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JEB 10/22

THE WHITE HOUSE
WASHINGTON

October 25, 1976

MEMORANDUM FOR: GEORGE BUSH
 DIRECTOR
 CENTRAL INTELLIGENCE AGENCY

FROM: PHILIP W. BUCHEN *P.W.B.*
 COUNSEL TO THE PRESIDENT

SUBJECT: Issues in the CIA/ITT/Chile
 Investigation being Conducted
 by the Department of Justice

On October 23, 1976, I reviewed with the President the contents of your memoranda of October 13, 1976, to John Marsh and of October 22, 1976, to me, along with a memorandum to me from the Department of Justice on the same subject.

The President directed me to advise you that his policy as it should guide your actions in this matter is the same as he publicly stated on September 22, 1975, namely:

"I can assure you . . . that under no circumstances will there be any action by me or people working with me to use the classification process to prevent the exposure of alleged or actual criminal action by any Federal authority."

The President also directed me to advise you that your authorizing disclosures of the names and CIA connections of persons named in your memorandum to me of October 22, 1976, and of those CIA employees presently involved in the modified requests to you from DOJ, along with



disclosures of the documents related thereto to the extent requested to be declassified by DOJ for its purposes, is consistent with the President's above-stated policy of making an exception to the protection of intelligence sources and methods for purposes of the investigation and prosecution of alleged criminal acts.

BT



SECRET/WITH ATTACHMENTS

THE WHITE HOUSE

WASHINGTON

October 22, 1976

THE PRESIDENT HAS SEEN....

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN *P.*

SUBJECT: Differences Between the CIA and the DOJ

BACKGROUND

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

"The Commission shall furnish to the Attorney General any evidence found by the Commission which may relate to offenses under the statutes of the United States."

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

"I can assure you . . . that under no circumstances will there be any action by me or people working with me to use the classification process to prevent the exposure of alleged or actual criminal action by any Federal authority."

During the Church Committee investigation of alleged assassination plots involving foreign leaders, you made it clear to all of your staff who worked on responses to such Committee that on this subject

SECRET/WITH ATTACHMENTS

- 2 -

you wanted material to be provided without regard to classification status or possible claims of executive privilege. This material included documents on CIA activities in Chile during 1970. You took this position because of the possible criminality involved and the obvious misuse of power if the allegations proved to be true.

Now an impasse exists between the Justice Department and Director George Bush of the CIA over the calling of certain witnesses and use in evidence of documents that reveal their identification and CIA connections for the purposes of a grand jury investigation and possible trial of cases involving alleged perjury previously committed before Committees of Congress or the Rockefeller Commission by some of these same persons and by others connected with the CIA. The investigation involves the knowledge of such persons and their sworn statements about CIA operations in Chile during the late 1960's and early 1970's including Agency relations with ITT, many details of which have been publicly disclosed in the proceedings and reports of the Church Committee (volume on "Alleged Assassination Plots Involving Foreign Leaders," pp. 225-53, and volume on "Covert Action" pp. 5-48, pp. 95-136, and pp. 144-209).

The scope and nature of requests made by Justice to the CIA and the reactions of Director Bush up to October 13, 1976, are described in a memorandum from George Bush to Jack Marsh which is attached at TAB A.

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

PRESENT STATUS

Near the end of negotiations, the CIA maintained its concern about seventeen Agency employees, past and current, and two other persons who had supplied information on Chile to the CIA. In deference to that concern, Justice determined that at least for grand jury purposes, its needs could be reasonably limited to disclosures of eight of the nineteen persons involved, and that it would attempt to avoid disclosing the present location and position of one of those and would try to bring another before the grand jury under an alias. So the

issue now to be resolved is whether the requirements of the Department of Justice, as reduced to the eight persons still in question, are to be respected by George Bush. He seeks your guidance because he believes his statutory responsibility "for protecting intelligence sources and methods from unauthorized disclosure" [emphasis added] is in conflict with the needs of the Justice Department and he has never had a directive from you on your policy as expressed in your statement at the San Francisco World Affairs Council meeting on September 22, 1975, which is quoted above in this memorandum. Jack Marsh and I believe that it is clearly within the authority of George Bush to authorize the disclosures at issue on the basis of the stated needs of the Department of Justice and that your public statement is sufficient indication that for him to do so would not contravene any policy of yours, but would be in keeping with your policy. However, Brent Scowcroft believes that George should have your guidance on this matter.

