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THE WHITE HOUSE
WASHINGTON

July 12, 1976

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR:

PHILIP W. BUCHEN

FROM:

JAMES E. CONNOR *J.E.C.*

SUBJECT:

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

The President reviewed your memorandum of July 8 on the above subject and approved your recommendation to sign the attached memorandum to Director George Bush of the Central Intelligence Agency.

The signed memorandum is being delivered to CIA today. A copy of this memorandum is attached for your file.

cc: Dick Cheney

THE WHITE HOUSE
WASHINGTON

Bob Linder -

I discussed the handling of this
with Jim Connor.

He would like you to handle the
delivery of the letter to Director Bush
but it is to be very closely held.

I would like the package back after
letter delivered.

Trudy Fry
7/12/76

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00782

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS,National security restriction
Type of Material : MEM,Memo(s)
Creator's Name : Philip Buchen
Receiver's Name : President
Description : re reports from Intelligence Over
sight Board and Attorney General
Creation Date : 07/08/1976
Volume (pages) : 4
Date Withdrawn : 05/18/1988

87/10/76

THE WHITE HOUSE
WASHINGTON

July 9, 1976

MR PRESIDENT:

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

- I showed this package to Brent Scowcroft and Jack Marsh. They both concur with Phil Buchen's recommendation.

Jim Connor

*Memo for Director of Central Intelligence (Tab B)
was delivered by St. H. Messenger, w/ receipt, 7/12/76.*

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00783

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS,National security restriction
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Creator's Name : Robert D. Murphy
Receiver's Name : President
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ommunity which raises legal questions
Creation Date : 05/07/1976
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*opened with portions exempted
7/28/98 KBH*



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THE WHITE HOUSE

WASHINGTON

Intelligence Oversight Board

May 7, 1976

Dear Mr. President:

The Intelligence Oversight Board is hereby reporting to you and the Attorney General, pursuant to Section 6(a) (v) of Executive Order 11905, on an activity of the Intelligence Community which raises legal questions.

The activity in question is the expenditure of appropriated funds for the resettlement of Meo tribesmen in Laos by the CIA in the absence of a specific Presidential finding, pursuant to Section 662 of the Foreign Assistance Act of 1961, that this operation was "important to the national security of the United States" and of a timely report to the appropriate committees of the Congress.

We are reporting this activity to you because we have determined that there is an absence of clear legal guidance in the Intelligence Community on compliance with Section 662. In the case of the Meo tribesmen, no definitive legal opinion was ever sought by the National Security Council. Although the issue of whether the Meo expenditures were illegal is very unclear, understanding of the problem demonstrates the need for better legal guidance in this area.

The Meos had participated in a CIA paramilitary program in Laos since 1961. In November 1973, the 40 Committee approved a CIA program to aid the Meos in Laos in order to strengthen anticommunist Laos elements. In January 1975, after the effective date of Section 662 (often termed the "Hughes-Ryan Amendment"), a description of the program for aiding the Meos in Laos was included in the Omnibus Finding covering all ongoing covert actions and the accompanying briefings to Congressional committees. The resettlement of the Meoswas necessitated by the fall of Laos to the communists in May 1975. The remainder of the fiscal year 1975 funds allocated for aid to the Meos in Laos was expended for their resettlement

DECLASSIFIED • E.O. 12958 Sec. 3.6
With PORTIONS EXEMPTED
E.O. 12958 Sec. 1.5 (c)(4)

MR 94-155, #70 CIA Hr. 6/17/98

By KBH, NARA, Date 7/22/98

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On September 22, 1975, you authorized the State Department to assist the Meos overtly through the United Nations High Commissioner for Refugees..... You also authorized a standby covert CIA program of aid in case the overt channel proved impossible. However, this authorization did not contain a finding that the CIA program was "important to the national security." Since the U.N. channels did not begin functioning immediately, the CIA program was activated. The CIA spent..... for Meo resettlement until the U.N. relief programs became operational around April 1, 1976.

After an OMB budget examiner, in October 1975, raised the question of whether a Section 662 finding and report were required, the CIA's East Asia Division sought the opinion of the Agency's General Counsel. Although he wrote no formal opinion, the General Counsel decided a finding and report were required. On January 15, 1976, DCI Colby forwarded a draft Presidential finding to General Scowcroft, in Colby's words, "to meet the procedural requirements of Section 662." Since the draft finding was forwarded to General Scowcroft, neither the National Security Council, its staff, nor the 40 Committee (or its successor) have taken any action.

Although most of the relevant Congressional committees have been informed of these activities..... in varying degrees of detail and at various times (primarily in connection with the budget actions necessary to approve funds for this purpose), none has been told of a Presidential finding, nor has the House Armed Services Committee ever been briefed.

Several arguments can be made that a finding and report were not required by Section 662 in this case. The ambiguity of the statute makes it unclear whether there has been a violation of Section 662. Nevertheless, we conclude that this matter raises serious questions of legality and demonstrates the need for better guidelines within the Executive Branch on compliance with this statute.

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A memorandum containing a more detailed account of the facts of this case and a brief legal analysis is attached.

Sincerely,

Robert D. Murphy

Robert D. Murphy
Chairman

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

Enclosures

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CIA PROGRAM OF RESETTLING
MEO TRIBESMEN IN LAOS

On March 31, 1976, John Warner, General Counsel of CIA, filed a report to the Intelligence Oversight Board. It contained the following item:

"Around the beginning of the year, OMB approved additional funds for the continued resettling of the Meo tribesmen...
..... This required a reprogramming of funds and notification of the House and Senate Appropriations Committees. OMB raised the question of a specific Presidential finding under Section 662 of the Foreign Assistance Act. Although the President in a 24 September 1975 memorandum approved by Dr. Kissinger authorized CIA support to the Meo under certain conditions, in order to be in full procedural compliance with the law, a request for a finding went forward to the National Security Council on 15 January 1976, but no action has been taken by the NSC."

The Board has investigated this matter and its findings are set forth in this memorandum.

BACKGROUND:

The Law

Section 662 of the Foreign Assistance Act of 1961, as amended, often referred to as the Hughes-Ryan Amendment, provides:

"No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion,

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a description and scope of such operation to the appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives. "

Reports have been made under this provision to the Armed Services, Appropriations and Foreign Affairs Committees in both Houses, as well as the two special intelligence committees.

Determination of the scope of the bill has had to be determined by the Executive Branch without any clear legislative history to rely upon. It does appear, though, that by "operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, " Congress was primarily referring to the group of activities normally called "covert actions". The term "covert action" is generally understood to mean activities designed to influence events abroad in such a way that the role of the United States Government is not apparent or publicly acknowledged. Examples would include paramilitary and propaganda operations. No legislative history exists on Congress' intention in referring to "each such operation, " nor to "reports in a timely fashion. "

The Operation

From 1961 to 1973, the CIA conducted paramilitary operations in Southeast Asia with the assistance of the Meo tribesmen of Laos. On November 19, 1973, the 40 Committee approved a covert political action program for Laos. That program included socio-economic aid to the Meos to aid their recovery from war and resist communist political challenges.

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On January 10, 1975, President Ford made his first finding pursuant to Section 622 which was then reported to Congress. That report covered a number of on-going covert action programs and is referred to as the Omnibus Finding.

The portion of the Omnibus Finding relating to Laos reads:

"Support selected non-Communist Lao leaders of proven competence and political stature who can develop or expand a grass roots political base for the purpose of unifying the diverse regional and ethnic grouping in rural Laos in the interest of the survival of Laos as a non-Communist state."

The Omnibus Finding also contained the following general statement:

"In addition, I also find important to the national security of the United States the support necessary to the tasks and operations covered by this finding."

The practice to date under the Hughes-Ryan Amendment has been for the President to transmit such cursory reports (although findings subsequent to the Omnibus Finding have generally contained somewhat greater detail) and for the Director of Central Intelligence to brief committee members further as requested. CIA briefings to the Senate Armed Services and Foreign Relations committees in January and February 1975 mentioned that the Laos program included resettlement of the Meos.

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In May 1975, the Meos were forced to flee after the Communist takeover in Laos. Because the CIA had been supporting the Meos in Laos, it felt an obligation to continue to provide aid when they arrived homeless..... Funds originally intended to be spent to aid the Meos in Laos were used to aid them..... The total cost of the program in Fiscal Year 1975 (ending June 30, 1975) was..... When the Defense subcommittee of the House Appropriations Committee was briefed on June 11, 1975, its members were told that some money would be spent on Meo resettlement.

As Fiscal Year 1976 began, it was hoped that the United Nations High Commissioner for Refugees (UNHCR)..... would take over from the CIA the financial support of Meo settlements..... They did not, however, immediately do so. The CIA's budget for FY 1976 included..... support of the Meos.

On September 22, 1975, the President approved transfer of money to the State Department to assist overtly the U.N. in supporting the Meos. In addition, as reported in a September 24, 1975 memorandum from Dr. Kissinger to the relevant officials, the President decided:

"The Central Intelligence Agency is authorized to maintain on a standby basis the capability to provide limited support to the Meo refugees should the UNHCR..... program prove temporarily inadequate to meet the basic survival needs of the Meo refugees. This capability will only be exercised with the approval of the American Ambassador,

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On the same day, the Office of Management and Budget (OMB) approved for CIA use in supporting the Meos from July 1, 1975 to the end of the calendar year. OMB wrote to the Senate and House Appropriations Committees informing them of this action.

At an October 22, 1975 budget hearing on the next year's CIA budget, the OMB examiner questioned whether a new Presidential finding and report to Congress was necessary for the CIA program in supporting the Meos This question prompted the Chief of the CIA's East Asia Division to seek an opinion from the CIA General Counsel on whether a new finding was needed.

By January 1, 1976, the U.N. had still not begun assuming the support of the Meos. OMB therefore approved for CIA use from January 1 to April 1, 1976. The Director of Central Intelligence wrote to the House and Senate Appropriations Committees on January 20 to inform them of this action.

Although he wrote no formal opinion on whether a formal finding and reports to Congress were required, the CIA General Counsel decided that such was the case. On January 15, 1976, Director Colby informed the 40 Committee in writing of the status of the program and forwarded a Presidential finding to General Scowcroft, in Colby's words, "to meet the procedural requirements of Section 662."

The staff assistant to the 40 Committee, in forwarding the DCI's memorandum of January 15 to General Scowcroft, raised questions as to whether the finding was necessary. He questioned the advisability of a finding in January, 1976 in view of the fact that no finding had been made when the program had commenced in May 1975. Also, he suggested that the Meo program might not qualify as being "important to the national security of the United States" - the standard of Section 662.

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Since the draft finding was forwarded to General Scowcroft, neither the National Security Council, its staff, nor the 40 Committee have taken any action. The draft finding has not been forwarded to the President for signature. Mr. Buchen, Counsel to the President, has not been consulted. CIA officials have been inquiring regularly of the NSC staff on whether a finding was going to be made and reported to Congress. The NSC has continued to refuse to state whether a finding was or was not required. When queried last week, the responsible NSC officials stated that the relevant documents are still "on General Scowcroft's desk."

