

The original documents are located in Box 26, folder “National Security Chronological File (7)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

Copyright Notice

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald R. Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Presidential Libraries Withdrawal Sheet

WITHDRAWAL ID 01431

REASON FOR WITHDRAWAL National security restriction

TYPE OF MATERIAL Memo(s)

CREATOR'S NAME Philip Buchen

RECEIVER'S NAME Wheaton Byers

DESCRIPTION re Foreign Intelligence Surveillance
Act of 1976

CREATION DATE 07/01/1976

VOLUME 4 pages

COLLECTION/SERIES/FOLDER ID . 001900629

COLLECTION TITLE Philip W. Buchen Files

BOX NUMBER 26

FOLDER TITLE National Security Chronological File
(1)-(7)

DATE WITHDRAWN 08/12/1988

WITHDRAWING ARCHIVIST WHM

THE WHITE HOUSE

WASHINGTON

July 1, 1976

MEMORANDUM FOR:

DOUGLAS BENNETT

FROM:

PHILIP BUCHEN *P.*

SUBJECT:

Charles Crutchfield to be a
Member, Board of Directors,
Corporation of Public Broad-
casting

We have concluded our review of the Personal Data Statement made by Mr. Crutchfield. These responses reveal attitudes and actions on his part which are likely to cause controversy during the confirmation process. Among them are:

1. A speech he made on August 11, 1972, in Atlanta, Ga., which was printed and circulated by the Georgia Association of Broadcasters. The title of the speech was "A Commitment to Balanced News" in which the speaker cited a personal incident where he had made ad lib comments while meeting with North Carolina legislators to support retention of State laws that permitted cities like Charlotte to annex additional areas. His report of that incident is:

"I commented that 'Blacks are not -- at this time -- mentally or economically qualified to run a city the size of Charlotte.' This was an unfortunate choice of words. I should not have used the word 'mentally qualified'. The meaning I was trying to convey was that, general speaking, blacks do not -- at this time -- possess the education and experience necessary to administer a large city."

His point in using this example was that he had been unfairly treated by the news media for having used an ill-considered phrase, but the fact that he did use it will undoubtedly come up in the hearings.



2. Also, in another speech delivered March 26, 1970, he very much defended the attacks by Spiro Agnew on the media.
3. Mr. Crutchfield was active in trying to ban non-communists from speaking at tax-supported colleges in the State of North Carolina.
4. The proposed nominee also has publicly criticized the networks for permitting programs to be aired in which blasphemy was used such as one episode of the "All in the Family" series.

In the aftermath of the refusal of the Senate to accept the nomination of Joseph Coors, we are likely to face efforts by liberal Senators to characterize Mr. Crutchfield as equally objectionable, and I think it necessary that you be aware of this likelihood and the types of evidence which will be available to the Senate Committee.

THE WHITE HOUSE

WASHINGTON

July 12, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP BUCHEN *P.*

SUBJECT: Evidence on U. S. Navy Flyers Downed in 1950

1. Circumstances of the disappearance of the flyers (from findings made by Secretary of the Navy on April 11, 1951 after inquiry and report by Board of Investigation).

At 10:51 AM on 8 April 1950, ten officers and enlisted men took off from U.S. Air Force Base, Wiesbaden, Germany, in a U.S. Navy Aircraft PB4Y-2. Subsequent events, as found by the Secretary were:

Subsequent to its departure communications were received from the subject aircraft up to 1:55 PM (Z) on 6 April. Since the aircraft had fuel aboard sufficient to last until approximately 11:00 PM (Z) on 8 April, it was not officially declared missing until that time. However, search and rescue aircraft were alerted at 10:45 PM (Z) on that date. The first search and rescue airplane took off from Wiesbaden at 2:40 AM on 9 April, followed quickly by others and a total of 26 aircraft were engaged in the search and rescue operations. On 16 April 1950, search and rescue operations were suspended at sundown with negative results. However, a British merchant ship Mc.CHLAND on 14 April picked up a Mark VII life raft at location 56-20N 20-06E which was positively identified as belonging to the missing aircraft. On 23 April 1950, the Swedish ship HITTAGEN also picked up a Mark VII life raft in a reported position of 56-10N 19-05E which was positively identified as belonging to the missing aircraft.