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

Attached at TAB C is a Secret document prepared for me by the Justice Department in justification of its requirements for the disclosures it seeks. This has not been shown to CIA or anyone else at the White House except Jack Marsh, because it explains why the persons in question are targets of investigation or are essential witnesses. This document shows the importance which the Department of Justice puts upon their testimony and upon documents concerning their knowledge of, and involvement in, prior CIA activities. I believe it overcomes any argument that the Department of Justice has gone farther in its requests to the CIA than is necessary for proper criminal investigatory and prosecutorial purposes.

RECOMMENDATION

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

- a. That your policy as it should guide his actions is the same as you stated it to be on September 22, 1975.

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

Arguments in favor of such recommendation are:

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

- 5 -

their identities and CIA connections from disclosure. Such an outcome would be interpreted by knowledgeable people as setting a precedent for never investigating or prosecuting a confidential source of information even though he may have committed perjury; also for not prosecuting anyone for any crime if the evidence to do so would involve disclosing confidential CIA sources or methods.

Arguments against such recommendation are:

°CIA secret informants and employees for undercover activities will be difficult to recruit or will be inhibited in their work if they have to worry about the possibility that their identity and activities may be later disclosed in connection with a criminal case.

°The morale of people in the agency will be adversely affected.

APPROVE

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DISAPPROVE



007 10 1976

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

13 October 1976

A

MEMORANDUM FOR: The Honorable John O. Marsh
Counsellor to the President

FROM: George Bush
Director

SUBJECT: ITT/Chile Investigation

1. The Criminal Division of the Department of Justice has conducted a protracted investigation concerning sworn testimony given by former Director of Central Intelligence Richard Helms and others, on the subject of Agency operations in Chile in the late 1960's and early 1970's and related matters, including Agency relations with ITT, before various committees of Congress and other forums. The matters under investigation were referred to the Department of Justice by former Director of Central Intelligence William E. Colby in December 1974, and since that time attorneys from the Criminal Division have had access to all relevant CIA files and records, without regard to the classification of the materials, and have interviewed a large number of present and former Agency employees. In addition, a great deal of information about the Agency's activities in Chile during the relevant period is already in the public domain as a result of reports made by a number of committees of Congress, including the final report (Vol. VII) of the Church Committee.

2. Starting in May of 1976, and subsequently thereafter, the Department of Justice has identified certain present and former Agency employees as witnesses who might be summoned to appear before a grand jury and, assuming indictment, before a petit jury in a public trial. In addition, the Department has identified certain classified documents in the possession of CIA that it may want to use in connection with grand jury or trial proceedings, and it has asked the Agency to review those documents to determine whether they can be declassified, either in whole or in part, for prosecution purposes. Approximately 50 present or former CIA employees have been identified as potential witnesses. More than 500 documents are either under review or have been reviewed pursuant to the Department's requests to determine whether they can be totally or partially declassified.

3. The Agency is prepared to declassify the bulk of the documents requested by the Department, and to release the documents thus declassified for use in a prosecution. The Agency likewise has no objection to the appearance, even in



public, of most of the current and former employees identified by the Department as potential witnesses. There are, however, several former or current employees, among those identified as potential witnesses, whose appearance the Agency would regard as harmful from an operational standpoint. These persons are either presently serving in official or nonofficial cover positions, or have served in such positions in the past, with the result that their public identification with CIA could compromise operations in which they have been involved, destroy or at least seriously impair their future utility to the Agency, and expose Agency sources and methods.