On April 1, 1976, the U.N. took over the support of the Meos and the CIA terminated its support.

DISCUSSION

Three possible arguments exist to justify the failure of the President to make a new finding and reports to Congress on the CIA resettlement of the Meos

(1) Type of Activity not Covered by the Amendment

Section 662 applies to "operations in foreign countries, other than activities intended solely for obtaining necessary intelligence." Interpreting the bare words of the statute, the resettlement program certainly was a CIA operation abroad "other than an activity intended solely for obtaining necessary intelligence." However, it can be argued that the statute was intended only to apply to covert actions, activities conducted to have some influence on affairs in a foreign country. The Meo program arguably had no goal of influencing politics It can be construed, rather, as a form of humanitarian assistance to refugees.

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The argument that the statute applies only to covert actions is based on an understanding of how the statute was written. Because of a reluctance of the Government to speak of or define covert action in an official document, the euphemism "operations in foreign countries, other than activities intended solely for obtaining necessary intelligence" was used. Support for this interpretation of the statute, narrowing its scope from the bare words, however, cannot be found in the printed legislative history. Such an interpretation would have to rely solely on the recollections of Administration personnel (sometimes recorded in contemporaneous memoranda) who worked with the Congress at the time the statute was passed.

The argument that the resettlement program is not covered by the statute is further complicated by an understanding of why the resettlement program was undertaken. It was not solely a humanitarian gesture to a group of refugees. The reason the CIA was so involved with the Meos was that they had been used in a true covert action, the "secret war" in Laos. The Meo resettlement stems from that war and represents a reward for their participation in it. Furthermore, U.S. assistance to the Meos was necessary to convince..... government to allow the tribesmen to settle in that country.

(2) Continuation of a Previously Reported Activity

It can also be argued that no new finding is needed for the program because the resettlement was a continuation of a covert action previously found important to the national security and reported to all the relevant committees of Congress.

This argument has several problems. The original Omnibus Finding made by the President refers only to activities in Laos and states the purpose of the program was "the survival of Laos as a non-Communist state."
..... When the Meos were forced to flee Laos, the resettlement program was a natural outgrowth, but it was nonetheless an activity in a new country for different purposes.

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In construing whether the.....activities were covered by the Omnibus Finding, no light is shed by a look at the legislative history of the statute. There is nothing there that indicates what Congress meant when it required a finding and reports on "each such operation." The Executive must itself work out the ground-rules in this area.

(3) Finding and Reports were Made

It can also be argued that the required actions have been taken. The President's decision of September 22, 1975, can possibly be read as a finding that theoperation was "important to the national security." The initialed decision of the President in the September 22, 1975, memorandum, however, is not structured in the form of a Presidential finding of importance to national security. (it does not contain any explicit statement as to the degree of importance attached to the resettlement operation. Instead, it is a more typical action memorandum seeking the President's approval of foreign activities.

This third argument also relies on the various briefings of and letters to congressional committees that were referred to in the background section of this paper. Although most of the relevant committees have been informed of the activities.....in varying degrees of detail and at various times, none has been told of a Presidential finding, nor has the House Armed Services Committee ever been briefed.

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CONCLUSION:

The Board concludes that the lack of a new Presidential finding and of new reports to Congress raises serious legal questions. The ambiguity of the statute makes it quite unclear whether there has been any violation of Section 662, but this case demonstrates the clear need for better guidelines in the Executive Branch on compliance with the statute.

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Bent Coners

THE WHITE HOUSE

WASHINGTON

July 9, 1976

MEMORANDUM FOR: JIM CONNOR

FROM: PHIL BUCHEN *P.*

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

Attached is a memorandum for the President on the above subject. It should not be staffed.

(a) There is hereby established an Intelligence Oversight Board, hereinafter referred to as the Oversight Board.

(1) The Oversight Board shall have three members who shall be appointed by the President and who shall be from outside the Government and be qualified on the basis of ability, knowledge, diversity of background and experience. The members of the Oversight Board may also serve on the President's Foreign Intelligence Advisory Board (Executive Order No. 11460 of March 20, 1969). No member of the Oversight Board shall have any personal contractual relationship with any agency or department of the Intelligence Community.

(2) One member of the Oversight Board shall be designated by the President as its Chairman.

(3) The Oversight Board shall:

(i) Receive and consider reports by Inspectors General and General Counsels of the Intelligence Community concerning activities that raise questions of legality or propriety.

(ii) Review periodically the practices and procedures of the Inspectors General and General Counsels of the Intelligence Community designed to discover and report to the Oversight Board activities that raise questions of legality or propriety.

(iii) Review periodically with each member of the Intelligence Community their internal guidelines to ensure their adequacy.

(iv) Report periodically, at least quarterly, to the Attorney General and the President on its findings.

(v) Report in a timely manner to the Attorney General and to the President any activities that raise serious questions about legality.

(vi) Report in a timely manner to the President any activities that raise serious questions about propriety.

(b) Inspectors General and General Counsels within the Intelligence Community shall:

(1) Transmit to the Oversight Board reports of any activities that come to their attention that raise questions of legality or propriety.

(2) Report periodically, at least quarterly, to the Oversight Board on its findings concerning questionable activities, if any.

(3) Provide to the Oversight Board all information requested about activities within their respective departments or agencies.

(4) Report to the Oversight Board any occasion on which they were directed not to report any activity to the Oversight Board by their agency or department heads.

(5) Formulate practices and procedures designed to discover and report to the Oversight Board activities that raise questions of legality or propriety.

(c) Heads of intelligence agencies or departments shall:

(1) Report periodically to the Oversight Board on any activities of their organizations that raise questions of legality or propriety.

(2) Instruct their employees to cooperate fully with the Oversight Board.

(3) Ensure that Inspectors General and General Counsels of their agency have access to any information necessary to perform their duties assigned by paragraph (4) of this section.

(d) The Attorney General shall:

(1) Receive and consider reports from the Oversight Board.

(2) Report periodically, at least quarterly, to the President with respect to activities of the Intelligence Community, if any, which raise questions of legality.

(e) The Oversight Board shall receive staff support. No person who serves on the staff of the Oversight Board shall have any contractual or employment relationship with any department or agency in the Intelligence Community.

(f) The President's Foreign Intelligence Advisory Board established by Executive Order No. 11460 of March 20, 1969, remains in effect.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Presidential Libraries Withdrawal Sheet

WITHDRAWAL ID 00784

Exempted 11/18/98

REASON FOR WITHDRAWAL National security restriction

TYPE OF MATERIAL Briefing Paper

CREATOR'S NAME George Bush

RECEIVER'S NAME President

DESCRIPTION re intelligence matter

CREATION DATE 05/1976?

VOLUME 2 pages

COLLECTION/SERIES/FOLDER ID . 004700173

COLLECTION TITLE PRESIDENTIAL HANDWRITING FILE

BOX NUMBER 31

FOLDER TITLE National Security - Intelligence
(7)-(16)

DATE WITHDRAWN 05/18/1988

WITHDRAWING ARCHIVIST WHM

on "Lao Tribal Operations" submitted to the 303 Committee (successor to the Special Group) on 5 April 1965 as follows:

"CIA has developed operations with primitive people using methods which have not disturbed the local customs and beliefs. Existing tribal leadership has been maintained . . . The tribal people have been exposed to basic civic action programs, principally medical help, education and agricultural advice in order to develop a loyalty and nurture a will to resist . . . Through this technique of building up local leadership, improving conditions of life, and providing a local defense, CIA has been able to expand areas of friendly tribal control . . . "

In short, CIA pervaded the tribal life of the Meo rather than following the usual technique of establishing a clandestine relationship with a single leader and working through him. By the same token, this extended our commitments beyond the primary leader of the Meo to the tribal leadership and members .

[REDACTED]

[REDACTED]

Photocopy from Gerald R. Ford Library

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Over the years the success of CIA's program with the Meos [REDACTED] made the tribe a special target for extensive and intensive armed attack. The Meo suffered casualties, disruption of their normal pursuits, and were forced on several occasions to uproot themselves from their native homelands to resettle elsewhere. In each case the CIA facilitated movements of the tribe as an agent of the U.S. Government fulfilling its commitments. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

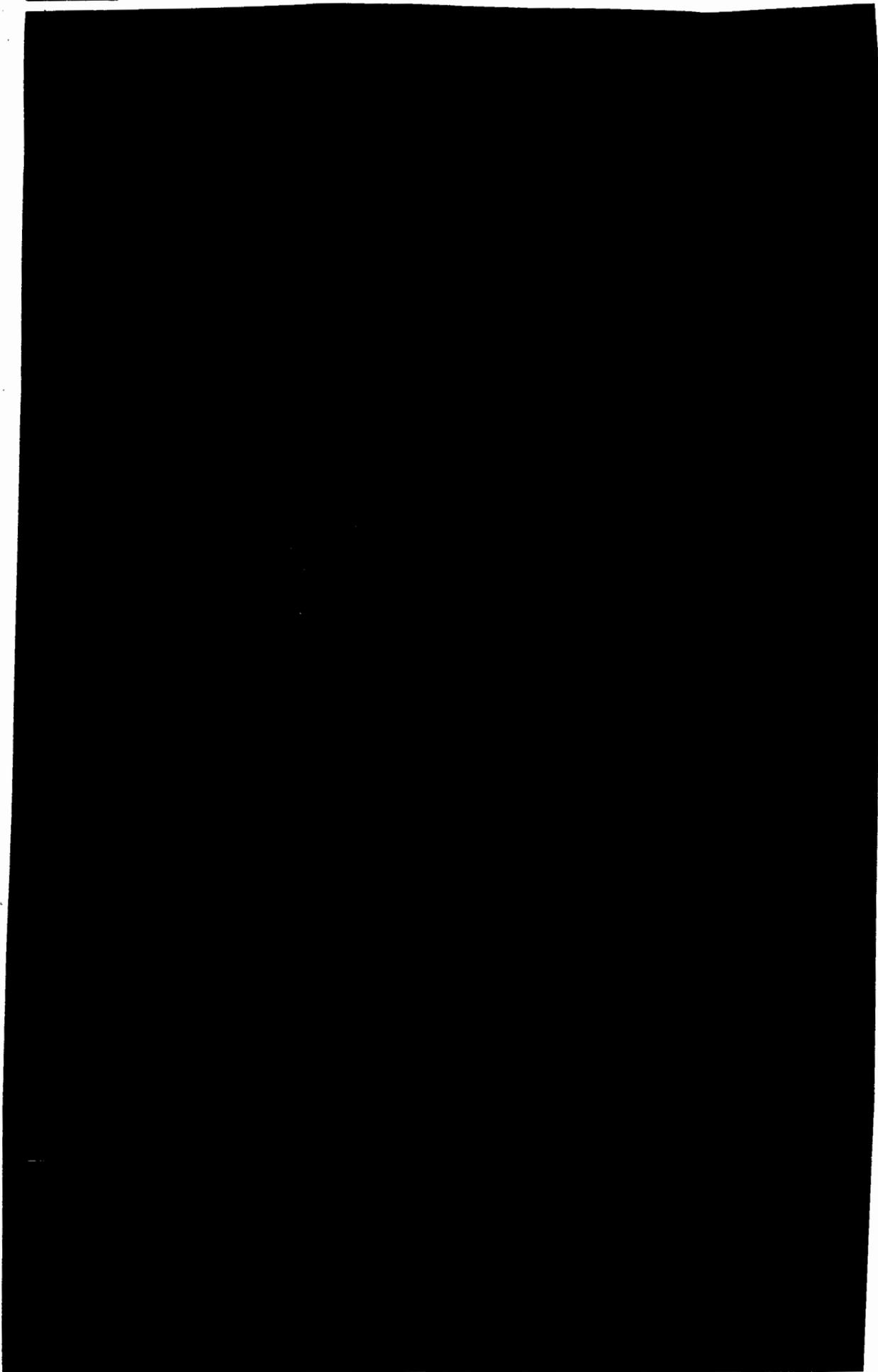
[REDACTED]

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Photocopy from Gerald R. Ford Library



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ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00786

Collection/Series/Folder ID No. : 004700173
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Receiver's Name : James Connor
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Creation Date : 05/19/1976
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*Sanitized 6/20/00 KBH
(MR)*



THE WHITE HOUSE

WASHINGTON

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 to spending CIA funds on the resettlement of Laotian Meos [REDACTED].