Immediately following the failure of the aircraft to return to Wiesbaden, the Soviet Government addressed a note to the United States Government stating that a U.S. aircraft was encountered and fired upon by Soviet fighter aircraft at approximately 2:30 PM (Z) on 8 April in the vicinity of overland at Laben, Latvia.



However, it was the opinion of the Board of Investigation that by reconstruction of the scheduled flight plan of the aircraft, it was most improbable that the aircraft would have been overland at the time of the Soviet strike but it was possible that due to radar failure and weather change, the plane could have flown into Soviet held territory without knowing it. Based on the positions of the life rafts when recovered, by reconstruction of average daily surface winds and currents in the Baltic during the period of the elapsed time from the assumed time of the loss of the aircraft to the time of the recovery of each raft, and assuming certain sailing characterization of the rafts, an average mean position of Latitude 55° 19' N Longitude 18° 45 E was computed as being the geographical point where the loss of the aircraft occurred. This then would place the aircraft over the waters of the Baltic Sea.

2. Arrest, Incarceration, and Release of John H. Noble, a U. S. citizen, by the USSR.

- (a) Arrested in Dresden, East Germany, on July 5, 1945.
- (b) Held in East German prisons and concentration camps until August 1950.
- (c) Transferred to Vorkuta Arctic Slave Camp where he arrived on September 14, 1950, and was assigned on September 26, 1950, to Camp 3. In an affidavit of May 26, 1973*, Noble said in respect to his stay at Vorkuta as follows:

"Shortly after my arrival I spoke with a Yugoslavian National in Camp Number Three who told me several months before an American Navy Reconnaissance plane had been downed by the Soviets over the Baltic Sea and that eight of the ten crew members had survived.

"The eight survivors were being held in the Vorkuta area but most important was all survivors had been declared dead and they had been told by the Soviet officials the United States Government had accepted this statement and therefore they may just as well forget about ever going back to America.

*This affidavit, made long after the events in question, is cited because on the basis of this affidavit, President Nixon first and now you have been asked to intercede with the Soviets.

"The Yugoslavian national told me they feared they would never see their homeland again.

"During my stay I was never able to identify the survivors by name, however, I heard repeatedly from other Nationals being transferred from one camp to another that American's were being held where these transferre's [sic] came from."

- (d) On June 10, 1954, Noble first met William Marchuk and William Verdine, who were also U.S. citizens, and on June 30, 1954, all three arrived at a repatriation camp in Potma. In a sworn deposition given by Noble on January 18, 1955, he stated:

" . . . On the 30th of June, 1954, immediately after I arrived in the Camp of Potma, I was sitting on the bench in the park with either Verdine or Marchuk -- I don't remember exactly -- I was told by a German Yugoslav that he had met eight American flyers which claimed to have been shot down over the Baltic Sea. . . .

"I don't remember the name of this German Yugoslav, but . . . I know some people which were together with him and have already been repatriated. . . .

"One of them I think I have here: Franz Zvetko.. . .

"He was together with these Yugoslavs for more than a year . . . so most likely he knows the name of this person. . . .

"I did not take opportunity to speak with this fellow later on, because I was warned by several people in the Camp that this person was working in connection with the Soviet authorities."

Later, in the same deposition, Noble stated that he remembered only the one conversation with the German Yugoslav, and said he gave no details of the eight flyers. Noble also said Marchuk was informed of the flyers by the same Yugoslav either in company with Noble on June 30, 1954 or on other occasions when Marchuk talked alone



with the same Yugoslav. Marchuk was most likely to have known more than Noble about the information which the Yugoslav had, but not Verdine because he spoke no Russian and very little German, according to this deposition.