4. For its part, so far as concerns the requested documents, the Department is apparently willing to accept at least some of the deletions being made by the Agency on classification grounds, and, so far as concerns the potential witnesses, the Department may also be willing to forego the testimony of at least some of the persons whose public identification as CIA employees would be regarded by the Agency as harmful.

5. Some items remain in dispute between the Department and the Agency, both as to what documents or portions thereof should remain classified and therefore unavailable (to the Government, if not the defense) in any prosecution, and as to which employees, if any, the Department should refrain from calling as witnesses. One of the key outstanding disputes relates to two CIA sources who were ITT employees and who apparently are among the targets of the Department's investigation. On the one hand their names must be deleted from the requested documents if the Agency is to adhere to a principle of strict confidentiality in its relationships with its sources. That principle was given statutory force in the National Security Act of 1947, which provides that the Director of Central Intelligence is responsible for the protection of intelligence sources and methods against unauthorized disclosure. On the other hand, the deletions of these names from the requested documents evidently would deprive the Department of evidence it feels it needs, and indeed evidence that it deems to be centrally important, both as against the two ITT employees themselves and against other possible defendants, including former Director Helms. The Agency's and the Department's interests are similarly at odds with respect to some of the witnesses whose public identification with CIA would be regarded by the Agency as harmful, but whose testimony the Department regards as essential to its case.

6. Unless the outstanding differences between the Agency and the Department can be settled by further negotiations, which is doubtful, it is very likely the Department will cause grand jury subpoenas to issue, requiring the production of the documents in question and the appearance of the potential witnesses

in question. The subpoenaed individuals will have no choice except to appear. Presumably I, as Director, will be the recipient of any document subpoena; and, barring any advice or direction to the contrary, I would have to assume that any such subpoena represents a valid demand supported by the President, and I would therefore expect to comply.

7. In a longer perspective, beyond the matters that presently remain in controversy between the Agency and the Department, there is an equally if not more serious question as to how, should there be indictment, the Government as a whole will respond to the multitude of discovery requests, predictably covering a wide range of classified materials, that almost certainly will be made by the defense.

8. There is no intention on my part or on the part of this Agency to take any action that might reasonably be construed as an effort to thwart or frustrate the investigation being conducted by the Department. At the same time I mean to do whatever is necessary and appropriate to carry out my statutory mandate to protect intelligence sources and methods, believing as I do that such protection is at the heart of the Agency's ability to function effectively.


George Bush



ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00928

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS,National security restriction
Type of Material : MEM,Memo(s)
Creator's Name : George Bush
Receiver's Name : Philip Buchen
Receiver's Title : Counsel to the President
Description : Department of Justice investigati
Creation Date : 10/22/1976
Volume (pages) : 3
Date Withdrawn : 05/23/1988

on.

*opened with
portions exempted*



Washington, D.C. 20505

22 OCT 1976

MEMORANDUM FOR: Philip W. Buchen
Counsel to the President

FROM : George Bush
Director

SUBJECT : Issues in the CIA/ITT/Chile Investigation being
Conducted by the Department of Justice

1. On the basis of information supplied by my predecessor, William Colby, the Department of Justice has been conducting a criminal investigation for better than a year to determine whether former Director Richard Helms and others may have committed perjury when testifying before the Congress on the CIA/ITT/Chile matter, or related criminal offenses. We are not fully apprised of Justice's case, but it appears that, addition to Helms, one or two Agency employees are possible defendants.

2. The Agency has cooperated with the Department of Justice in the investigation. A thorough search for all relevant materials has been conducted and Department of Justice attorneys have been given total access to CIA materials on Chile, including all of the most sensitive operational correspondence.

3. As you know, evidence relating to the investigation is now being presented to a Federal grand jury. In that connection the Department of Justice has identified a large number of Agency documents and asked that these be reviewed to determine whether they can be declassified, in whole or in part, for purposes of prosecution. The Department has also identified upwards of 40 current and former Agency employees, including the one or two who are possible defendants, who apparently are also possible defendants, as potential grand jury witnesses.