However, had the question been put to me, I think I would have arrived at the conclusion that these resettlement 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 [REDACTED] involving the Laotian Meos constitutes an operation different from the original operation on which President Ford made a finding on January 10, 1975, simply because the activity was in a new country for a different purpose.

Obviously, the purpose of an activity changes when it becomes necessary to withdraw from the activity and to protect the assets 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 in a different location or in a different country,

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E.O. 12958 Sec. 1.5 (c) 1.6(d)(1)

MR 97-1, #10 & MR 95-38, #24

By KPH NARA, Date 6/14/00

which is to be used only as a haven, does not in my opinion, make it a new operation within the intent of the applicable statute.

We have been in a similar situation with respect to the covert actions [REDACTED] which are now in the process of disengagement and which require the reprogramming of funds to resettle the people 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.

[REDACTED]. 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, other than activities intended solely for obtaining necessary intelligence."



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

JUN 14 1976

The President,
The White House.

My dear Mr. President:

Pursuant to Executive Order 11905, the Intelligence Oversight Board reported to me an activity which in its view raised a serious question about legality, to wit, whether a proper Presidential finding and report to Congress had been made concerning a particular covert operation. I initially referred the question to the Department's Office of Legal Counsel, which studied the matter and gathered some additional information from the Board's staff. By memorandum, a copy of which is enclosed, the Office reported to me its conclusions that, on the basis of the objective evidence, it is reasonable to assume that you made the requisite finding, but that a "description and scope" of the operation was not reported to all the appropriate committees of Congress as required by the Hughes Amendment, 22 U.S.C. § 2422.

I have reviewed those conclusions and believe they are a correct interpretation of the law as applied to these facts. I have further determined that on the facts here involved there is no proper basis for the Department of Justice to proceed either civilly or criminally against any individual for the failure to report to the appropriate committees of Congress.

In making this report to you pursuant to the Executive order, I offer the following suggestions: If it was your intent to make a finding of importance to the national security with respect to the activity here in question, either in the Omnibus Finding of January 10, 1975, or in your September 22, 1975 approval of continuation of the activity, then I

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UNCLASSIFIED.

believe you should now so indicate in writing. If such was not your intent, then, if you believe the activity was "important to the national security," you should now make a formal finding. In either case, you should designate a person to make a report to the appropriate committees of Congress.

Finally, steps should be taken to avoid recurrence of this sort of problem. I would suggest that you direct the Operations Advisory Group (OAG) to include in each of its recommendations to you an explicit determination as to the need for a Presidential finding and a report to Congress. Moreover, I believe you should direct the National Security Council staff to draft guidelines for the intelligence community, to be approved by the OAG, relative to those matters which, because of possible need for a Presidential finding and a report to Congress, should be referred to the OAG.

Respectfully,


Edward H. Levi
Attorney General

Enclosure

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00787

·Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS,National security restriction
Type of Material : MEM,Memo(s)
Creator's Name : Antonin Scalia
Creator's Agency : DOJ,Department of Justice
Receiver's Name : Attorney General
Receiver's Agency : DOJ,Department of Justice
Description : re report from Intelligence Overs
ight Board,5/13/76
Creation Date : 05/27/1976

Volume (pages) : 7

Date Withdrawn : 05/18/1988

REDACTED

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MAY 27 1976

MEMORANDUM TO THE ATTORNEY GENERAL

Re: Report to you from the Intelligence Oversight Board, dated May 13, 1976.

(U) Under Executive Order 11995, the Intelligence Oversight Board (IOB) is given the duty to report in a timely manner to you and to the President "any activities that raise serious questions about legality." Section 6(a) (3) (v). Under that Order you have the consequent duty to "[r]eceive and consider reports" from the IOB and to "[r]eport periodically, at least quarterly, to the President with respect to activities of the Intelligence Community, if any, which raise questions of legality." Section 6(d). Your duty to report to the President appears to extend to all legally questionable activities of which you are aware, not just those reported to you by the IOB.

(S) The activity here involved is the expenditure of appropriated funds for the resettlement of Meo tribesmen..... The legal questions involved are whether a Presidential finding and a report to appropriate committees of Congress were required pursuant to the Hughes Amendment, 22 U.S.C. § 2422, and if so whether they were in fact made. The General Counsel of the CIA determined that they were required, and appears to have been of the view that they were not made.

(S) It is my belief that such an activity falls within the term "operations in a foreign country, other than activities intended solely for obtaining necessary intelligence." While the legislative history indicates that this phrase would properly be equated with the terms "covert operations" or "covert actions," that equivalence is of little help with respect to the present point, since there is little basis for giving the latter terms an interpretation so narrow as to exclude the Meo resettlement. First, covert action was described to the House Intelligence Committee as "any clandestine activity designed to influence foreign governments, events, organizations, or persons in support of United States foreign policy, conducted in such manner that the involvement of the United States Government is not apparent." Rogovin Statement of December 9, 1975, at 2.

DECLASSIFIED • E.O. 12958 SEC. 3.6
WITH PORTIONS EXEMPTED
E.O. 12958 SEC. 1.5

~~SECRET~~

CLASSIFIED BY *Steve Auth - Letter from Robt. Murphy*
EXEMPT FROM GDSR E.O. 12958
SCHEDULE OF EXECUTIVE ORDER 11652
EXEMPTION CATEGORY
AUTOMATICALLY DECLASSIFIED ON *Indefinite*

MR 67-64, #2: CIA Memo 9/2/98 3/20/08

BY *del* NARA DATE *11/26/08*

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.....
.....
..... Second, while the term "covert action" is not used in Executive Order 11905, the term "special activities in support of national foreign policy objectives" is used, Sections 2(c), 3(a), 3(c)(2), and was intended to be equated with "covert action." See Memo for Working Members of ICG..... dated March 10, 1976. The term "special activities in support of national foreign policy objectives" is itself defined in the Order as:

activities, other than the collection and production of intelligence and related support functions, designed to further official United States programs and policies abroad which are planned and executed so that the role of the United States Government is not apparent or publicly acknowledged.

Section 2(c). This definition would clearly encompass the covert funding of the resettlement of Meo tribesmen. It is noteworthy that similar operations,.....
..... have been presented to the Operations Advisory Group and have been considered covert actions. Thus, it is my conclusion that the requirements of the Hughes Amendment apply with respect to this activity.

(S) The question then becomes whether the requirements of that Amendment have been satisfied in all material respects. The Hughes Amendment requires two separate actions as a condition to the expenditure of appropriations for covert operations - a prior finding by the President that the operation is "important to the national security" and a report "in a timely fashion" to the appropriate committees of Congress consisting of a "description and scope of such operation."

(S) The IOB Memo states that on January 13, 1975, President Ford made his first finding required by the Hughes Amendment. This finding, now referred to as the Omnibus Finding, included a number of then on-going covert operations. The only portions of the finding relevant here read as follows:

Support selected non-Communist Lao leaders of proven competence and political stature who can develop

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CLASSIFIED BY *Dennis Smith - Letter from Robert Murphy*
EXEMPT FROM GDS *dated 10/15/76 with attachments*
SCHEDULE OF EXECUTIVE ORDER 11652
EXEMPTION CATEGORY
AUTOMATICALLY DECLASSIFIED ON *Indefinite*

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-3-

or expand a grass roots political base for the purpose of unifying the diverse regional and ethnic grouping in rural Laos in the interest of the survival of Laos as a non-Communist state.

* * * * *

In addition, I also find important to the national security of the United States the support necessary to the tasks and operations covered by this finding.

1/

IOB Memo at 3. Resettlement of Meo tribesmen
after Laos had already become a Communist state, would hardly seem to be directly "for the purpose of unifying the diverse regional and ethnic grouping in rural Laos in the interest of the survival of Laos as a non-Communist state," and so does not appear to constitute primary activity covered by the finding. However, necessary "support" for a particular primary activity would normally be thought to include a commitment (express or implied) to assist flight and relocation if the undertaking should fail. To be sure, such a use of the concept of "support" seems more difficult when the resettlement of entire tribes is involved; but the extent of support presumably varies according to the extent of the primary activity itself, and there is, in any event, a budgetary limit upon each project which the President approves. In other words, a finding that it is important to the national security to assist a primary undertaking may be thought to imply a similar finding with respect to the ordinary concomitant commitment to assist in extrication from the undertaking gone wrong. The fact that the one step normally includes the other is reflected in the CIA's sensibility of an "obligation to continue to provide aid," referred to in the IOB Memo. It is, in short, possible that the President's Omnibus Finding was meant to cover resettlement up to the authorized expenditure. It should be borne in mind in considering this point that we are not dealing with a statute which requires the Presidential finding to be made pursuant to a particular formula, or, indeed, to be expressed in writing at all.

1/ This second quoted paragraph applied to all the operations covered by the Omnibus Finding, not just the Laos project.

CLASSIFIED BY *Derick [unclear] - Letter from R. H. Murphy*
EXEMPT FROM *dated 5-13-76 with attachments*
SCHEDULE OF EXECUTIVE ORDER 11652
EXEMPTION CATEGORY *[unclear]*
AUTOMATICALLY DECLASSIFIED ON *Indefinite*

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(S) Further evidence of Presidential intent may be found in the President's September 22, 1975 approval of the decision memorandum authorizing continuing support to the Meos on a standby basis. The presumption of legality which attends official acts, and particularly acts performed personally by the President, supports the proposition that the President would not have made the authorization without having made the finding necessary to its legality. Since it has been his practice (and a desirable one) to make such findings in writing, one might conclude that he considered his earlier Omnibus Finding sufficient record of his determination.