- (e) On January 8, 1955, Noble was given his freedom in Berlin and arrived back in this country on January 17, 1955.
- (f) Noble was debriefed in Berlin before returning to this country, according to a State Department message of January 12, 1955, and told of having "talked to prisoners who had seen 8 of these flyers alive [those shot down in the Baltic in 1950] in an unspecified camp." On January 17, 1955, Noble was interviewed in New York City by a Navy Intelligence officer, and identified Franz Zwetko, then in Austria, as the man who could identify the German Yugoslav who had told Noble the story of the eight Americans. Later in Washington on January 18, 1955, Noble gave a sworn deposition at the State Department, with exhaustive questions and answers, the transcript of which covers 34 pages and part of which is quoted in item (d) above. Lastly, on March 23, 1955, the F.B.I. interviewed Noble in Detroit, and the interview report states in part:

"While in Camp Potma about January 2, 1955 [sic], awaiting release he talked to FNU WUKOWITSCH, who stated he had seen the eight Americans (believed to refer to the eight lost in a plane accident), and talked with them and they expressed to him their fear that they would be "lost" in the Soviet Union because they had been officially pronounced dead by the Russian Government."

Included in Noble's affidavit of May 26, 1973, part of which is quoted in item (c) above, is another statement, not reflected in any of the other documentation, namely:

"After my arrival in Washington, D. C. on January 17, 1955, I was interviewed by Naval Intelligence primarily regarding the downed American Navy fliers referred to earlier in this statement. I was told by my interrogators that they did have photographic evidence to the fact the

plane was afloat for some time after the crash and a Soviet vessel did come alongside to pick-up the survivors and/or the bodies.

"Due to the fact the plane was afloat gave reason to believe there are survivors which verified to me the existence of the American's [sic] inside Vorkuta."

3. Lack of substantiation for the evidence given by John Noble that eight of the flyers who crashed in 1950 survived and were imprisoned by the Soviets.

- (a) In his 1973 affidavit Noble identified the source for his only information about the flyers as a Yugoslav who had also been imprisoned by the Soviets, but he placed the Yugoslav at Vorkuta and the time of the disclosure in 1950. In all of his statements given to U. S. authorities upon his release in 1955, Noble placed the Yugoslav in Potma at the only instance of any conversation between the two and gave the time as being in 1954. When I talked recently to Noble he gave no satisfactory explanation for this discrepancy and said only that he now thought he had heard the same information both at Vorkuta in 1950 and at Potma in 1954. But this current recollection of his having received the same report at different times and in separate locations is clearly contradicted by Noble's fresher memories in 1955.
- (b) No one else has ever confirmed to the U. S. Government the information which Noble said he had obtained from the particular Yugoslav who told him of the eight flyers still alive in the Soviet Union. The government made an exhaustive inquiry in 1955 to see if it was possible to confirm the story. The Yugoslav described by Noble as the sole source for his information about the flyers was identified by Zwetko (to whom Noble had directed the U. S. officials) as one Wukowitsch, then in West Berlin. The latter was promptly interviewed and stated he had no knowledge of any Navy internees in Russia, although

he had in 1950 heard over a prison loudspeaker from a radio broadcast that an American aircraft had crossed the USSR border, that the U.S. had charged the Soviets with shooting it down, and that the Soviets had denied the charge. One Franz Lesnik had been a fellow prisoner of Wukowitsch who helped the U. S. officials locate Wukowitsch in West Berlin, but he also had no knowledge of American prisoners taken from a U. S. aircraft. Many other possible sources for confirming Noble's account were interviewed in 1955 without obtaining any confirmation or additional clues. Among them were the two Americans who had been with Noble in Potma -- Marchuk and Verdine -- and various former prisoners of other nationalities.