CLASSIFIED BY George Bush
EXEMPT FROM GENERAL DECLASSIFICATION
SCHEDULE OF E.O. 11652. EXEMPTION CATEGORY:
§ 5E(1). (3) or (1) (circle one or more)
AUTOMATICALLY DECLASSIFIED ON
Impossible to Determine

(unless impossible, insert date or event)

DECLASSIFIED - E.O. 12356, Sec. 3.4
With PORTIONS EXEMPTED
E.O. 12356, Sec. 1.3 (a) (2)(4)

SECRET

CIA letter 9/24/89

By KBH, NARA, Date 12/7/89

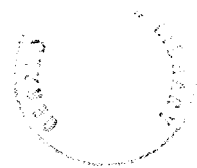
Many documents requested by Justice contain the names of one or another of the Agency employees identified as potential witnesses.
.....
.....

4. The Department has accommodated some of our concerns by agreeing to forego, at least for the present, appearances by some of the Agency employees, who either are or have been under cover, by tentatively agreeing to permit one other Agency officer to testify in alias, and by agreeing to refrain from asking another Agency witness.
..... questions that would elicit his present connection with the Agency. At the same time the Department is insistent that other Agency witnesses under cover appear in their true names, and that these true names remain in the requested documents. There are four Agency witnesses in this category, including the one or two possible Agency defendants. The Department is similarly insistent with regard to the release of documents.
.....

5. While I am not in a position to assess the Department's investigative needs, and while the Chile affair has been exposed to a very considerable extent by prior public disclosures, I am in general concerned about the further disclosures a prosecution would entail, all of which relate in one way or another to our intelligence operations.
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6. The touchstone of the Agency-source relationship is confidentiality. Confidential sources of intelligence information can be expected to furnish information and to cooperate with the Agency only so long as they feel secure in the knowledge that they are being protected from retribution or embarrassment by the pledge of confidentiality that surrounds the relationship. In my tenure as Director I have made every effort to observe that pledge, in accordance with what I regard as one of my paramount responsibilities.

7.
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.....



~~SECRET~~

8. This is a risk that relates directly to the national security of the United States. Since pursuant to the National Security Act of 1947 the Director of Central Intelligence is responsible for protecting intelligence sources and methods against unauthorized disclosure, I must share with you my concern. There is, I recognize, a powerful need to see justice done and to vigorously enforce the criminal laws of this country, and I do not want to do anything to thwart a proper investigation or frustrate the workings of the criminal justice system, or to suggest that the Agency is above the law. But also at issue here is the need to ensure that this country retains the ability to obtain intelligence information which is an essential element in the foreign policy decision-making process. The differing institutional responsibilities which the Attorney General and I have make it impossible for either of us to weigh all of the considerations. I consider it my duty, therefore, to acquaint the President with the potential harm to the national security which could result from these disclosures, and I of course recognize that he may well conclude that other interests are of overriding importance in this case.


George Bush

~~SECRET~~

C

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00929

Collection/Series/Folder ID No. : 004700173
Reason for Withdrawal : NS, National security restriction
Type of Material : BRP, Briefing Paper(s)
Receiver's Name : Buchen
Description : Department of Justice investigati
Creation Date : 10/1976?
Volume (pages) : 7
Date Withdrawn : 05/23/1988

*opened with
portions exempted*



~~SECRET~~

FACT SHEET

On May 5, 1976, the Department of Justice submitted the first of a series of requests for the declassification of a number of documents in the possession of the Central Intelligence Agency and for advice as to problems the Agency may have with respect to the use of Agency employees, former Agency employees and Agency sources as witnesses before a federal grand jury and possibly at trial in federal District Court. The Department made these requests as a part of its investigation into the apparently criminal conduct of Richard M. Helms, other Agency officers and officers and employees of the International Telephone and Telegraph Corporation. This conduct includes possible charges of perjury, obstruction of proceedings and conspiracy that relate generally to the testimony of various individuals as to events connected with the 1970 presidential election in Chile.