(U) I consider the issue of whether the requisite Presidential finding was made to be a close one on the basis of the evidence before us. The very factors which support the argument that a finding was made -- to-wit, the close, and indeed almost inevitable, connection between support in the event of defeat with support for conduct of the operation, and the explicit Presidential approval of acts which would be unlawful absent the finding -- doubtless account for the fact that the issue was not raised sooner. On the basis of the evidence we have, showing personal Presidential attention to, and involvement in, this project, I think it reasonable to conclude that the necessary finding was made; but in any event, any failure to comply with strict legal requirements would surely appear to have been the result of inadvertence rather than design.

(S) There remains the separate issue of the reporting requirement under the Hughes Amendment. This has clearly been complied with insofar as the Senate and House Appropriation Committees are concerned, since they were advised of the specific resettlement program in connection with the reprogramming of funds. As for the Senate Armed Services & Foreign Relations Committees, however, the IOB Memo states merely that they were advised that the Laos program included resettlement of the Meos. It is not clear that this was understood to mean resettlement outside Laos, and absent some explicit statement to that effect that would not be the natural understanding; such resettlement would hardly be a normal means of "unifying the diverse regional and ethnic grouping in rural Laos." In any event, there is no indication in the IOB Memo that the House Armed Services and International Relations Committees were advised in any fashion.



~~SECRET~~

CLASSIFIED BY *Devin Auth - Letter from Robt. Murphy dated 8-13-76 with attachment*
EXEMPT FROM COMINT CONTROL SCHEDULE OF EXECUTIVE ORDER 11652
EXEMPTION CLASSIFIED BY *Indefinite*
AUTOMATICALLY DECLASSIFIED ON *Indefinite*

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(U) I do not consider the President's Omnibus Finding, which was sent to all the relevant committees, adequate to comply with the reporting requirement, even though it may (as discussed above) embody or evidence compliance with the Presidential finding requirement. The former, unlike the latter, must be made with a prescribed degree of specificity -- i.e., it must include "a description and scope of such operation." The issue of what the Omnibus Finding may demonstrate as to the personal determinations of the President with respect to this matter is not in my view identical to the issue of whether it effectively conveyed to the Congress "a description and scope" of the resettlement program within the meaning of the statute.

(S) As our earlier memoranda to you concerning OAG matters indicate, we believe the reporting requirement must be interpreted to effect the purpose of the statute, which is to insure that the Congress be advised of the substantial nature of all covert actions undertaken. At least where the resettlement is of the magnitude here.....

..... we think a supplemental report should have been made. Here again, any failure to comply seems from the evidence before us to be the result of inadvertence rather than any intent to keep the Congress uninformed.

(U) It may be well to discuss briefly the question of whether the Department of Justice must take any action with respect to this matter, on the assumption that the requirements of the Hughes Amendment were not fully complied with. There are only two criminal statutes which are arguably applicable. One, 31 U.S.C. § 665(i)(1), penalizes the knowing and willful expenditure of funds in excess of the amount available in appropriations. It is questionable whether expenditure of appropriated funds without complying with the Hughes Amendment procedures (at least where the purpose of the expenditure is in fact "important to the national security") would violate this provision. In any case, the "knowing and willful" requirement of the statute does not appear to be met. The other statute, 18 U.S.C. § 641, penalizes:

Whoever . . . knowingly converts to . . . the use of another, or without authority . . . conveys or disposes of any . . . money . . . of the United States

CLASSIFIED BY *Dennis Auth* - *Letter from Roll Murphy*
EXEMPT FROM GDS *5-13-86* *with attachment*
SCHEDULE OF EXECUTIVE ORDER 11652
EXEMPTION CATEGORIES
AUTOMATICALLY DECLASSIFIED ON *Indefinite*

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-6-

While the quoted language would be literally sufficient to make criminal any unauthorized expenditure of public funds, the section is generally aimed at embezzlement and theft, and indeed is the first section in a chapter bearing that title. The Criminal Division is unaware of any case brought under this section where the defendant was not allegedly engaged in embezzlement, theft, or criminal conversion. In any event, the Supreme Court has interpreted the provision as requiring criminal intent, despite the lack of explicit provision therefor. Morrisette v. United States, 342 U.S. 246 (1952). I would conclude that on the basis of the evidence we possess, which contains no indication of wilfully violative expenditures, there would be no appropriate basis for Justice Department prosecution.

(S) I recommend that you report to the President the substance of this memorandum with the following suggestions: (1) If it was not the intent of the President, in making his Omnibus Finding, to include the resettlement operation, he should now set forth in writing his determination whether the resettlement operation was "important to the national security of the United States" (either in its own right or as a necessary adjunct to the Laos program) and the date as of which that determination was in fact made. (2) If it was the President's intent to include the operation within the Omnibus Finding, he should make a written record of that specification. (3) The President should designate a person to make a formal report of "a description and scope" of the resettlement operation to the appropriate committees of the Congress.

(U) Finally, steps should be taken to avoid recurrence of this sort of problem. To the extent matters come before the OAG, your participation will suffice to assure strict compliance with legal requirements; and it seems to us that all matters sufficiently distinct to require a separate Presidential finding or separate reporting should be referred to the OAG. The need, therefore, is to assure that proper reference is made. The National Security Council staff in support of the OAG, see § 3(c)(4) of the Executive Order, should draft for OAG approval guidelines concerning those matters which must be referred. It might also be useful to have the same group develop for the OAG's own use

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CLASSIFIED BY *Deriv. Auth. - Letter from Robert Murphy*
EXEMPT FROM COMPARISON SCHEDULE C, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z
EXEMPTION CODE *15-73-76 with Attachments*
AUTOMATICALLY DECLASSIFIED ON *Indefinite*

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guidelines as to when a particular matter should be submitted for Presidential finding or reported to the Congress. There should be a standard statement in each OAG recommendation to the President to the effect that a finding and report are or are not necessary.

Antonin Scalia
Assistant Attorney General
Office of Legal Counsel



CLASSIFIED BY *Deriv Auth. - Letter from Roll Murphy*
EXEMPT FROM GDS SCHEDULE 1 EXEMPTION CATEGORY 1 *dated 5-13-76 with attachment*
SCHEDULE OF EXECUTIVE ORDER 11652
EXEMPTION CANNOT BE DETERMINED ON *Indefinite*
AUTOMATICALLY DECLASSIFIED ON

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ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00787

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS,National security restriction
Type of Material : MEM,Memo(s)
Creator's Name : Antonin Scalia
Creator's Agency : DOJ,Department of Justice
Receiver's Name : Attorney General
Receiver's Agency : DOJ,Department of Justice
Description : re report from Intelligence Overs
ight Board,5/13/76
Creation Date : 05/27/1976

Volume (pages) : 7

Date Withdrawn : 05/18/1988

REDACTED

3/20/08

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MAY 27 1976

MEMORANDUM TO THE ATTORNEY GENERAL

Re: Report to you from the Intelligence Oversight Board, dated May 13, 1976.

(U) Under Executive Order 11905, the Intelligence Oversight Board (IOB) is given the duty to report in a timely manner to you and to the President "any activities that raise serious questions about legality." Section 6(a)(3)(v). Under that Order you have the consequent duty to "[r]eceive and consider reports" from the IOB and to "[r]eport periodically, at least quarterly, to the President with respect to activities of the Intelligence Community, if any, which raise questions of legality." Section 6(d). Your duty to report to the President appears to extend to all legally questionable activities of which you are aware, not just those reported to you by the IOB.

(S) The activity here involved is the expenditure of appropriated funds for the resettlement of Meo tribesmen. The legal questions involved are whether a Presidential finding and a report to appropriate committees of Congress were required pursuant to the Hughes Amendment, 22 U.S.C. § 2422, and if so whether they were in fact made. The General Counsel of the CIA determined that they were required, and appears to have been of the view that they were not made.

(S) It is my belief that such an activity falls within the term "operations in a foreign country, other than activities intended solely for obtaining necessary intelligence." While the legislative history indicates that this phrase would properly be equated with the terms "covert operations" or "covert actions," that equivalence is of little help with respect to the present point, since there is little basis for giving the latter terms an interpretation so narrow as to exclude the Meo resettlement. First, covert action was described to the House Intelligence Committee as "any clandestine activity designed to influence foreign governments, events, organizations, or persons in support of United States foreign policy, conducted in such manner that the involvement of the United States Government is not apparent." Rogovin Statement of December 9, 1975, at 2.

DECLASSIFIED • E.O. 12958 SEC. 3.6
WITH PORTIONS EXEMPTED
E.O. 12958 SEC. 1.5

~~SECRET~~

CLASSIFIED BY *Steve Auth - Letter from R. M. Murphy dated 5-17-76 with attachment*
EXEMPT FROM GDS SCHEDULE OF EXECUTIVE ORDER 11652
EXEMPTION CODE: *Indefinite*
AUTOMATICALLY DECLASSIFIED ON *Indefinite*

MR 67-64, #2: CIA memo 9/2/98 3/20/08

BY *del* NARA DATE *11/26/08*

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.....

..... Second, while the term "covert action" is not used in Executive Order 11905, the term "special activities in support of national foreign policy objectives" is used, Sections 2(c), 3(a), 3(c) (2), and was intended to be equated with "covert action." See Memo for Working Members of ICG..... dated March 10, 1976. The term "special activities in support of national foreign policy objectives" is itself defined in the Order as:

activities, other than the collection and production of intelligence and related support functions, designed to further official United States programs and policies abroad which are planned and executed so that the role of the United States Government is not apparent or publicly acknowledged.

Section 2(c). This definition would clearly encompass the covert funding of the resettlement of Meo tribesmen. It is noteworthy that similar operations,..... have been presented to the Operations Advisory Group and have been considered covert actions. Thus, it is my conclusion that the requirements of the Hughes Amendment apply with respect to this activity.

(S) The question then becomes whether the requirements of that Amendment have been satisfied in all material respects. The Hughes Amendment requires two separate actions as a condition to the expenditure of appropriations for covert operations - a prior finding by the President that the operation is "important to the national security" and a report "in a timely fashion" to the appropriate committees of Congress consisting of a "description and scope of such operation."

(S) The IOB Memo states that on January 10, 1975, President Ford made his first finding required by the Hughes Amendment. This finding, now referred to as the Omnibus Finding, included a number of then on-going covert operations. The only portions of the finding relevant here read as follows:

Support selected non-Communist Lao leaders of proven competence and political stature who can develop

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CLASSIFIED BY *Derid. Auth. - Letter from Robt. Murphy dated 10-13-76 with attachments*
 EXEMPT FROM GDS SCHEDULE OF EXECUTIVE ORDER 11652
 EXEMPTION CATEGORY.....
 AUTOMATICALLY DECLASSIFIED ON *Indefinite*

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or expand a grass roots political base for the purpose of unifying the diverse regional and ethnic grouping in rural Laos in the interest of the survival of Laos as a non-Communist state.

* * * * *

In addition, I also find important to the national security of the United States the support necessary to the tasks and operations covered by this finding.