- (c) As to the recollection of Noble in 1973 that he was told of photographic evidence possessed by Navy intelligence that the downed Navy aircraft remained afloat and that a Soviet vessel came alongside to pick up bodies and survivors, it is nowhere supported by any records. I have read the complete transcript of evidence taken by the Board of Investigation for the Navy, and no reference appears to any such photographs. Moreover, the Navy's search and rescue flights (which proved futile) were only begun during darkness in the early morning of April 9, 1950, some hours after the downed aircraft would have run out of fuel and twelve hours after the time when the Soviet government later said its aircraft had fired on the U. S. aircraft.

4. Recommendation

In response to the information supplied you by John along with your memo of conversation attached at TAB A, I recommend you authorize me to disclose to John the extent and results of my investigation into the matter. I think he would then agree that, however sincere John Noble may be about what he was told while in Soviet prison camps, there is no evidence whatsoever which substantiates the hearsay account given by Noble and no basis for further investigation which could prove fruitful, especially in respect of an event dating back 25 years.

Brent Scowcroft concurs in this recommendation.

APPROVE _____ WOULD LIKE TO DISCUSS _____

THE WHITE HOUSE

WASHINGTON

July 22, 1976

MEETING WITH CONGRESSMAN JOHN E. MOSS

Thursday, July 22, 1976

3:30 or 4:00 p.m. (30 minutes)

The Oval Office

From: Philip W. Buchen

I. PURPOSE

To discuss with John E. Moss as Chairman of the Oversight Investigation Subcommittee of the House Committee on Interstate and Foreign Commerce the positions taken by you in your letters of today sent to Chairman Staggers (Tab A) and to John E. Moss (Tab B).

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

- A. Background: The return date for the subpoena to AT&T is now at 10:00 a.m. on Friday, July 23. As a result of your letters of today, it is hoped that Chairman Moss will agree to the proposals made in your letter to him of today (Tab B) or that, if he wants additional time to consider them, he will further extend the return date for the subpoena. If there is neither agreement nor postponement as an immediate result of this meeting, it will be necessary for the Justice Department to file immediately a suit against AT&T to obtain a temporary restraining order tonight to prohibit AT&T from complying with the subpoena tomorrow morning.
- B. Participants: Congressman Moss, John Marsh, Brent Scowcroft and Philip Buchen.
- C. Press Plan: Kennerly photo only. Meeting not to be announced (although the press already knows it is to occur).

III. TALKING POINTS

1. John, I understand that you have had very beneficial discussions with Jack Marsh and Phil Buchen and that you talked to Phil Buchen yesterday afternoon indicating that you thought it would be in the best interests of the country if we could find acceptable arrangements for your Subcommittee to obtain certain information.
2. John, I also understand that the principal differences between you and the Executive Branch are now over the means for verifying the expurgated backup material for the surveillances involving assistance to the FBI from the AT&T. From our point of view, any verification procedure which allows the names of particular targets of foreign intelligence surveillance or the identities and nature of sensitive source and methods to reach your Subcommittee and, potentially every member of the House of Representatives, involves risks that I as President cannot approve. I feel particularly strong on this point because I understand that for the purposes of investigation you do not need to know the identities of targets which could be foreign establishments, individual foreign agents or even double agents. My security advisers tell me that if a foreign power should ever find out that we have discovered one of its foreign agents, not only would such agent be withdrawn and replaced but also the foreign power could reasonably surmise how that agent was discovered and could take serious reprisals against the informants on which we have relied to discover the existence of the foreign agent.
3. I know that you, John, have been trusted with much sensitive information under previous administrations and I would feel no difficulty in sharing very confidential information with you but I must draw the line on having your Subcommittee acquire information that could in turn, because of Rule 11, become available to any of 435 Congressmen particularly when there is not a critical need for your Subcommittee or any other Congressman to know this information.



4. You may think that I have stepped in to disrupt a plan that you thought could be implemented on the basis of discussions your staff has had with Rex Lee and others in the Department of Justice. However, Phil Buchen tells me that as late as July 12th he approved for negotiation purposes a memorandum from the Justice Department which involved proposing to you arrangements which would leave open the verification procedure until after you had seen the expurgated documents. We all think that once you have looked at the expurgated documents, you will find that they serve your purposes completely and that no greater verification procedure is necessary than the one I proposed in my letter to you today.

