals with covert operations.

cc: Jack Marsh

THE WHITE HOUSE
WASHINGTON

Classification

January 14, 1976

MEMORANDUM FOR: JIM CONNOR

FROM: PHIL BUCHEN *P.*

SUBJECT: Frank G. Zarb memo 1/13/76
re: U. S. Government Oil
Purchase Agreement

The last of the listed disadvantages is perhaps the most important. This would be a conspicuous, controversial action. If we cannot give a realistic explanation, the alternative rationales will look disingenuous.

An important disadvantage not listed is the major administrative problem created by resale of the oil. It presents the same problem that persisted for years in allocating oil import quotas. Auctioning was often proposed, but never proved politically acceptable. The politically inevitable preference for the smaller refiners would be a subsidy and a continuing source of controversy.

Another disadvantage is that this proposal is inconsistent with the President's policies for energy independence. The massive government intervention -- to obtain imports -- may be seriously resented by the domestic energy industry just at the time we are trying to encourage its expansion.

DECLASSIFIED
E.O. 12958, Sec. 3.5
NSC Memo, 11/24/98, State Dept Guidelines
By *W/H/m*, NARA, Date *5/9/00*



EYES ONLY
THE WHITE HOUSE
WASHINGTON

*Class
Cham*

January 16, 1976

MEMORANDUM FOR: TOM WOLF

FROM: PHIL BUCHEN *P.*

It is inappropriate for you to regard my memorandum of January 7 as a personnel action or even as a punitive and discriminatory act. A pass to the White House is not a perquisite of employment but rather a device employed for the convenience of the people within the White House who depend on quick and easy access by people who are frequently reporting to them or otherwise providing services which require regular access to the offices here.

In your case and those of others on your staff, the device is no longer needed. For that reason the issuance of the passes for you and your staff should have been terminated some time ago. Again, this circumstance in no way reflects on your capabilities and quality of service; nor will the absence of passes impair your performance.

EYES ONLY



EYES ONLY

THE WHITE HOUSE

classified admin
LOG NO.:

ACTION MEMORANDUM

WASHINGTON

Date: January 20, 1976

Time:

FOR ACTION:

cc (for information):

Phil Buchen
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Wednesday, January 21 Time: 10 A.M.

SUBJECT:

Brent Scowcroft's memo of 1/19/76
regarding the National Security Medal

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

EYES ONLY

January 20, 1976

I support this proposal.

P.W.B.

Philip Buchen

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Connor
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

*Class
chem*

Date: January 21, 1976

Time:

FOR ACTION:

cc (for information):

Phil Buchen

Bob Hartmann

Jack Marsh

Bill Seidman

Ron Nessen

FROM THE STAFF SECRETARY

DUE: Date: Friday, January 23

Time: 3 P.M.

SUBJECT:

CONFIDENTIAL

Brent Scowcroft memo 1/19/76
re: USSR/Warsaw Pact Contacts
with White House Staff

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:


January 24, 1976

No objections -- although a possible alternative would be for General Scowcroft to make this request verbally at a Senior Staff meeting.

T.W.B.
Philip Buchen

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.


Jim Connor
For the President



ckm

THE WHITE HOUSE

WASHINGTON

January 26, 1976

MEMORANDUM FOR: THE ATTORNEY GENERAL

FROM: PHILIP W. BUCHEN *P.W.B.*
Counsel to the President

SUBJECT: Prohibiting Surreptitious Entries
by the CIA

This memorandum is in response to your inquiry concerning restrictions currently in effect to prohibit the CIA from conducting, either independently or with any other government entity, an illegal surreptitious entry or "break-in."

On August 29, 1973, following a review of the legality and propriety of certain CIA activities by the CIA's Inspector General and General Counsel, Director Colby issued a series of internal directives. Two of these directives dealt with surreptitious entries against CIA employees, ex-employees and "United States citizens not connected with the CIA" (Tab A). The directive pertaining to CIA employees and ex-employees prohibits surreptitious entries only "outside Agency property." The directive with respect to "other United States citizens" unfortunately contains a number of ambiguities. For example, it is not cast in terms of a prohibition per se, but states merely that surreptitious entries may not be justified under the "protection of intelligence sources and methods" authority. Again, it is silent with respect to individuals such as resident aliens or foreign nationals within the United States.

Last month, Mr. Colby issued an internal directive to all CIA employees dealing with "restrictions on CIA activities within the United States or related to United States citizens and organizations" (Tab B). The directive does not specifically address the subject of surreptitious entries. However, it is replete with instructions to the effect that the Agency must



operate in accordance with the law. For example, Section I. a. (5) states that:

"In addition to specific provisions of this regulation that relate to the conduct of CIA activities, no CIA activity or action by CIA employees shall be authorized which would abridge the Constitutional or legal rights of United States citizens, whether in the United States or abroad."

In my judgment, the August, 1973 directives and the more recent "restrictions" directive, taken together, probably represent a complete prohibition, in practice, against illegal entries within the United States or against individuals entitled to the protection of the U. S. Constitution. However, I believe it desirable that a clearer and more specific prohibition be issued. As you know, there is currently under consideration a comprehensive Executive Order with respect to the intelligence community; the draft includes specific restrictions on certain intelligence activities. Although the current draft does not contain a specific reference to surreptitious entries, it can easily be amended to include such a prohibition.