Since the initial request, the Agency has expressed concern about the inclusion of the names of seventeen Agency employees, past and current, and two sources of information in the documents requested. In consideration of the Agency's concern, the Department has designated eight of the contested names as the ones whose disclosure is most important to the investigation. The Department further agreed to withhold a request for declassification of the other names pending the results of the initial grand jury investigation. As to one witness, the Department agreed to explore the practicability of bringing the witness in under an alias and also agreed not to disclose the current Agency relationship of another witness.

There follow summaries of the reasons why each of the contested names is important to this criminal investigation.

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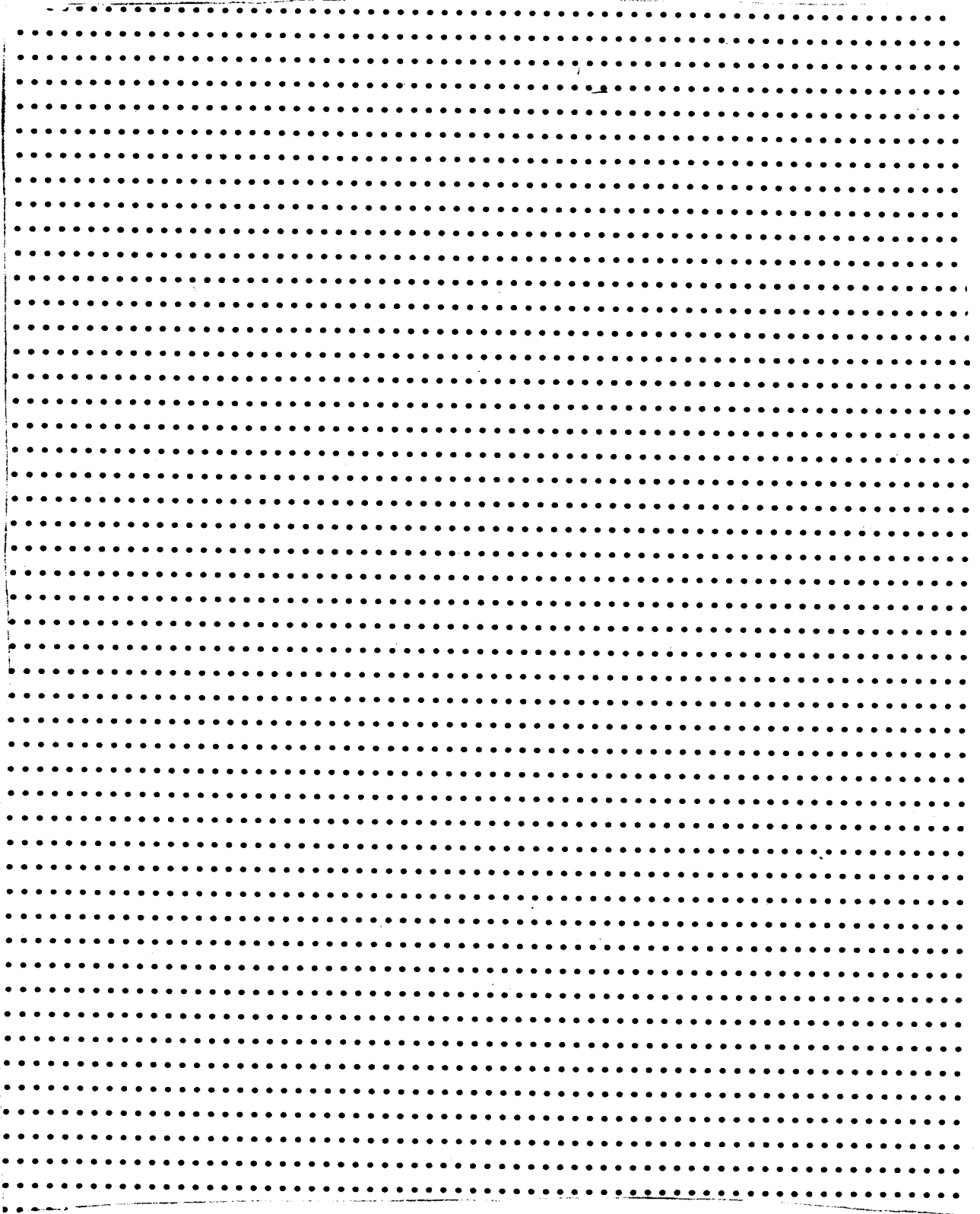
DECLASSIFIED - E.O. 12356, Sec. 3.4
With PORTIONS EXEMPTED
E.O. 12356, Sec. 1.3 (a) (4)