Classified

THE WHITE HOUSE

WASHINGTON

July 22, 1976

MEMORANDUM FOR

THE HONORABLE REX LEE

Attached are the originals of Affidavits
of Mr. Lew Allen and Mr. Robert L. Keuch.

1-6-76
Philip W. Buchen
Counsel to the President

Attachments (2)



THE WHITE HOUSE

WASHINGTON

Confidential

July 22, 1976

*sent
down
8/2/76*

MEMORANDUM FOR:

JOHN MATHENY

FROM:

PHILIP W. BUCHEN

P.W.B.

SUBJECT:

Declassification of Memorandum
to President Eisenhower

The Counsel's Office sees no reason why the attached memorandum could not be declassified.

Attachment

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ATTACHMENTS



*Classified
chron*

THE WHITE HOUSE
WASHINGTON

July 26, 1976

TO: JIM CONNOR
FROM: PHIL BUCHEN *P.*

Suggest you circulate copies as
you see fit.



THE WHITE HOUSE

WASHINGTON

July 26, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHIL BUCHEN *PB*

SUBJECT: Star Article of 7/23/76 Entitled
"Moss Claims U.S. Wiretaps
on Increase"

Attached at Tab A is a page from the affidavit of James B. Adams, Assistant to the Director of the FBI, which details the number of leased line letters from which Congressman Moss wrongly inferred that wiretaps and microphones for foreign intelligence purposes had increased during your Administration. At Tab B is the release issued by the Department of Justice after Congressman Moss had spoken to the press. It explains that the number of leased line letters does not reflect the actual number of different wiretaps and microphones and that the number of persons subject to surveillances has actually decreased under your Administration.

Attachments



THE WHITE HOUSE

WASHINGTON

July 27, 1976

Don Chen

MEMORANDUM FOR:

RICHARD CHENEY

FROM:

PHILIP BUCHEN *P.*

Preparatory to our meeting on the subject we discussed, I attach for your review drafts of documents which the President could use to implement part of the procedures he would follow in determining his preference for the nominee as Vice President.

The draft of a letter for Edward McCabe explains the procedures to be followed. I suggest him for this purpose because he is a respected private attorney, was formerly counsel to President Eisenhower and is now serving as part-time counsel to the President Ford Committee, although I have not, of course, inquired whether he is willing to serve in this capacity.

The memorandum setting forth the desired information and documents is based on the kind of information obtained from prospective appointees to federal office, and from persons who are screened for security clearance purposes; although in some respects the information required is more extensive, but is consistent with information Congressman Ford had to supply to the Congress upon his nomination to be Vice President of the United States.

Attachments

U.S. 100-100000

cleron

THE WHITE HOUSE

WASHINGTON

July 27, 1976

MEMORANDUM FOR: MAX FRIEDERSDORF

FROM: PHILIP W. BUCHEN *P.*

SUBJECT: Case of U. S. v. AT&T as
Defendant and Chairman Moss
as Intervenor-Defendant

Action was started on Thursday, July 22, in the United States District Court for the District of Columbia to restrain AT&T from turning over certain documents to the Subcommittee on Oversight and Investigations of the House Interstate and Foreign Commerce Committee, pursuant to its subpoena. The documents in question involve letters from the FBI to AT&T to order installation of telephone lines between (a) the point of FBI wiretaps or microphones installed to acquire foreign intelligence information and (b) the point where the FBI is to monitor the communications which can be intercepted by the wiretaps or microphones.

Letters like this have been sent to AT&T since 1969 (before which they were merely shown but not delivered) and have been issued only after determination by the Attorney General that interception of the communications to be monitored is within the lawful authority of the government to conduct electronic surveillances without judicial warrant for the intelligence and counter-intelligence operations of the NSA and the Intelligence Branch of the FBI.