THE WHITE HOUSE

WASHINGTON

Chen

February 3, 1976

Dear Bob:

In accordance with our telephone conversation today, I am enclosing the vita of James A. Wilderotter.

As I told you, I recommend Jim very highly, and if you desire to meet with him, you can reach him at the White House during business hours at 456-7094.

Sincerely,



Philip W. Buchen
Counsel to the President

The Honorable Robert C. Seamans, Jr.
Administrator
Energy, Research and Development
Administration
Washington, D. C.

Enclosure



THE WHITE HOUSE

WASHINGTON

February 3, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: PHILIP BUCHEN *P.*

SUBJECT: Chairman of the Federal Trade Commission

Some consideration has been given to the selection of Antonin Scalia for nomination by you to be Chairman of the Federal Trade Commission (FTC). Scalia is now Assistant Attorney General in charge of the Office of Legal Counsel. I know that Ed Levi considers him among his most valued Assistants and it would be a severe loss to the Attorney General as well as to the Department of Justice if Scalia were to be asked to leave his present position.

In addition, I want to point out how valuable it is for you and the White House staff to have Scalia remain in his present position. In that position, Scalia directs all the legal research and provides the advice needed to deal with the major issues that affect the Presidency and operations of the Executive branch. Among the major issues in which he has been or still is involved are:

1. The extent of "executive privilege" under the law and the right of the President to protect national security secrets in dealings by the Executive branch with the Congress;
2. Legal issues raised by the pending bills to establish congressional oversight for control of the CIA and the rest of the intelligence community;



3. Constitutional issues involved in warrantless electronic surveillance of all types;
4. Statutory provisions needed to improve the protection of national security information;
5. The problems created by the Supreme Court's decision on the Federal Election Laws;
6. Conflict of interest questions involving your appointees; and
7. Numerous other issues involving attempted encroachment by the Congress on the powers of the Executive branch.

Scalia is a remarkably bright and resourceful attorney and a prodigious worker. I can think of no one else over at Justice who could adequately take his place. Also, it would be difficult and time-consuming to find an adequate replacement from outside the Justice Department, and even a competent newcomer would require time to begin to match Scalia's performance.

I suggest that if Scalia is to be further considered for a new assignment that it would be desirable for you to consult with the Attorney General.



THE WHITE HOUSE
WASHINGTON

Classified

February 10, 1976

MEMORANDUM FOR: RICHARD CHENEY

FROM: PHIL BUCHEN *P.*

SUBJECT: Balance Sheet and Tax Summary as Prepared by Robert McBain

At my suggestion, Bob McBain is going to submit a replacement letter and accompanying balance sheet with the following changes:

1. In his report on Federal Income Tax paid for each of the years 73, 74, & 75, he will add information for the Michigan income taxes paid which were as follows:

1973	-	\$3,219
1974	-	5,123
1975	-	9,123

2. He will add after the word "Furnishings" the words "and Personal Effects."



THE WHITE HOUSE

DECISION

WASHINGTON

February 13, 1976

MEMORANDUM FOR: THE PRESIDENT
FROM: PHILIP BUCHEN *P.*
SUBJECT: Intelligence Legislation Proposed
by the Justice Department

BACKGROUND

Ed Levi has submitted three proposed bills for your consideration concerning the Intelligence Community. He recommends that they be submitted along with your intelligence "package." They cover the following:

- Assassination: Ed Levi has endorsed the bill prohibiting assassinations developed by the Senate Select Committee and introduced at the time they submitted their assassination report. The Senate bill is generally acceptable except for an ambiguity which could prohibit paramilitary or insurgent operations in which opponents of U. S. supported groups might be killed. A language change could solve this problem but it is unclear how receptive Congress might be to our proposed changes.
- Electronic Surveillance: This bill drafted by Justice would establish a procedure for undertaking electronic surveillance for foreign intelligence purposes. It would create a special procedure for seeking a judicial warrant authorizing the use of electronic surveillance for foreign intelligence purposes. The bill would apply only to the interception of wire and oral communications to or from persons in the United



States and of radio communications both transmitted and received within the United States. It would therefore not cover NSA's operations. In this connection, Senators Kennedy and Scott are planning to introduce their own "bipartisan" bill on this subject next week; their bill is unacceptable to the Justice Department.

- Mail Openings: This bill establishes procedures similar to those proposed by the Justice Department for electronic surveillance. It would establish a special warrant procedure authorizing the opening of mail for counterintelligence purposes only where there is probable cause to believe that the sender or recipient is an agent of a foreign power who is engaged in spying, sabotage or terrorist activities.

AGENCY REACTIONS

There is general agreement that you should endorse the Senate assassination bill or a modified version thereof. A question exists as to whether you should propose specific new language to correct the ambiguity discussed above or merely rely on legislative history to resolve the problem. The Senate may be suspicious of clarifying language proposed by the executive branch, although such proposed changes would be considered by the Judiciary Committee which would be more likely to accept changes than the Church Committee.