1/

IOB Memo at 3. Resettlement of Meo tribesmen after Laos had already become a Communist state, would hardly seem to be directly "for the purpose of unifying the diverse regional and ethnic grouping in rural Laos in the interest of the survival of Laos as a non-Communist state," and so does not appear to constitute primary activity covered by the finding. However, necessary "support" for a particular primary activity would normally be thought to include a commitment (express or implied) to assist flight and relocation if the undertaking should fail. To be sure, such a use of the concept of "support" seems more difficult when the resettlement of entire tribes is involved; but the extent of support presumably varies according to the extent of the primary activity itself, and there is, in any event, a budgetary limit upon each project which the President approves. In other words, a finding that it is important to the national security to assist a primary undertaking may be thought to imply a similar finding with respect to the ordinary concomitant commitment to assist in extrication from the undertaking gone wrong. The fact that the one step normally includes the other is reflected in the CIA's sensibility of an "obligation to continue to provide aid," referred to in the IOB Memo. It is, in short, possible that the President's Omnibus Finding was meant to cover resettlement up to the authorized expenditure. It should be borne in mind in considering this point that we are not dealing with a statute which requires the Presidential finding to be made pursuant to a particular formula, or, indeed, to be expressed in writing at all.

1/ This second quoted paragraph applied to all the operations covered by the Omnibus Finding, not just the Laos project.

CLASSIFIED BY *Jim [unclear] - Letter from [unclear] Murphy*
EXEMPT FROM *dated 5-7-76 with attachments*
SCHEDULE OF EXECUTIVE ORDER 11652
EXEMPTION CODE *[unclear]*
AUTOMATICALLY DECLASSIFIED ON *[unclear]*

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(S) Further evidence of Presidential intent may be found in the President's September 22, 1975 approval of the decision memorandum authorizing continuing support to the Meos on a standby basis. The presumption of legality which attends official acts, and particularly acts performed personally by the President, supports the proposition that the President would not have made the authorization without having made the finding necessary to its legality. Since it has been his practice (and a desirable one) to make such findings in writing, one might conclude that he considered his earlier Omnibus Finding sufficient record of his determination.

(U) I consider the issue of whether the requisite Presidential finding was made to be a close one on the basis of the evidence before us. The very factors which support the argument that a finding was made -- to-wit, the close, and indeed almost inevitable, connection between support in the event of defeat with support for conduct of the operation, and the explicit Presidential approval of acts which would be unlawful absent the finding -- doubtless account for the fact that the issue was not raised sooner. On the basis of the evidence we have, showing personal Presidential attention to, and involvement in, this project, I think it reasonable to conclude that the necessary finding was made; but in any event, any failure to comply with strict legal requirements would surely appear to have been the result of inadvertence rather than design.

(S) There remains the separate issue of the reporting requirement under the Hughes Amendment. This has clearly been complied with insofar as the Senate and House Appropriation Committees are concerned, since they were advised of the specific resettlement program in connection with the reprogramming of funds. As for the Senate Armed Services & Foreign Relations Committees, however, the IOB Memo states merely that they were advised that the Laos program included resettlement of the Meos. It is not clear that this was understood to mean resettlement outside Laos, and absent some explicit statement to that effect that would not be the natural understanding; such resettlement would hardly be a normal means of "unifying the diverse regional and ethnic grouping in rural Laos." In any event, there is no indication in the IOB Memo that the House Armed Services and International Relations Committees were advised in any fashion.

CLASSIFIED BY *Service Auth. - Letter from Robt. Murphy dated 8-15-76 with attachments*
EXEMPT FROM *CONFIDENTIALITY*
SCHEDULE OF *CONFIDENTIALITY*
EXEMPTION CLASSIFICATION *Indefinite*
AUTOMATICALLY DECLASSIFIED ON *Indefinite*

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(U) I do not consider the President's Omnibus Finding, which was sent to all the relevant committees, adequate to comply with the reporting requirement, even though it may (as discussed above) embody or evidence compliance with the Presidential finding requirement. The former, unlike the latter, must be made with a prescribed degree of specificity -- i.e., it must include "a description and scope of such operation." The issue of what the Omnibus Finding may demonstrate as to the personal determinations of the President with respect to this matter is not in my view identical to the issue of whether it effectively conveyed to the Congress "a description and scope" of the resettlement program within the meaning of the statute.

(S) As our earlier memoranda to you concerning OAG matters indicate, we believe the reporting requirement must be interpreted to effect the purpose of the statute, which is to insure that the Congress be advised of the substantial nature of all covert actions undertaken. At least where the resettlement is of the magnitude here.....

..... we think a supplemental report should have been made. Here again, any failure to comply seems from the evidence before us to be the result of inadvertence rather than any intent to keep the Congress uninformed.

(U) It may be well to discuss briefly the question of whether the Department of Justice must take any action with respect to this matter, on the assumption that the requirements of the Hughes Amendment were not fully complied with. There are only two criminal statutes which are arguably applicable. One, 31 U.S.C. § 665(i) (1), penalizes the knowing and willful expenditure of funds in excess of the amount available in appropriations. It is questionable whether expenditure of appropriated funds without complying with the Hughes Amendment procedures (at least where the purpose of the expenditure is in fact "important to the national security") would violate this provision. In any case, the "knowing and willful" requirement of the statute does not appear to be met. The other statute, 18 U.S.C. § 641, penalizes:

Whoever . . . knowingly converts to . . . the use of another, or without authority . . . conveys or disposes of any . . . money . . . of the United States

CLASSIFIED BY *SP-6/ab* - Letter from *Roll Murphy*
EXEMPT FROM GDS *5-73-76* with attachment
SCHEDULE OF INFORMATION CLASSIFICATION
EXEMPTION CODE *1.4*
AUTOMATICALLY DECLASSIFIED ON *Indefinite*

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While the quoted language would be literally sufficient to make criminal any unauthorized expenditure of public funds, the section is generally aimed at embezzlement and theft, and indeed is the first section in a chapter bearing that title. The Criminal Division is unaware of any case brought under this section where the defendant was not allegedly engaged in embezzlement, theft, or criminal conversion. In any event, the Supreme Court has interpreted the provision as requiring criminal intent, despite the lack of explicit provision therefor. Morrisette v. United States, 342 U.S. 246 (1952). I would conclude that on the basis of the evidence we possess, which contains no indication of wilfully violative expenditures, there would be no appropriate basis for Justice Department prosecution.

(S) I recommend that you report to the President the substance of this memorandum with the following suggestions: (1) If it was not the intent of the President, in making his Omnibus Finding, to include the resettlement operation, he should now set forth in writing his determination whether the resettlement operation was "important to the national security of the United States" (either in its own right or as a necessary adjunct to the Laos program) and the date as of which that determination was in fact made. (2) If it was the President's intent to include the operation within the Omnibus Finding, he should make a written record of that specification. (3) The President should designate a person to make a formal report of "a description and scope" of the resettlement operation to the appropriate committees of the Congress.

(U) Finally, steps should be taken to avoid recurrence of this sort of problem. To the extent matters come before the OAG, your participation will suffice to assure strict compliance with legal requirements; and it seems to us that all matters sufficiently distinct to require a separate Presidential finding or separate reporting should be referred to the OAG. The need, therefore, is to assure that proper reference is made. The National Security Council staff in support of the OAG, see § 3(c)(4) of the Executive Order, should draft for OAG approval guidelines concerning those matters which must be referred. It might also be useful to have the same group develop for the OAG's own use

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CLASSIFIED BY *Derw. Auth. - Letter from Bill Murphy*
EXEMPT FROM GDS *dated 5-13-76 with attachments*
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guidelines as to when a particular matter should be submitted for Presidential finding or reported to the Congress. There should be a standard statement in each OAG recommendation to the President to the effect that a finding and report are or are not necessary.

Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

CLASSIFIED BY *Dennis Ault - Letter from Robt. Murphy*
EXEMPT FROM *dated 5-3-76*
SCHEDULE C OF *with attachments*
EXEMPTION CODE *Indefinite*
AUTOMATICALLY DECLASSIFIED ON *Indefinite*

~~SECRET~~

G

Original delivered by W.H. Messenger,
w/receipt - 7/12/76 (a.m.)

This memo was classified by Mr. Buchen
after it was delivered - Eleanor Connors
Telephoned Miss Fitzgerald in Amb. Bush
office and asked her to mark the letter
SECRET.

Trudy Fry 7/13/76

SECRET

DECLASSIFIED • E.O. 12958 Sec. 3.6
With PORTIONS EXEMPTED
E.O. 12958 Sec. 1.5 (c) 1.6 (d) (1)

THE WHITE HOUSE
WASHINGTON

MR 97-1, #11 CIA Ltr. 11/19/98

July 10, 1976

By KBH NARA, Date 6/14/00

MEMORANDUM FOR

THE HONORABLE GEORGE BUSH
DIRECTOR OF CENTRAL INTELLIGENCE

SUBJECT: Support by CIA in Thailand of Meo tribesmen
who were Refugees from Laos

On September 22, 1975, I approved transfer of AID funds to the State Department to assist overtly the United Nations and the Thai government in supporting in Thailand the Meo tribesmen who were refugees from Laos. I also authorized at that time the CIA to maintain on a standby basis the capability to provide support for such refugees pending adequate operation of the authorized plan for overt assistance and to exercise this capability if the American Ambassador at Bangkok approved.

Based on the latter authorization, OMB approved expenditures by the CIA [REDACTED] for the period July 1, 1975, to the end of the calendar year, and subsequently an additional [REDACTED] for the period January 1 to April 1, 1976, because of continued delays in getting underway support of the refugees under the UN-Thai program. At the time of each of these approvals, OMB wrote the Senate and House Appropriations Committees informing them of the action taken.

These expenditures were the result of a long continuing program by the CIA to support non-Communist elements in Laos and were necessitated by events in May 1975 when democratic resistance collapsed and the Communists took control of the Laotian government, forcing flight of the Meo tribesmen from Laos into Thailand.

I had previously authorized the Laotian phase of this program,
[REDACTED]

SECRET

[REDACTED]

[REDACTED] I did not expect [REDACTED]
[REDACTED] the change of government in Laos which occurred in May of 1975, but inherent in the conduct of any operations of this sort is the possibility of having to withdraw from positive endeavors and to protect the human and physical assets which had been committed to the operation. Support of any elements in a foreign country to work in the interests of the national security of the United States and in opposition to forces in that foreign country which are working against our interests necessitates a continuity of operation to try saving those elements from loss or annihilation because of their prior efforts in behalf of our interests whenever or however they become jeopardized. Otherwise, it would be difficult to enlist the efforts of such elements in the first place; and it would prejudice similar operations elsewhere in the future if it should happen and become known that we as a nation precipitously abandon the support of people who help our interests once they have lost their immediate effectiveness. When I made the finding [REDACTED]

[REDACTED] I included language related to all operations then approved as follows:

In addition, I also find important to the national security of the United States the support necessary to the tasks and operations covered by this finding.

The purpose of this general finding was to cover activities by the CIA necessarily related to the operations as specifically described and authorized, and I consider the required support of the Meo tribesmen even after the end of their involvement against the Communist forces in Laos to have been covered by this general finding.

The Director of Central Intelligence has heretofore been designated by me to be responsible for making the required reports to the appropriate Committees of the House and Senate on the description and scope of each operation covered by Section 662 of the aforementioned act. If you determine that the operation



then I request that you complete such reporting and advise me accordingly.