CLASSIFIED BY CIA DERIVATIVE 22092
EXEMPT FROM GENERAL DECLASSIFICATION
SCHEDULE OF EXECUTIVE ORDER 11652
EXEMPTION CATEGORY
AUTOMATICALLY DECLASSIFIED ON IMPOSSIBLE TO DETERMINE

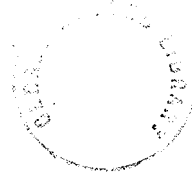
CIA letter dated 9/26/89
By KBH, NARA, Date 12/7/89

~~SECRET~~

- 2 - (thru 6)



~~SECRET~~



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- 7 -

Angus Thuermer

As an assistant to Mr. Helms, one of Angus Thuermer's major responsibilities was press relations. He had this responsibility during the period that columnist Jack Anderson presented the CIA with a major publicity problem through the March 1972 publication of articles about CIA and ITT activities in Chile. Mr. Thuermer's communications with Mr. Helms concerning that problem are of great importance in determining the extent of Mr. Helms' knowledge of events about which he gave sworn testimony to the Senate Foreign Relations Committee in 1973. Mr. Thuermer twice declined to give sworn testimony in interviews with Department of Justice investigators. In the opinion of the investigators, Mr. Thuermer's unsworn testimony was questionable and should be tested before a federal grand jury.

Mr. Thuermer's name and connection with the Agency were well-known to the press because he was responsible for the Agency's press relations. Mr. Thuermer also signed his true name as an assistant to the Director to the Agency's responses to a variety of public correspondence.

It should be noted that a restriction on the use of the above names involves not only the deletion of those names from particular documents, but also the deletion of information which might identify an individual as an Agency employee or as a source of the information. Where such deletions involve information concerning events about which Mr. Helms testified before the Senate Foreign Relations Committee in 1973, the deletions could prevent the use of documentary evidence of Mr. Helms' knowledge of those events at the time he testified.

~~SECRET~~

THE WHITE HOUSE

NOV 4 1976

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

See: ASAP

Date: November 4, 1976

Time:

FOR ACTION:

cc (for information):

Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date:

Soon As Possible

Time:

SUBJECT:

Differences Between the CIA and the DOJ

ACTION REQUESTED:

☐ For Necessary Action☐ For Your Recommendations☐ Prepare Agenda and Brief☐ Draft Reply☒ For Your Comments☐ Draft Remarks

REMARKS:

It is my feeling that we should have an original
sign off from the President.

No copy made of this file - please return the entire package.



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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

Jim Connor
For the President

THE WHITE HOUSE

WASHINGTON

November 2, 1976

MEMORANDUM FOR: TRUDY FRY

FROM: PHILIP BUCHEN

P.W.B.

Attached is the original of a Memorandum for the President on the subject of "Differences Between the CIA and the DOJ," along with a copy of my memorandum of October 25 to George Bush.

The President did not mark the original of my memorandum to him, but I presented it to him on Air Force One on October 23. The President verbally authorized my memorandum to George Bush.

The attached should therefore become a part of Presidential records.

Attachments