Agencies have identified several problems with the mail opening bill:

- (1) Although it purports to allow mail opening for "foreign intelligence" purposes, it allows opening only for the collection of counterintelligence. As a result, it may implicitly limit whatever constitutional authority the President may have to open mail for foreign intelligence purposes.



(2) It would allow warrants to be framed much less specifically than traditional criminal warrants, when most activities justifying the new type of warrants would also constitute crimes ("spying, sabotage, or terrorist activities pursuant to the direction of a foreign government or foreign terrorist group").

(3) An important operative term, "spying", is undefined.

There are strong objections within the Administration to any electronic surveillance bill being proposed by you at this time. The objections are:

(1) An Administration bill would not be approved by Congress during its present session or would become so extensively amended as to make it unacceptable to the Administration.

(2) The bill as drafted omits covering critical NSA activities which do not lend themselves to a warrant procedure on a target-by-target basis; and Congress might attempt to overcome this omission by unworkable provisions.

(3) The bill unnecessarily derogates from the inherent Constitutional authority of the President to conduct warrantless electronic surveillance for foreign intelligence purposes. (Note: The Attorney General totally disagrees with this argument.)

The Attorney General, on the other hand, is strongly of these views:

(1) Certain committees of Congress will move ahead with their own proposals to control electronic surveillance for foreign intelligence purposes, and only by submitting an Administration proposal can we effectively counter objectionable moves by Congress.

Senators Ted Kennedy and Hugh Scott are likely to introduce their own bill. (Note: It may be referred to Senator McClellan's Judiciary subcommittee.)



(2) A specific statutory basis for electronic surveillance to collect foreign intelligence information under a procedure for obtaining special judicial warrants is advisable in view of the growing possibility that the Supreme Court will ultimately require judicial warrants for this type of activity under judicially-devised procedures and tests which will prove not to be nearly as workable as those set out in the proposed bill.

(3) Such legislation will overcome the erroneous public suspicion that covert and indiscriminate electronic surveillance abounds within the United States.

(4) Supplementary legislation to deal with NSA activities is in process and can be ready in time to deal with objections that the bill presently proposed by the Justice Department does not deal with such activities.

See Tab A for additional personal views from Ed Levi.

DECISIONS

1. With respect to the anti-assassination bill, there are three options:

- (a) Endorse the Senate Select Committee draft bill when you announce your Community decisions.

Favor: Justice, Buchen

Approve _____ Disapprove _____

- (b) Endorse the principle of the Senate Select Committee bill but say work must be done to correct its deficiencies.

Favor: CIA, State, Marsh, Scowcroft

Approve _____ Disapprove _____

- (c) Announce that the Administration is considering an anti-assassination criminal statute, but do not endorse the Senate Select Committee Bill.

Favor: Defense

Approve _____ Disapprove _____

2. Submit mail opening legislation (or a slightly modified version thereof) with your Intelligence Community decisions.

Favor: Justice, State, Buchen, Scowcroft

Oppose: CIA (opposes such legislation for its purposes) and Defense

Approve _____ Disapprove _____

3. Submit electronic surveillance legislation when you announce your Intelligence Community decisions.

Favor: Justice, Buchen

Oppose: Defense, CIA, State, Scowcroft

Approve _____ Disapprove _____

If you submit no electronic surveillance legislation, there are two other options available:

- (a) Support the concept of such legislation, and announce that you will meet with Congressional leaders on the subject.

Favor: Justice

Approve _____ Disapprove _____

- (b) Take no position at this time.

Favor: Defense, State, CIA, Marsh, Scowcroft

Approve _____ Disapprove _____

The only real choice the President has is to be openly for or against legislation. Legislation is coming, and our best belief is that with Kennedy and Scott joined, a bill will be reported out by the Senate Judiciary Committee. The President will be in an awkward position to oppose, and in a much better position if the President has taken an affirmative position on, desirable legislation.

If the Executive does not support such legislation, this will weaken the position of the government in future cases where we will have to argue that warrantless surveillance is necessary because there is no other workable procedure.

There is a real danger that the Supreme Court will continue not to act, and lower courts in cases such as Zweibon will cast doubt on the legality of warrantless surveillance or intrusions for the placing of microphones.

The step by the President in asking for special legislation and a warrant procedure will be reassuring and an appropriate step in Presidential leadership.

The Attorney General

1960

THE WHITE HOUSE

WASHINGTON

February 13, 1976

clm

MEMORANDUM FOR: THE PRESIDENT
FROM: PHILIP BUCHEN *P.*
SUBJECT: Intelligence Legislation Proposed
by the Justice Department

Supplementing my earlier memorandum to you on this date, I attach copies of the three proposed bills as follows:

- . Assassination (See Tab A)
- . Electronic Surveillance (See Tab B)
- . Mail Openings (See Tab C)



Date: February 17, 1976

Time:

Class. Connor

FOR ACTION:

cc (for information):

Max Friedersdorf

Phil Buchen

Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Wednesday, February 18

Time: 10 A. M.