Each of the letters which has gone to AT&T identifies by location, telephone number or other means, the subject of the surveillance. Their disclosure would reveal every foreign power or agent of a foreign power which has been a subject of interest to the United States for foreign intelligence or counterintelligence purposes. Involved are foreign agents believed to be engaged in espionage, sabotage, or terrorism, whose identification,

7-27-76

if it became known to unfriendly powers, would be seriously detrimental to this nation's security, could jeopardize the lives of informants, and would evidence to the extreme advantage of foreign powers the limits of our awareness as to their agents.

The Court initially issued a temporary restraining order and set the case for a further hearing on July 28 when the United States will move for the issuance of a preliminary injunction and for a summary judgment to make the injunction permanent. Such a judgment would protect the information held by AT&T from delivery to a Subcommittee of Congress and thus would avoid the risk of either deliberate or inadvertent disclosure by action of the Subcommittee, by any one of the 435 members of the Congress who, pursuant to Rule 11(2)(e)(2) of the House would have access to the information, or by any Congressional staff member who may be given access.

Notwithstanding the case by the U. S. for preventing such risks of disclosure over objections by Congressman Moss, the Executive Branch has offered the Subcommittee access to certain records within the FBI sufficient to permit the Subcommittee to make a responsible judgment that the electronic surveillances conducted through assistance from AT&T were within the lawful authority of the United States. To the extent these surveillances involved domestic-related activities rather than foreign-related ones, as the law prior to the Kieth case in 1972 permitted, a full disclosure would be made to the Subcommittee, and in other respects the reason and justification for each surveillance would be disclosed but not the identity of the particular target and not the details of the sensitive sources or methods.

Despite this offer of alternative means for providing adequate and relevant information to the Subcommittee, Chairman Moss persists in defending the force and effect of the subpoena for delivery of highly sensitive documents.

cc: Jack Marsh



THE WHITE HOUSE

WASHINGTON

July 27, 1976

MEMORANDUM FOR: MAX FRIEDERSDORF

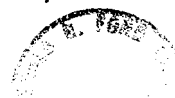
FROM: PHILIP W. BUCHEN *P.*

SUBJECT: Case of U. S. v. AT&T as
Defendant and Chairman Moss
as Intervenor-Defendant

Action was started on Thursday, July 22, in the United States District Court for the District of Columbia to restrain AT&T from turning over certain documents to the Subcommittee on Oversight and Investigations of the House Interstate and Foreign Commerce Committee, pursuant to its subpoena. The documents in question involve letters from the FBI to AT&T to order installation of telephone lines between (a) the point of FBI wiretaps or microphones installed to acquire foreign intelligence information and (b) the point where the FBI is to monitor the communications which can be intercepted by the wiretaps or microphones.

Letters like this have been sent to AT&T since 1969 (before which they were merely shown but not delivered) and have been issued only after determination by the Attorney General that interception of the communications to be monitored is within the lawful authority of the government to conduct electronic surveillances without judicial warrant for the intelligence and counter-intelligence operations of the NSA and the Intelligence Branch of the FBI.

Each of the letters which has gone to AT&T identifies by location, telephone number or other means, the subject of the surveillance. Their disclosure would reveal every foreign power or agent of a foreign power which has been a subject of interest to the United States for foreign intelligence or counterintelligence purposes. Involved are foreign agents believed to be engaged in espionage, sabotage, or terrorism, whose identification,




if it became known to unfriendly powers, would be seriously detrimental to this nation's security, could jeopardize the lives of informants, and would evidence to the extreme advantage of foreign powers the limits of our awareness as to their agents.

The Court initially issued a temporary restraining order and set the case for a further hearing on July 28 when the United States will move for the issuance of a preliminary injunction and for a summary judgment to make the injunction permanent. Such a judgment would protect the information held by AT&T from delivery to a Subcommittee of Congress and thus would avoid the risk of either deliberate or inadvertent disclosure by action of the Subcommittee, by any one of the 435 members of the Congress who, pursuant to Rule 11(2)(e)(2) of the House would have access to the information, or by any Congressional staff member who may be given access.