Gerald R. Ford

THE WHITE HOUSE
WASHINGTON

Mr. Bucken will
review his memo
added NSC news
on the A H's letter
& get to us tomorrow

ABF
7/6/76

MEMORANDUM
OF CALL

TO:

YOU WERE CALLED BY— YOU WERE VISITED BY—

OF (Organization)

PLEASE CALL → PHONE NO. CODE/EXT. _____
 WILL CALL AGAIN IS WAITING TO SEE YOU
 RETURNED YOUR CALL WISHES AN APPOINTMENT

MESSAGE

NSC has now
commented to
Mr. Bucken

RECEIVED BY

T

DATE

7/6

TIME

10:30

STANDARD FORM 63
REVISED AUGUST 1967
GSA FPMR (41 CFR) 101-11.6

GPO : 1969-048-16-80841-1 232-899

63-108

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: June 17, 1976

Time:

FOR ACTION:

cc (for information):

Brent Scowcroft

FROM THE STAFF SECRETARY

DUE: Date: Quick Turnaround Please

Time:

SUBJECT:

Philip W. Buchen memo of 6/17/76 re
Intelligence Oversight Board Report of
May 7, 1976 and Related Report from the
Attorney General to you of June 14, 1976

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

SECRET MATERIAL ATTACHED

*Bud McFarlane will
comment on the copy
that came from Justice
of the May 7 letter.*

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

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00789

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS,National security restriction
Type of Material : MEM,Memo(s)
Creator's Name : Philip Buchen
Receiver's Name : President
Description : re reports by Intelligence Oversi
ght Board and Attorney General
Creation Date : 06/17/1976
Volume (pages) : 3
Date Withdrawn : 05/18/1988

Sanitized 6/20/80 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 [REDACTED]. 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. . .".

DECLASSIFIED • E.O. 12958 Sec. 3.8
With PORTIONS EXEMPTED
E.O. 12958 Sec. 1.5 (c) (4)
M.R. 95-38 # 23
Some aa file 94-155 # 22

By KBH, NARA, Date 6/14/00

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, [REDACTED] 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.

I agree that this circumstance supports such a finding, although I disagree that [REDACTED] 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

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00790

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS,National security restriction
Type of Material : LET,Letter(s)
Creator's Name : Robert Murphy
Receiver's Name : President
Description : re activity of the intelligence c
ommunity which raises legal questions
Creation Date : 05/07/1976
Volume (pages) : 12
Date Withdrawn : 05/18/1988

Sanitized 6/20/00

THE WHITE HOUSE
WASHINGTON

Intelligence Oversight Board

May 7, 1976

Dear Mr. President:

The Intelligence Oversight Board is hereby reporting to you and the Attorney General, pursuant to Section 6(a) (v) of Executive Order 11905, on an activity of the Intelligence Community which raises legal questions.

The activity in question is the expenditure of appropriated funds for the resettlement of Meo tribesmen in Laos by the CIA in the absence of a specific Presidential finding, pursuant to Section 662 of the Foreign Assistance Act of 1961, that this operation was "important to the national security of the United States" and of a timely report to the appropriate committees of the Congress.

We are reporting this activity to you because we have determined that there is an absence of clear legal guidance in the Intelligence Community on compliance with Section 662. In the case of the Meo tribesmen, no definitive legal opinion was ever sought by the National Security Council. Although the issue of whether the Meo expenditures were illegal is very unclear, understanding of the problem demonstrates the need for better legal guidance in this area.

The Meos had participated in a CIA paramilitary program in Laos

[REDACTED]

The resettlement of the Meos [REDACTED] was necessitated by the fall of Laos to the communists in May 1975. The remainder of the fiscal year 1975 funds allocated for aid to the Meos in Laos was expended for their resettlement [REDACTED]

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With PORTIONS EXEMPTED
E.O. 12958 Sec. 1.5 (c) 1.6(d)(1)

MR 97-1, #13 CIA 44. 11/19/98

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By KBH, NARA, Date 6/14/00

On September 22, 1975, you authorized the State Department to assist the Meos overtly through the United Nations High Commissioner for Refugees and [REDACTED]. You also authorized a standby covert CIA program of aid in case the overt channel proved impossible. However, this authorization did not contain a finding that the CIA program was "important to the national security." Since the U.N. and Thai channels did not begin functioning immediately, the CIA program was activated. The CIA spent approximately [REDACTED] for Meo resettlement until the U.N. and [REDACTED] relief programs became operational around April 1, 1976.

After an OMB budget examiner, in October 1975, raised the question of whether a Section 662 finding and report were required, the CIA's East Asia Division sought the opinion of the Agency's General Counsel. Although he wrote no formal opinion, the General Counsel decided a finding and report were required. On January 15, 1976, DCI Colby forwarded a draft Presidential finding to General Scowcroft, in Colby's words, "to meet the procedural requirements of Section 662." Since the draft finding was forwarded to General Scowcroft, neither the National Security Council, its staff, nor the 40 Committee (or its successor) have taken any action.

Although most of the relevant Congressional committees have been informed of these activities [REDACTED], in varying degrees of detail and at various times (primarily in connection with the budget actions necessary to approve funds for this purpose), none has been told of a Presidential finding, nor has the House Armed Services Committee ever been briefed.

Several arguments can be made that a finding and report were not required by Section 662 in this case. The ambiguity of the statute makes it unclear whether there has been a violation of Section 662. Nevertheless, we conclude that this matter raises serious questions of legality and demonstrates the need for better guidelines within the Executive Branch on compliance with this statute.

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A memorandum containing a more detailed account of the facts of this case and a brief legal analysis is attached.

Sincerely,

Robert D. Murphy

Robert D. Murphy
Chairman

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

Enclosures

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CIA PROGRAM OF RESETTLING
MEO TRIBESMEN IN LAOS

On March 31, 1976, John Warner, General Counsel of CIA, filed a report to the Intelligence Oversight Board. It contained the following item:

"Around the beginning of the year, OMB approved additional funds for the continued resettling of the Meo tribesmen [REDACTED]. This required a reprogramming of funds and notification of the House and Senate Appropriations Committees. OMB raised the question of a specific Presidential finding under Section 662 of the Foreign Assistance Act. Although the President in a 24 September 1975 memorandum approved by Dr. Kissinger authorized CIA support to the Meo under certain conditions, in order to be in full procedural compliance with the law, a request for a finding went forward to the National Security Council on 15 January 1976, but no action has been taken by the NSC."

The Board has investigated this matter and its findings are set forth in this memorandum.

BACKGROUND:

The Law

Section 662 of the Foreign Assistance Act of 1961, as amended, often referred to as the Hughes-Ryan Amendment, provides:

"No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion,

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a description and scope of such operation to the appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives."

Reports have been made under this provision to the Armed Services, Appropriations and Foreign Affairs Committees in both Houses, as well as the two special intelligence committees.

Determination of the scope of the bill has had to be determined by the Executive Branch without any clear legislative history to rely upon. It does appear, though, that by "operations in foreign countries, other than activities intended solely for obtaining necessary intelligence," Congress was primarily referring to the group of activities normally called "covert actions". The term "covert action" is generally understood to mean activities designed to influence events abroad in such a way that the role of the United States Government is not apparent or publicly acknowledged. Examples would include paramilitary and propaganda operations. No legislative history exists on Congress' intention in referring to "each such operation," nor to "reports in a timely fashion."

The Operation

[REDACTED] the CIA conducted paramilitary operations in Southeast Asia with the assistance of the Meo tribesmen of Laos. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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On January 10, 1975, President Ford made his first finding pursuant to Section 622 which was then reported to Congress. That report covered a number of on-going covert action programs and is referred to as the Omnibus Finding.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The practice to date under the Hughes-Ryan Amendment has been for the President to transmit such cursory reports (although findings subsequent to the Omnibus Finding have generally contained somewhat greater detail) and for the Director of Central Intelligence to brief committee members further as requested. CIA briefings to the Senate Armed Services and Foreign Relations committees in January and February 1975 mentioned that the Laos program included resettlement of the Meos.

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In May 1975, the Meos were forced to flee after the Communist takeover in Laos. [REDACTED]

[REDACTED] The total cost of the program in Fiscal Year 1975 (ending June 30, 1975) was [REDACTED]

[REDACTED] When the Defense subcommittee of the House Appropriations Committee was briefed on June 11, 1975, its members were told that some money would be spent on Meo resettlement.

As Fiscal Year 1976 began, it was hoped that the United Nations High Commissioner for Refugees (UNHCR) and [REDACTED] would take over from the CIA the financial support of Meo settlements [REDACTED]. They did not, however, immediately do so. The CIA's budget for FY 1976 included [REDACTED] for support of the Meos.

On September 22, 1975, the President approved transfer of money to the State Department to assist overtly the U. N. and [REDACTED] in supporting the Meos. In addition, as reported in a September 24, 1975 memorandum from Dr. Kissinger to the relevant officials, the President decided:

"The Central Intelligence Agency is authorized to maintain on a standby basis the capability to provide limited support to the Meo refugees should the UNHCR/RTG program prove temporarily inadequate to meet the basic survival needs of the Meo refugees. This capability will only be exercised with the approval of the American Ambassador, [REDACTED]"

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On the same day, the Office of Management and Budget (OMB) approved [REDACTED] for CIA use in supporting the Meos [REDACTED] from July 1, 1975 to the end of the calendar year. OMB wrote to the Senate and House Appropriations Committees informing them of this action.

At an October 22, 1975 budget hearing on the next year's CIA budget, the OMB examiner questioned whether a new Presidential finding and report to Congress was necessary for the CIA program in supporting the Meos [REDACTED]. This question prompted the Chief of the CIA's East Asia Division to seek an opinion from the CIA General Counsel on whether a new finding was needed.

By January 1, 1976, the U.N. and [REDACTED] had still not begun assuming the support of the Meos. OMB therefore approved another [REDACTED] for CIA use from January 1 to April 1, 1976. The Director of Central Intelligence wrote to the House and Senate Appropriations Committees on January 20 to inform them of this action.

Although he wrote no formal opinion on whether a formal finding and reports to Congress were required, the CIA General Counsel decided that such was the case. On January 15, 1976, Director Colby informed the 40 Committee in writing of the status of the program [REDACTED] and forwarded a Presidential finding to General Scowcroft, in Colby's words, "to meet the procedural requirements of Section 662."

The staff assistant to the 40 Committee, in forwarding the DCI's memorandum of January 15 to General Scowcroft, raised questions as to whether the finding was necessary. He questioned the advisability of a finding in January, 1976 in view of the fact that no finding had been made when the program had commenced in May 1975. Also, he suggested that the Meo program might not qualify as being "important to the national security of the United States" - the standard of Section 662.

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Since the draft finding was forwarded to General Scowcroft, neither the National Security Council, its staff, nor the 40 Committee have taken any action. The draft finding has not been forwarded to the President for signature. Mr. Buchen, Counsel to the President, has not been consulted. CIA officials have been inquiring regularly of the NSC staff on whether a finding was going to be made and reported to Congress. The NSC has continued to refuse to state whether a finding was or was not required. When queried last week, the responsible NSC officials stated that the relevant documents are still "on General Scowcroft's desk."