SUBJECT:

Brent Scowcroft memo 2/17/76 re
U. S. Military Relationship with Egypt

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

SECRET MATERIAL ATTACHED

February 19, 1976

No legal objections. (I assume that the Letter of Offer to be provided in accordance with the Nelson-Bingham Amendment will be reviewed by the legal offices at State and Defense before it is submitted to the Congress.)

T.W.B.

Philip W. Buchen

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James E. Connor
For the President



~~SECRET~~
THE WHITE HOUSE

WASHINGTON

March 1, 1976

MEMORANDUM FOR: JIM WILDEROTTER

FROM: PHIL BUCHEN *P.*

Kindly handle the attached matter dealing with the Criminal Division's request for a copy of a White House paper.

Is this one of the documents in the Nixon collection?

Attachment

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ATTACHMENTS



*Class.
Chin*

THE WHITE HOUSE

WASHINGTON

March 5, 1976

MEMORANDUM FOR: JIM CONNOR
JACK MARSH
BRENT SCOWCROFT

FROM: PHIL BUCHEN *T.W.B.*

SUBJECT: Brent Scowcroft's Memorandum
of 3/3/76 re Function &
Organization of NSC Sub-Groups

The National Security Council is established by law (50 U.S.C. Sec. 402). Presumably each of the sub-groups is subordinate to the Council and is intended to assist the Council in performing its specific statutory functions, namely:

1. ". . . to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security. (50 U.S.C. 402(a))
2. "to assess and appraise the objectives, commitments, and risks of the United States in relation to our actual and potential military power, in the interest of national security, for the purpose of making recommendations to the President in connection therewith; (50 U.S.C. 402(b)(1))
3. "to consider policies on matters of common interest to the departments and agencies of the Government concerned with the national security, and to make recommendations to the President in connection therewith. (50 U.S.C. 402(b)(2))



4. "to direct the Central Intelligence Agency in carrying out its functions." (50 U.S.C. 403(b))

and "such other functions as the President may direct" (50 U.S.C. 402(b)). Therefore, I think the appropriate instrument(s) for establishing the sub-groups should be one(s) which is adopted and issued by NSC rather than by the President acting alone.

Also, I recommend that whatever instrument(s) is so issued now should be complete in itself and should not depend on reference to prior memoranda, which in some instances include references to even earlier documents. In addition, I question whether the instrument(s) needs to be so drafted as to require a security classification.

Before having the NSC act to reconstitute any existing sub-group, I suggest that an evaluation be made of how well each particular sub-group has been functioning and whether it is still necessary or desirable. I believe the President wants at this time to eliminate unnecessary or overlapping entities, and it may be that one or more sub-groups should be eliminated or their functions consolidated or that additional sub-groups for other functions (such as those required by Sec. 3(a), (2) and (3) of E.O. 11905) would be desirable.

In regard to specific sub-groups, I have these comments:

NSC Senior Review Group: If the "charter" for this group is to be based on what now appears in NSDM 85, I would revise the provisions in the last paragraph on page 1, where the group is authorized to recommend submission of a paper directly to the President rather than through the NSC. I do not know to whom such a recommendation goes, but if the intent is to allow a sub-group of NSC to by-pass the parent council, I think it is not appropriate. Also, the top paragraph on page 2 depends on references to still earlier memoranda, and these are probably of no current value.



Verification Panel: The three earlier memoranda on which the continuation of this group is proposed to be based refer only to particular studies which had completion dates in 1970 and 1971 respectively, so I assume they are out-of-date, and if there are functions for this group still to perform they should be defined anew.

Defense Review Panel: If the reference to NSCM 26 means anything more than is stated on page 2 of the proposed new memo for the President to sign, it merely creates ambiguities.

Washington Special Actions Group. Reference is made to a 1969 memo which is very cryptic and for understanding requires knowing about an earlier group which functioned during the Korean crisis and about "Crisis Task Forces" which apparently are described in NSDM 8 and have to do with the Under Secretaries Committee as it functions under both NSDM 8 and part of NSDM 2. Also, it is not at all clear how WSAG relates to the NSC, because it appears that it makes policy decisions which are then directly implemented by "Crisis Task Forces." Again, this is the kind of situation which creates obscurity and ambiguities and should be corrected at this time.

Under Secretaries Committee: Reference is made to part of NSDM 2, which appears to give this Committee operational responsibilities and makes it something other than a sub-group of NSC. Also, it appears elsewhere that existing NSDM 8 gives additional authority to this Committee, and yet it is not referred to in this connection.

Interdepartmental Groups: Reference is made to another part of NSDM 2 for a description of the functions and membership of these groups, but the exact nature, scope, and membership of each of these six groups is not well delineated.

The NSC itself: The first part of NSDM 2 appears to deal with the functions and procedures of the Council, but it is less complete than the statute



which created the Council and does not track with the new E.O. 11905, Sec. 3(a). I suggest that NSDM 2, as well as other memoranda dealing with the structure, functions, and procedures of NSC and the sub-groups to be continued or reconstituted be withdrawn and be replaced by one new comprehensive memorandum which overcomes the defects and diffusiveness of the earlier memoranda and which fits all current needs in the best possible way.

At the same time, it seems desirable that Sec. 8(b) of E.O. 11905 be implemented in respect of all NSC directives.