Notwithstanding the case by the U. S. for preventing such risks of disclosure over objections by Congressman Moss, the Executive Branch has offered the Subcommittee access to certain records within the FBI sufficient to permit the Subcommittee to make a responsible judgment that the electronic surveillances conducted through assistance from AT&T were within the lawful authority of the United States. To the extent these surveillances involved domestic-related activities rather than foreign-related ones, as the law prior to the Kieth case in 1972 permitted, a full disclosure would be made to the Subcommittee, and in other respects the reason and justification for each surveillance would be disclosed but not the identity of the particular target and not the details of the sensitive sources or methods.

Despite this offer of alternative means for providing adequate and relevant information to the Subcommittee, Chairman Moss persists in defending the force and effect of the subpoena for delivery of highly sensitive documents.

cc: Jack Marsh



THE WHITE HOUSE
WASHINGTON

7/28/76
Doug Bennett took
this memo to President,
who saw no reason why
M. L. should not step
down. I have so
advised M. L.

P.



THE WHITE HOUSE
WASHINGTON

July 28, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN *P.*

SUBJECT: Mel Laird as a Member of PFIAB

When Mel was originally being considered for appointment to PFIAB, Hobart Lewis talked to me about the problem he saw because Mel was under contract with Reader's Digest to write articles for the magazine on national defense and international affairs. Hobart thought that it would be difficult for Mel to separate information he acquired as a Member of PFIAB from information he derived independently, and he thought that in any event, competitive publications and the public generally would believe he was taking advantage of information he acquired in an official capacity for the purpose of preparing his articles.

Somehow, these concerns of Hobart Lewis were later ignored, and Mel agreed to accept the appointment. However, even though you nominated him, Mel has not yet taken his oath of office nor participated in any PFIAB meeting, because Mel himself is concerned now that his role for Reader's Digest poses the problems which had been previously raised. Moreover, Mel did provide for the May issue of Reader's Digest an article on the CIA which does include heretofore unpublished information about its operations. Also, for the August issue he will be providing an article that contains heretofore unpublished information about the relationships between the Soviet Union and Cuba. Leo Cherne has seen both of these articles and does believe that articles like this, if prepared after Mel takes part in the PFIAB deliberations, would lead to the charge that he was using his PFIAB position to his private advantage.



I report these developments to you because Mel indicates he will be sending a letter to you shortly in which he proposes to step aside from service on PFIAB, and he wants to be sure that you understand why he has reluctantly decided to take this step.

APR 12 1978

THE WHITE HOUSE

WASHINGTON

August 2, 1976

MEMORANDUM FOR: DICK CHENEY

FROM: PHIL BUCHEN *P.*

Attached is a draft of a document to be used in contacting persons at the semi-final stage of the selection process, a signed copy of which is to be sought from each prospective candidate then under consideration. I urge that the President review this promptly and approve taking this next step as early as Thursday of this week so as to enable the persons contacted to get their material together in time.

Attachments



THE WHITE HOUSE

WASHINGTON

August 2, 1976

MEMORANDUM FOR: SAM HOSKINSON

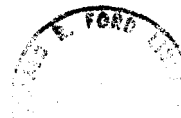
FROM: PHIL BUCHEN *P.*

Enclosed with this memorandum is a report to the President of July 12, 1976, by the Intelligence Oversight Board.

After this was originally delivered to me, I received a call from Joe Dennin, Counsel to the IOB, who suggested that I might want to hold up further handling of this communication until the Defense Department (Bob Ellsworth) came up with a proposal or other suggestion as mentioned in the last paragraph of the report to the President. At that time IOB contemplated a fairly quick response from Defense, but more recently I have received a call from Dennin indicating that the IOB was no longer requesting that further handling of the report be postponed, presumably because IOB has not heard from Defense.