On April 1, 1976, the U.N. and [REDACTED] took over the support of the Meos and the CIA terminated its support.

DISCUSSION

Three possible arguments exist to justify the failure of the President to make a new finding and reports to Congress on the CIA resettlement of the Meos [REDACTED]

(1) Type of Activity not Covered by the Amendment

Section 662 applies to "operations in foreign countries, other than activities intended solely for obtaining necessary intelligence." Interpreting the bare words of the statute, the resettlement program certainly was a CIA operation abroad "other than an activity intended solely for obtaining necessary intelligence." However, it can be argued that the statute was intended only to apply to covert actions, activities conducted to have some influence on affairs in a foreign country. The Meo program arguably had no goal of influencing politics [REDACTED] It can be construed, rather, as a form of humanitarian assistance to refugees.

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The argument that the statute applies only to covert actions is based on an understanding of how the statute was written. Because of a reluctance of the Government to speak of or define covert action in an official document, the euphemism "operations in foreign countries, other than activities intended solely for obtaining necessary intelligence" was used. Support for this interpretation of the statute, narrowing its scope from the bare words, however, cannot be found in the printed legislative history. Such an interpretation would have to rely solely on the recollections of Administration personnel (sometimes recorded in contemporaneous memoranda) who worked with the Congress at the time the statute was passed.

The argument that the resettlement program is not covered by the statute is further complicated by an understanding of why the resettlement program was undertaken. It was not solely a humanitarian gesture to a group of refugees. The reason the CIA was so involved with the Meos was that they had been used in a true covert action, the "secret war" in Laos. The Meo resettlement stems from that war and represents a reward for their participation in it. Furthermore, U.S. assistance to the Meos was necessary to convince [REDACTED] to allow the tribesmen to settle in that country.

(2) Continuation of a Previously Reported Activity

It can also be argued that no new finding is needed for the [REDACTED] program because the resettlement was a continuation of a covert action previously found important to the national security and reported to all the relevant committees of Congress.

This argument has several problems. The original Omnibus Finding made by the President refers only to activities in Laos and states the purpose of the program was "the survival of Laos as a non-Communist state." [REDACTED]

[REDACTED] When the Meos were forced to flee Laos, the resettlement program was a natural outgrowth, but it was nonetheless an activity in a new country for different purposes.

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In construing whether [REDACTED] activities were covered by the Omnibus Finding, no light is shed by a look at the legislative history of the statute. There is nothing there that indicates what Congress meant when it required a finding and reports on "each such operation." The Executive must itself work out the ground-rules in this area.

(3) Finding and Reports were Made

It can also be argued that the required actions have been taken. The President's decision of September 22, 1975, can possibly be read as a finding that the [REDACTED] operation was "important to the national security." The initialed decision of the President in the September 22, 1975, memorandum, however, is not structured in the form of a Presidential finding of importance to national security. (it does not contain any explicit statement as to the degree of importance attached to the resettlement operation. Instead, it is a more typical action memorandum seeking the President's approval of foreign activities.

This third argument also relies on the various briefings of and letters to congressional committees that were referred to in the background section of this paper. Although most of the relevant committees have been informed of the activities [REDACTED] in varying degrees of detail and at various times, none has been told of a Presidential finding, nor has the House Armed Services Committee ever been briefed.

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CONCLUSION:

The Board concludes that the lack of a new Presidential finding and of new reports to Congress raises serious legal questions. The ambiguity of the statute makes it quite unclear whether there has been any violation of Section 662, but this case demonstrates the clear need for better guidelines in the Executive Branch on compliance with the statute.

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Sec. 6. Oversight of Intelligence Organizations. 10

(a) There is hereby established an Intelligence Oversight Board, hereinafter referred to as the Oversight Board.

(1) The Oversight Board shall have three members who shall be appointed by the President and who shall be from outside the Government and be qualified on the basis of ability, knowledge, diversity of background and experience. The members of the Oversight Board may also serve on the President's Foreign Intelligence Advisory Board (Executive Order No. 11460 of March 20, 1969). No member of the Oversight Board shall have any personal contractual relationship with any agency or department of the Intelligence Community.

(2) One member of the Oversight Board shall be designated by the President as its Chairman.

(3) The Oversight Board shall:

(i) Receive and consider reports by Inspectors General and General Counsels of the Intelligence Community concerning activities that raise questions of legality or propriety.

(ii) Review periodically the practices and procedures of the Inspectors General and General Counsels of the Intelligence Community designed to discover and report to the Oversight Board activities that raise questions of legality or propriety.

(iii) Review periodically with each member of the Intelligence Community their internal guidelines to ensure their adequacy.

(iv) Report periodically, at least quarterly, to the Attorney General and the President on its findings.

(v) Report in a timely manner to the Attorney General and to the President any activities that raise serious questions about legality.

(vi) Report in a timely manner to the President any activities that raise serious questions about propriety.

(b) Inspectors General and General Counsels within the Intelligence Community shall:

(1) Transmit to the Oversight Board reports of any activities that come to their attention that raise questions of legality or propriety.

(2) Report periodically, at least quarterly, to the Oversight Board on its findings concerning questionable activities, if any.

(3) Provide to the Oversight Board all information requested about activities within their respective departments or agencies.

(4) Report to the Oversight Board any occasion on which they were directed not to report any activity to the Oversight Board by their agency or department heads.

(5) Formulate practices and procedures designed to discover and report to the Oversight Board activities that raise questions of legality or propriety.

(c) Heads of intelligence agencies or departments shall:

(1) Report periodically to the Oversight Board on any activities of their organizations that raise questions of legality or propriety.

(2) Instruct their employees to cooperate fully with the Oversight Board.

(3) Ensure that Inspectors General and General Counsels of their agency have access to any information necessary to perform their duties assigned by paragraph (4) of this section.

(d) The Attorney General shall:

(1) Receive and consider reports from the Oversight Board.

(2) Report periodically, at least quarterly, to the President with respect to activities of the Intelligence Community, if any, which raise questions of legality.

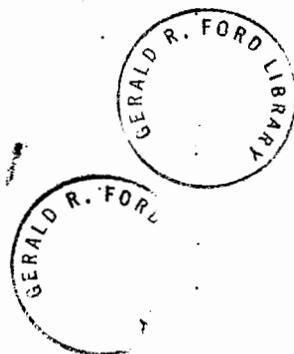
(e) The Oversight Board shall receive staff support. No person who serves on the staff of the Oversight Board shall have any contractual or employment relationship with any department or agency in the Intelligence Community.

(f) The President's Foreign Intelligence Advisory Board established by Executive Order No. 11460 of March 20, 1969, remains in effect.

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00791

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS,National security restriction
Type of Material : MEM,Memo(s)
Creator's Name : Philip Buchen
Receiver's Name : James Connor
Description : re comments on the IOB letter and
memo of 5/7/76
Creation Date : 05/19/1976
Volume (pages) : 2
Date Withdrawn : 05/18/1988

*Sanitized 6/20/00 KBH
(MR)*



THE WHITE HOUSE

WASHINGTON

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 to spending CIA funds on the resettlement of Laotian Meos [REDACTED]

However, had the question been put to me, I think I would have arrived at the conclusion that these resettlement 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 [REDACTED]

[REDACTED] involving the Laotian Meos constitutes an operation different from the original operation on which President Ford made a finding on January 10, 1975, simply because the activity was in a new country for a different purpose.

Obviously, the purpose of an activity changes when it becomes necessary to withdraw from the activity and to protect the assets 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 in a different location or in a different country,

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E.O. 12958 Sec. 1.5 (c) 1.4(d)(4)

MR 97-1, #10 & MR 95-38, #24

By KBA NARA, Date 6/14/00

which is to be used only as a haven, does not in my opinion, make it a new operation within the intent of the applicable statute.

We have been in a similar situation with respect to the covert actions [REDACTED] which are now in the process of disengagement and which require the reprogramming of funds to resettle the people 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.

[REDACTED]. 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, other than activities intended solely for obtaining necessary intelligence."

JUN 14 1976

The President,
The White House.

My dear Mr. President:

Pursuant to Executive Order 11905, the Intelligence Oversight Board reported to me an activity which in its view raised a serious question about legality, to wit, whether a proper Presidential finding and report to Congress had been made concerning a particular covert operation. I initially referred the question to the Department's Office of Legal Counsel, which studied the matter and gathered some additional information from the Board's staff. By memorandum, a copy of which is enclosed, the Office reported to me its conclusions that, on the basis of the objective evidence, it is reasonable to assume that you made the requisite finding, but that a "description and scope" of the operation was not reported to all the appropriate committees of Congress as required by the Hughes Amendment, 22 U.S.C. § 2422.

I have reviewed those conclusions and believe they are a correct interpretation of the law as applied to these facts. I have further determined that on the facts here involved there is no proper basis for the Department of Justice to proceed either civilly or criminally against any individual for the failure to report to the appropriate committees of Congress.

In making this report to you pursuant to the Executive order, I offer the following suggestions: If it was your intent to make a finding of importance to the national security with respect to the activity here in question, either in the Omnibus Finding of January 10, 1975, or in your September 22, 1975 approval of continuation of the activity, then I

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WHEN SEPARATED FROM CLASSIFIED
ATTACHMENT, THIS DOCUMENT IS
UNCLASSIFIED.

believe you should now so indicate in writing. If such was not your intent, then, if you believe the activity was "important to the national security," you should now make a formal finding. In either case, you should designate a person to make a report to the appropriate committees of Congress.

Finally, steps should be taken to avoid recurrence of this sort of problem. I would suggest that you direct the Operations Advisory Group (OAG) to include in each of its recommendations to you an explicit determination as to the need for a Presidential finding and a report to Congress. Moreover, I believe you should direct the National Security Council staff to draft guidelines for the intelligence community, to be approved by the OAG, relative to those matters which, because of possible need for a Presidential finding and a report to Congress, should be referred to the OAG.

Respectfully,

Edward H. Levi
Attorney General

Enclosure

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00792

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS,National security restriction
Type of Material : MEM,Memo(s)
Creator's Name : Antonin Scalia
Receiver's Name : Attorney General
Description : re report from the Intelligence O
versight Board of 5/13/76
Creation Date : 05/27/1976
Volume (pages) : 7
Date Withdrawn : 05/18/1988

open with portions exempted



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MAY 27 1976

MEMORANDUM TO THE ATTORNEY GENERAL

Re: Report to you from the Intelligence Oversight Board, dated May 13, 1976.

(U) Under Executive Order 11995, the Intelligence Oversight Board (IOB) is given the duty to report in a timely manner to you and to the President "any activities that raise serious questions about legality." Section 6(a) (3) (v). Under that Order you have the consequent duty to "[r]eceive and consider reports" from the IOB and to "[r]eport periodically, at least quarterly, to the President with respect to activities of the Intelligence Community, if any, which raise questions of legality." Section 6(d). Your duty to report to the President appears to extend to all legally questionable activities of which you are aware, not just those reported to you by the IOB.