TOP SECRET

THE WHITE HOUSE

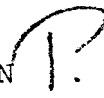
WASHINGTON

March 15, 1976

DECLASSIFIED
E.O. 12958, Sec. 3.4 (b)
White House Guide Lines, Feb. 24, 1983

By SP10 NARS Date 9/7/88

MEMORANDUM FOR: THE PRESIDENT

FROM: PHILIP BUCHEN 

SUBJECT: Legislation on Electronic Surveillance for Foreign Intelligence Purposes

Attached is a memorandum (Tab II) to you from the Attorney General on the above subject. It deals with the three remaining issues which, along with my summary of pros and cons for each, are listed at Tab I.

In an effort to resolve these differences, Jack Marsh and I held a meeting on Friday, March 12 with Henry Kissinger, Don Rumsfeld, Ed Levi, Brent Scowcroft and George Bush. After a lengthy discussion, the others had a better understanding as to why Ed Levi, Jack Marsh and I favor the legislation as it is now drafted (which applies the warrants to foreign installations and diplomats and which reflects option #1 on the second issue and option #2 on the third issue). As a result, I detect no adamant opposition to the legislation as now drafted. Those who had previously questioned aspects of the proposed legislation declined to register any votes on the issues. Therefore, I recommend that you deal with the three issues on the Levi memorandum (Tab II) as follows:

1. By approving applications of warrants to foreign installations and diplomats (page 5 at Tab II);
2. By approving option #1 (page 6 of Tab II); and
3. By approving option #2 (page 7 of Tab II).

The main concern was whether this legislative initiative would succeed or whether, as some feared, the legislation which is actually passed would depart in objectionable ways from the present draft. On this point, the Attorney General feels confident that the matter can be effectively handled through a meeting by you with members of the Senate and House Judiciary Committees and the top leadership of the two Houses.

Already, the Attorney General has found the key members of the Senate Judiciary Committee receptive to the legislation as drafted, and he has had favorable preliminary reactions from Congressmen Rodino and Hutchinson of the House Judiciary Committee. Senators Eastland, McClellan, and Hruska recommended to the Attorney General that he make a special point of enlisting strong support from Senator Kennedy, who, in turn, has now indicated he wants to sponsor the bill in the Senate. Senator Kennedy will be joined in sponsoring the bill by other key members of the Senate Judiciary Committee, and no opposition from any member of the Committee is expected.

The Attorney General is strongly of the opinion that you should support the legislation as drafted, and if you should feel any hesitancy, he would like to discuss the matter with you personally before you make a final decision.

You had earlier indicated to the Congress that you intend to meet with key members to develop acceptable legislation on this subject. Therefore, as soon as you have indicated your decisions which are sought in the Attorney General's memo to you, we will make arrangements to schedule the contemplated meeting.

Attachments



THE WHITE HOUSE
WASHINGTON

*@ Law
Chm.*

March 17, 1976

MEMORANDUM FOR: RICHARD OBER
FROM: PHILIP BUCHEN *P.W.B.*
SUBJECT: Draft Preamble for NSCIDs

Attached is a copy of the Lansdale memo which you furnished me. On it I have marked two suggested word changes which avoid the problem of using the word "inherent."

If the President does not have the authority either under the Constitution or under statutes, he has no authority and therefore the language as I have changed it is preferable.

Attachment

cc: Bill Hyland



Chen

THE WHITE HOUSE

WASHINGTON

March 19, 1976

~~SECRET~~

Dear Mr. Thornburgh:

This is in response to your letter of February 27 requesting access to those references in a White House document entitled "Findings Pursuant to Section 662 of the Foreign Assistance Act of 1961, as Amended, Concerning Operations Abroad to Help Implement Foreign Policy and Protect National Security," which concern CIA's authority and mandate to participate in narcotics intelligence collection as a matter affecting the national security.

As Mr. Wilderotter has discussed with you, the document involved concerns a number of matters beyond the interest of the Criminal Division. After reviewing the entire document myself, I can advise that there is a reference which could be regarded as concerning CIA's authority and mandate to participate in narcotics intelligence collection as a matter affecting the national security. We will be pleased to give Departmental Attorney Dougald McMillan access to that part of the document, as you requested. I suggest that Mr. McMillan contact Mrs. Jeanne Davis, Executive Secretary of the National Security Council, to arrange a mutually convenient time.

Please let me know how we can be of further assistance.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

The Honorable Richard L. Thornburgh
Assistant Attorney General
Criminal Division
Department of Justice
Washington, D. C. 29530

Signer
SEARCHED
SERIALIZED
INDEXED
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MAR 22 1976
FBI - WASHINGTON

DECLASSIFIED
AUTHORITY RAC 216-10-10-14-3 7/30/07
BY NLF, DATE 6/29/09

~~SECRET~~

THE WHITE HOUSE

WASHINGTON

April 2, 1976

MEMORANDUM FOR: ROBERT MCFARLANE

FROM: PHILIP BUCHEN *P*

When communicating with the President's party on the incident in New York involving the Soviet Mission to the United Nations, I suggest you make the following points:

1. The shooting involved both a violation of Federal and State laws.

Whether the persons committing the act when apprehended will be charged initially under Federal or State law, cannot be decided now.

2. This Mission is under the sole protection of the New York Police Department; therefore, it is important not to leave any impression that the protection afforded this Mission is not adequate or that it could be improved upon. (The only times that EPS services are provided for the protection of Missions are when the New York Police Department declines for lack of manpower or other reasons to provide the protection and it is usually afforded only on a temporary basis.)



THE WHITE HOUSE

WASHINGTON

May 14, 1976

MEMORANDUM FOR:

JOHN MATHENY
JANE DANNENHAUER

FROM:

PHIL BUCHEN *P.W.B.*

SUBJECT:

Access to and Disposition
of Certain Sensitive
Documents in the Wilderotter
files, Room 043

Attached is a proposal which I made to Jim Connor that has been approved by him. By this memo, I am authorizing the two of you to carry out the proposal as set forth. If you run into any problems or questions, please let me know.

Attachment



THE WHITE HOUSE

WASHINGTON

May 7, 1976

MEMORANDUM FOR: JIM CONNOR

FROM: PHIL BUCHEN *P.*

SUBJECT: Access and Disposition of
Certain Sensitive Documents
in the Wilderotter Files,
Room 043

As you will recall, Jim Wilderotter while serving in the White House collected certain files of a very sensitive nature which are contained in safes now located in Room 043. These were moved from Jim's former office to Room 63 and then yesterday were moved out to the present location.

John Matheny in Brent Scowcroft's office has requested access to these files for two purposes:

1. The first is to ascertain what documents that were forwarded to this office for clearance from the NSC did in fact go forward to the Select Committee; and
2. To retrieve those that were not forwarded or did not subsequently become part of a Presidential decision paper.

I am informed that there is also a significant amount of documents from the various intelligence agencies which, like some of the NSC documents, were never forwarded to the Select Committee or consumed in a Presidential decision memorandum.

It is my view that this type of document could reasonably be returned to the originating agency. Most of the materials in question are highly classified and were referred to this office by the originator with the expectation that they would be returned upon completion

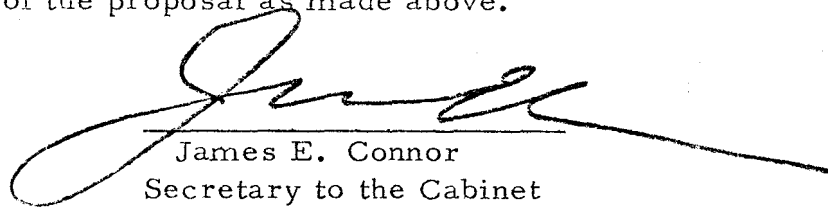


of the Senate investigations. Those that were then forwarded to the Select Committee should be so recorded to enable the originating agency to ascertain which of its documents are currently in the possession of the Committee, thus facilitating efforts to retrieve them. In this regard, it is my understanding that the Select Committee is due to close down before the end of May. It would therefore seem wise to complete this task as expeditiously as possible.

Accordingly, I have instructed Jane Dannenhauer of my staff to assist John Matheny in sorting through these materials with a view toward determining the final disposition of those that clearly fall in the above categories.

Because this proposal affects the disposition of papers which are presently files of the White House, I would appreciate your concurrence that the proposal does not affect the integrity of the Presidential materials. If you have any questions, please call me. Otherwise, I would like your approval of the proposal as made.

I approve of the proposal as made above.



James E. Connor
Secretary to the Cabinet
and Staff Secretary to the President

May 12, 1976



NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Presidential Libraries Withdrawal Sheet

WITHDRAWAL ID 01429

*opened with
portions exempted
7/31/90 KBH*

REASON FOR WITHDRAWAL National security restriction
TYPE OF MATERIAL Memo(s)
CREATOR'S NAME Philip Buchen
RECEIVER'S NAME Jim Connor
DESCRIPTION re Intelligence Oversight Board letter
and memorandum
CREATION DATE 05/19/1976
VOLUME 2 pages
COLLECTION/SERIES/FOLDER ID . 001900629
COLLECTION TITLE Philip W. Buchen Files
BOX NUMBER 26
FOLDER TITLE National Security Chronological File
(1)-(7)
DATE WITHDRAWN 08/12/1988
WITHDRAWING ARCHIVIST WHM

~~SECRET~~

THE WHITE HOUSE

WASHINGTON, D.C.

May 19, 1976

MEMORANDUM FOR:

JIM CONNOR

FROM:

PHILIP W. BUCHEN *P*

This memorandum is written in response to your request for my comments on the Intelligence Oversight Board letter and memorandum of May 7, 1976. The Oversight Board is correct in its finding that the issue raised is one on which I had not previously been consulted. It does disturb me that this legal question, as it bears on the obligation of the President, should not have been raised with me at the outset by those in the White House who were parties []

However, had the question been put to me, I think I would have arrived at the conclusion that these [] activities which were the outgrowth of a previously approved and reported covert action would not require a further finding and report pursuant to Section 662 of the Foreign Assistance Act of 1961, as amended.