(S) The activity here involved is the expenditure of appropriated funds for the resettlement of Meo tribesmen. The legal questions involved are whether a Presidential finding and a report to appropriate committees of Congress were required pursuant to the Hughes Amendment, 22 U.S.C. § 2422, and if so whether they were in fact made. The General Counsel of the CIA determined that they were required, and appears to have been of the view that they were not made.

(S) It is my belief that such an activity falls within the term "operations in a foreign country, other than activities intended solely for obtaining necessary intelligence." While the legislative history indicates that this phrase would properly be equated with the terms "covert operations" or "covert actions," that equivalence is of little help with respect to the present point, since there is little basis for giving the latter terms an interpretation so narrow as to exclude the Meo resettlement. First, covert action was described to the House Intelligence Committee as "any clandestine activity designed to influence foreign governments, events, organizations, or persons in support of United States foreign policy, conducted in such manner that the involvement of the United States Government is not apparent." Rogovin Statement of December 9, 1975, at 2.



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AUTHORITY: *Exec. Order MR 95-37 022 10/24/98*
BY *LR* NARA, DATE *9/14/12*

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..... Second, while the term "covert action" is not used in Executive Order 11905, the term "special activities in support of national foreign policy objectives" is used, Sections 2(c), 3(a), 3(c) (2), and was intended to be equated with "covert action." See Memo for Working Members of ICG..... dated March 10, 1976. The term "special activities in support of national foreign policy objectives" is itself defined in the Order as:

activities, other than the collection and production of intelligence and related support functions, designed to further official United States programs and policies abroad which are planned and executed so that the role of the United States Government is not apparent or publicly acknowledged.

Section 2(c). This definition would clearly encompass the covert funding of the resettlement of Meo tribesmen. It is noteworthy that similar operations,..... have been presented to the Operations Advisory Group and have been considered covert actions. Thus, it is my conclusion that the requirements of the Hughes Amendment apply with respect to this activity.

(8) The question then becomes whether the requirements of that Amendment have been satisfied in all material respects. The Hughes Amendment requires two separate actions as a condition to the expenditure of appropriations for covert operations - a prior finding by the President that the operation is "important to the national security" and a report "in a timely fashion" to the appropriate committees of Congress consisting of a "description and scope of such operation."

(9) The IOB Memo states that on January 10, 1975, President Ford made his first finding required by the Hughes Amendment. This finding, now referred to as the Omnibus Finding, included a number of then on-going covert operations. The only portions of the finding relevant here read as follows:

Support selected non-Communist Lao leaders of proven competence and political stature who can develop



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or expand a grass roots political base for the purpose of unifying the diverse regional and ethnic grouping in rural Laos in the interest of the survival of Laos as a non-Communist state.

* * * * *

In addition, I also find important to the national security of the United States the support necessary to the tasks and operations covered by this finding.

1/

IOB Memo at 3. Resettlement of Meo tribesmen after Laos had already become a Communist state, would hardly seem to be directly "for the purpose of unifying the diverse regional and ethnic grouping in rural Laos in the interest of the survival of Laos as a non-Communist state," and so does not appear to constitute primary activity covered by the finding. However, necessary "support" for a particular primary activity would normally be thought to include a commitment (express or implied) to assist flight and relocation if the undertaking should fail. To be sure, such a use of the concept of "support" seems more difficult when the resettlement of entire tribes is involved; but the extent of support presumably varies according to the extent of the primary activity itself, and there is, in any event, a budgetary limit upon each project which the President approves. In other words, a finding that it is important to the national security to assist a primary undertaking may be thought to imply a similar finding with respect to the ordinary concomitant commitment to assist in extrication from the undertaking gone wrong. The fact that the one step normally includes the other is reflected in the CIA's sensibility of an "obligation to continue to provide aid," referred to in the IOB Memo. It is, in short, possible that the President's Omnibus Finding was meant to cover resettlement up to the authorized expenditure. It should be borne in mind in considering this point that we are not dealing with a statute which requires the Presidential finding to be made pursuant to a particular formula, or, indeed, to be expressed in writing at all.



1/ This second quoted paragraph applied to all the operations covered by the Omnibus Finding, not just the Laos project.

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(S) Further evidence of Presidential intent may be found in the President's September 22, 1975 approval of the Decision memorandum authorizing continuing support to the Meos on a standby basis. The presumption of legality which attends official acts, and particularly acts performed personally by the President, supports the proposition that the President would not have made the authorization without having made the finding necessary to its legality. Since it has been his practice (and a desirable one) to make such findings in writing, one might conclude that he considered his earlier Omnibus Finding sufficient record of his determination.

(U) I consider the issue of whether the requisite Presidential finding was made to be a close one on the basis of the evidence before us. The very factors which support the argument that a finding was made -- to-wit, the close, and indeed almost inevitable, connection between support in the event of defeat with support for conduct of the operation, and the explicit Presidential approval of acts which would be unlawful absent the finding -- doubtless account for the fact that the issue was not raised sooner. On the basis of the evidence we have, showing personal Presidential attention to, and involvement in, this project, I think it reasonable to conclude that the necessary finding was made; but in any event, any failure to comply with strict legal requirements would surely appear to have been the result of inadvertence rather than design.

(S) There remains the separate issue of the reporting requirement under the Hughes Amendment. This has clearly been complied with insofar as the Senate and House Appropriation Committees are concerned, since they were advised of the specific resettlement program in connection with the reprogramming of funds. As for the Senate Armed Services & Foreign Relations Committees, however, the IOB Memo states merely that they were advised that the Laos program included resettlement of the Meos. It is not clear that this was understood to mean resettlement outside Laos, and absent some explicit statement to that effect that would not be the natural understanding; such resettlement would hardly be a normal means of "unifying the diverse regional and ethnic grouping in rural Laos." In any event, there is no indication in the IOB Memo that the House Armed Services and International Relations Committees were advised in any fashion.



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(U) I do not consider the President's Omnibus Finding, which was sent to all the relevant committees, adequate to comply with the reporting requirement, even though it may (as discussed above) embody or evidence compliance with the Presidential finding requirement. The former, unlike the latter, must be made with a prescribed degree of specificity -- i.e., it must include "a description and scope of such operation." The issue of what the Omnibus Finding may demonstrate as to the personal determinations of the President with respect to this matter is not in my view identical to the issue of whether it effectively conveyed to the Congress "a description and scope" of the resettlement program within the meaning of the statute.

(S) As our earlier memoranda to you concerning CAG matters indicate, we believe the reporting requirement must be interpreted to effect the purpose of the statute, which is to insure that the Congress be advised of the substantial nature of all covert actions undertaken. At least where the resettlement is of the magnitude here.

..... we think a supplemental report should have been made. Here again, any failure to comply seems from the evidence before us to be the result of inadvertence rather than any intent to keep the Congress uninformed.

(U) It may be well to discuss briefly the question of whether the Department of Justice must take any action with respect to this matter, on the assumption that the requirements of the Hughes Amendment were not fully complied with. There are only two criminal statutes which are arguably applicable. One, 31 U.S.C. § 665(i) (1), penalizes the knowing and willful expenditure of funds in excess of the amount available in appropriations. It is questionable whether expenditure of appropriated funds without complying with the Hughes Amendment procedures (at least where the purpose of the expenditure is in fact "important to the national security") would violate this provision. In any case, the "knowing and willful" requirement of the statute does not appear to be met. The other statute, 18 U.S.C. § 641, penalizes:

Whoever . . . knowingly converts to . . . the use of another, or without authority . . . conveys or disposes of any . . . money . . . of the United States



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While the quoted language would be literally sufficient to make criminal any unauthorized expenditure of public funds, the section is generally aimed at embezzlement and theft, and indeed is the first section in a chapter bearing that title. The Criminal Division is unaware of any case brought under this section where the defendant was not allegedly engaged in embezzlement, theft, or criminal conversion. In any event, the Supreme Court has interpreted the provision as requiring criminal intent, despite the lack of explicit provision therefor. Morrisette v. United States, 342 U.S. 246 (1952). I would conclude that on the basis of the evidence we possess, which contains no indication of wilfully violative expenditures, there would be no appropriate basis for Justice Department prosecution.

(8) I recommend that you report to the President the substance of this memorandum with the following suggestions: (1) If it was not the intent of the President, in making his Omnibus Finding, to include the resettlement operation, he should now set forth in writing his determination whether the resettlement operation was "important to the national security of the United States" (either in its own right or as a necessary adjunct to the Laos program) and the date as of which that determination was in fact made. (2) If it was the President's intent to include the operation within the Omnibus Finding, he should make a written record of that specification. (3) The President should designate a person to make a formal report of "a description and scope" of the resettlement operation to the appropriate committees of the Congress.

(U) Finally, steps should be taken to avoid recurrence of this sort of problem. To the extent matters come before the OAG, your participation will suffice to assure strict compliance with legal requirements; and it seems to us that all matters sufficiently distinct to require a separate Presidential finding or separate reporting should be referred to the OAG. The need, therefore, is to assure that proper reference is made. The National Security Council staff in support of the OAG, see § 3(c)(4) of the Executive Order, should draft for OAG approval guidelines concerning those matters which must be referred. It might also be useful to have the same group develop for the OAG's own use



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guidelines as to when a particular matter should be submitted for Presidential finding or reported to the Congress. There should be a standard statement in each OAG recommendation to the President to the effect that a finding and report are or are not necessary.

Antonia Scalia
Assistant Attorney General
Office of Legal Counsel



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THE WHITE HOUSE

WASHINGTON

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May 18, 1976

TO: PHIL BUCHEN

FROM: JIM CONNOR

I need your comments on the attached by cob today. I am not sending it through the normal staffing channel for obvious reasons. I would like you to give it your personal attention and not give it any wide distribution in your office. Thank you.

Please return your comments directly to me.

enc.

IOB Memo 5/7/76



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THE WHITE HOUSE
WASHINGTON

May 14, 1976

*Took to
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5/24*

MEMORANDUM FOR: JIM CONNOR
FROM: JACK MARSHALL *Jack*
SUBJECT: Intelligence Oversight Board (IOB)

The President has seen the accompanying letter from Robert Murphy, Chairman of the Intelligence Oversight Board, and he has scanned the attachment described in Chairman Murphy's letter.

He raised the question as to what were the appropriate steps to be taken concerning this subject, and it is my recommendation that the matter be referred to the Counsel's Office for their review and guidance.

Inasmuch as it is the first official action of the IOB on a complaint matter, its consideration must also take into account the establishment of procedures for Presidential response to IOB actions of this kind.

I am sure you will also want to give attention to White House Staff procedures on this subject. In reference to this, it should be noted the complaint raises a question directed to one of the staff sections of the White House.

I particularly call to your attention the Conclusion section on page 9 which goes to the heart of the complaint and causes me to suggest a review by the Counsel's Office.

Finally, I would suggest a short acknowledgment to Chairman Murphy that his communication was received on the afternoon of May 13.

THE WHITE HOUSE
WASHINGTON

Jack Marsh is asking if any
response has been sent to
Chairman Murphy for May 7th report?

8/9/76

Jack Marsh
acknowledged
8/9/76 per Donna