Specifically, I disagree with the Board's inference at the bottom of page 7 of its memorandum. The inference seems to be that the [] activities [] constitutes an operation different from the original operation on which President Ford made a finding on January 10, 1975, simply because the activity was [] for a different purpose.

Obviously, the purpose of an activity changes when it becomes necessary to withdraw from the activity and to [] which had been used to conduct it, but the withdrawal is still a part of the same operation. Moreover, the fact that the withdrawal phase of an operation requires activities []

DECLASSIFIED - E.O. 12356, Sec. 3.4
With PORTIONS EXEMPTED
E.O. 12356, Sec. 1.3 (a) (4)

MR 89-24, #6 NSC Ltr. 7/10/90

By KBH, NARA, Date 7/26/90

1,3(a)(4)

1,3(a)(4)

1,3(a)(4)



[] does not in my opinion, make it a new operation within the intent of the applicable statute.

1,3
(a)
(4)

We have been in a similar situation with respect to the covert actions [] which are now in the process of disengagement and which require the reprogramming of funds [] which had been involved. In that case, the President has made no new finding of importance to the national security.

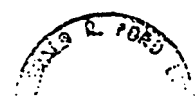
I have checked volume 7 of the report of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities. This volume deals with the subject of covert actions and makes reference in several places to the statute concerning covert actions by the CIA. I find nothing in the report which would throw any added light on the intent which Congress had in passing such statute. I do note, however, that in the reported testimony before the Committee by Cyrus Vance, he made the point that one of the problems of engaging in covert para-military operations is the difficulty of withdrawing from them once they have started and the length of time it may take to withdraw before the operation is actually terminated. []

1,3
(a)
(4)

[] This gives some support to my view that, as a practical matter, expenditures made to terminate an operation represent a continued funding of the same operation.

I do agree with the recommendation of the Board that better guidelines should be established to assure full compliance with the statute applicable to CIA "operations in foreign countries, []

1,3(a)
(4)



THE WHITE HOUSE

WASHINGTON

May 28, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN ^{P.}

Attached for your information are the following:

- TAB A - Draft of a prospective announcement by the Attorney General if he decides to file a memorandum in support of the granting of a certiorari by the Supreme Court.
- TAB B - Draft of an announcement by the Attorney General if he decides not to file such a memorandum.
- TAB C - A near final draft of a memorandum which would be filed if the Attorney General makes the decision to do so.

Although the draft announcement contains a reference in each case to the draft legislation being prepared by the Department of Justice, the Attorney General by telephone to me earlier this morning, indicated that he strongly objects to tying a reference to the proposed legislation into an announcement dealing with the pending Court case.

The Attorney General will be back in Washington at approximately 2:30 p.m. today. He will, after that time, report to you his decision on whether or not to file the memorandum.

Attachments



THE WHITE HOUSE

WASHINGTON

June 17, 1976

MEMORANDUM FOR: THE ATTORNEY GENERAL
FROM: PHILIP BUCHEN *P.*
SUBJECT: Shadrin Matter

Attached is a copy of a letter written by Mrs. Shadrin to her counsel, Mr. Richard Copaken, dated June 9, 1976, a copy of which was sent to Bill Hyland at the White House. I note that a copy was also sent to Robert Keuch of your Department, but I refer to it in this memo in order to bring you up-to-date on related developments on the same subject.

For some weeks, Mrs. Shadrin's attorney has been seeking to obtain from Bill Hyland a letter which the attorney thought was necessary to renew negotiations with a source in Berlin. Before issuing such a letter we had a meeting with Richard Copaken and Daniel Gribbon of Covington and Burling here in my office on June 4. At that time, I made it clear to these representatives of Covington and Burling that the United States Government was not assuming any responsibility for Mrs. Shadrin's legal fees and these lawyers clearly acknowledged to me they did not in representing Mrs. Shadrin intend that their fees would be met directly or indirectly by the Government.

Bill Hyland did on previous occasions state to Mrs. Shadrin that he thought the Government had some responsibility in the Shadrin matter and that it might be in order for the Government to reimburse Mrs. Shadrin for such reasonable expenses as she might incur to effectuate the discovery and release of her husband. However, contrary to the attached letter from Mrs. Shadrin, Bill Hyland never did confirm that the Justice Department had agreed to assume responsibility for her legal fees and expenses.



As a result of this conference, a letter was sent on June 7 over Bill Hyland's signature to Richard Copaken, a copy of which is attached. More recently, we have been advised by Mr. Copaken that the channel through which he was pursuing the matter has been closed off to him. We intend to verify this development through our own resources and will keep you advised.

Attachment

cc: Bill Hyland



~~TOP SECRET~~

THE WHITE HOUSE

WASHINGTON

June 29, 1976

MEMORANDUM FOR THE HONORABLE WILLIAM SIMON

FROM:

PHILIP W. BUCHEN

P.W.B.

SUBJECT:

Secret Service Request for Protective
Intelligence from NSA

In connection with your memo of recent date to the President on the above subject, I am attaching a copy of a memo to the President from the Attorney General dated June 25, 1976.

Attachment

cc: General Scowcroft

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ATTACHMENTS



THE WHITE HOUSE

WASHINGTON

*Class
cham*

June 29, 1976

MEMORANDUM FOR: BRENT SCOWCROFT

FROM: PHILIP BUCHEN *P.*

SUBJECT: Secret Service Request for
Protective Intelligence
from NSA

Attached are the following:

1. Original of a memo for the President from Attorney General Levi dated June 25, 1976.
2. A copy of my memo to Secretary Simon with a copy of Item 1 attached.

I trust you will take care of submitting the original of the Attorney General's memo to the President at an appropriate time and that you will advise me whether any further steps should be taken by me in respect of this matter.

Attachments



NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Presidential Libraries Withdrawal Sheet

WITHDRAWAL ID 01430

REASON FOR WITHDRAWAL National security restriction
TYPE OF MATERIAL Memo(s)
CREATOR'S NAME Philip Buchen
RECEIVER'S NAME President
DESCRIPTION re Intelligence Oversight Board report
of May 7, 1976
CREATION DATE 06/17/1976
VOLUME 3 pages
COLLECTION/SERIES/FOLDER ID . 001900629
COLLECTION TITLE Philip W. Buchen Files
BOX NUMBER 26
FOLDER TITLE National Security Chronological File
(1)-(7)
DATE WITHDRAWN 08/12/1988
WITHDRAWING ARCHIVIST WHM

*opened with portions exempted
7/28/98 KBH*

SECRET

THE WHITE HOUSE

WASHINGTON

June 17, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: PHILIP W. BUCHEN *P.*

SUBJECT: Intelligence Oversight Board Report of May 7, 1976, and Related Report from the Attorney General to you of June 14, 1976

Attached at TAB A is the Intelligence Oversight Board report to you of May 7, 1976, a copy of which was also submitted to the Attorney General. This report was prepared and furnished pursuant to Section 6 of your Executive Order 11905 dealing with the U. S. Foreign Intelligence Activities. A copy of the pertinent section of this Executive Order is attached at TAB B.

The report at TAB A raises questions about the legality of the procedures followed to undertake as a covert operation the resettlement of Meo tribesmen after the fall of Laos necessitated termination of the CIA covert paramilitary program which had been conducted in Laos since 1961.

On September 22, 1975, you authorized the State Department to assist the Meo overtly through the United Nations High Commissioner for Refugees and the Royal Thai Government and at the same time authorized an immediate covert CIA program of aid in resettling the Meos The question of legality arises because of the requirements of the Hughes Amendment to the Foreign Assistance Act of 1961 (Section 662 of that Act; 22 U.S.C. Section 242). This Amendment provides that no funds may be expended for covert operations in foreign countries "unless and until the President finds that each such operation is important to the national security of the United States and reports in timely fashion a description and scope of such operation to the appropriate committees of Congress. . .".

Photocopy from Gerald R. Ford Library

Declassified

DECLASSIFIED 10/20/88 Sec. 8.6
 With PORTIONS DECLASSIFIED
 E.O. 12958-2 (S)(d)

NK 94-155, #23 CIA Exr. 6/17/98

By KSH NARA, Date 7/22/99

In this case, the ongoing paramilitary activities involving the Meos in Laos were covered by a finding which you made on January 10, 1975, (when the Hughes Amendment first went into effect) and was reported to the required committees of Congress. However, your authorization of the resettlement program on September 22, 1975, was not accompanied by an express finding in writing of importance to the national security, nor by a report to all of the required committees.

After the report at TAB A was received here in the White House, I was asked by Jim Connor to comment on it by return memo to him, a copy of which now appears at TAB C. In that memo, I took the position that if the question had been presented to me at the time of your decision on September 22, 1975, I believe I would have arrived at the conclusion that the resettlement activities were merely the outgrowth of a previously approved and reported covert action and therefore would not require a further finding and report pursuant to the Hughes Amendment.

Since then, the Office of Legal Counsel at the Justice Department prepared a memo and the Attorney General has sent you a report of June 14, 1976, both of which are at TAB D. In discussions with Antonin Scalia, he clearly distinguishes the Meos operation and its aftermath from the Angolan operation which likewise involved a reprogramming of funds upon terminating the active phase of that operation. The distinction he makes is based on the fact that the resettlement phase of the Laotian operation involved covert activities affecting another country,..... and it therefore assumed the character of a new and separate operation different from the one reported on during the active phase of the Laotian operations.

Mr. Scalia further indicated that the need for protecting and saving the lives of the assets relied upon in the initial operation would support a finding of importance to the national security because of the adverse consequences of deserting any people in foreign countries who have staked their lives on assisting the U.S. in its operations.

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Declassified

I agree that this circumstance supports such a finding, although I disagree that..... to effectuate the resettlement necessarily makes that action a new operation requiring a new finding and additional reports. Nevertheless, I believe you should discuss with George Bush the practicality of following the suggestions of the Attorney General that are contained in the second-last paragraph of his letter to you. To follow these suggestions now would resolve without question the issues raised both by the Intelligence Oversight Board and the Attorney General. At the same time, we can avoid having this problem arise again by following the recommendation of the Attorney General in the last paragraph of his letter.

ATTACHMENTS

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