I assume you will see that the report gets to the President, although you may want to prepare a covering memorandum that comments on the issue raised by IOB. Such a memorandum, I suggest, should be preceded by consultation with OMB and with Bob Ellsworth, and I would be glad to discuss a draft of the memorandum before it goes to the President.

Attachment



Classified Chron.

THE WHITE HOUSE

WASHINGTON

August 11, 1976

MEMORANDUM FOR: BRENT SCOWCROFT
FROM: PHIL BUCHEN *R*
SUBJECT: Army Special Operations
Field Office in Berlin

I am returning to you the Action Memorandum on the above subject which has been prepared for you to send to the President.

I do concur in the action recommended. I do, however, point out that the National Security Decision Memorandum which you recommend be signed by the President has been drafted so as to call for your signature rather than the President's, and I assume that this was done in error.



~~TOP SECRET~~

ACTION

THE WHITE HOUSE

WASHINGTON

August 12, 1976

DECLASSIFIED

E.O. 12356, Sec. 3.4.

MR 89-23, #5 NSC Ltr 9/30/89

By KBH, NARA, Date 12/4/89

MEMORANDUM FOR THE PRESIDENT

FROM: PHIL BUCHEN *P.*

SUBJECT: Intelligence Oversight Board Report
Dated August 6, 1976

I. BACKGROUND

Attached at Tab A is a report to you from Chairman Murphy of the Intelligence Oversight Board, along with a memorandum of its staff on which the report is based.

This report is made pursuant to Section 6(a)(v) and (vi) of your Executive Order 11905 which requires the Board to report to you and the Attorney General "any activities that raise serious questions about legality" and to you alone "any activities that raise serious questions about propriety." This report appears to raise both questions of "legality" and those of "propriety."

The Attorney General has received a similar report and I have talked to him. He does not look upon the report as raising any question of criminality but merely of whether there was a requirement to comply with Section 662 of the Foreign Assistance Act, and, if so, whether there was a failure to do so. This statute requires that no funds can be expended by CIA for certain activities unless and until you find them to be important to the national security and report to certain Committees of the Congress.

II. RECOMMENDATIONS

The Board's staff memorandum does not reflect a thorough examination of the facts. Therefore, before you receive your own legal advice on the issue raised by the Board,

~~TOP SECRET~~

~~TOP SECRET~~

-2-

I believe you should authorize me to dig further into the facts of the matter. I would propose to do so by having Brent Scowcroft assign someone from the NSC staff to join me in talking first to George Bush and then to those people at CIA who may have direct knowledge of the activities in question. Also, we would examine whatever documentary evidence is available. At the conclusion of this process, I would report to you and the Attorney General whatever findings we make and then confer with the Attorney General as to what would be the most appropriate legal advice to you. Jack Marsh and Brent Scowcroft concur in this recommendation.

On the question of propriety, after all the facts are in, you may want to have the Operations Advisory Group study the matter from a policy standpoint and make a recommendation to you.

III. ACTION

_____ Approve investigation
of facts by Buchen
and NSC staff member

_____ See me to discuss

~~TOP SECRET~~

THE WHITE HOUSE

WASHINGTON

August 17, 1976

*Unifed
chron*

MEMORANDUM FOR:

BILL HYLAND

FROM:

PHILIP BUCHEN

P.

In accordance with the attached letter from Assistant Attorney General Thornburgh, will you please provide me with copies of the requested documents.

Thank you for your assistance.

Attachment

F. R. E.

August 18, 1976

*Clear
Chen*

MEMORANDUM FOR

THE HONORABLE HAROLD TYLER
DEPUTY ATTORNEY GENERAL

SUBJECT: Possible Misuse of Government
Facilities

Douglas Bennett of our office has been advised by operators of the White House Switchboard that on the mornings of August 3 and 4, they received requests to place overseas phone calls through the White House switchboard for someone who identified himself as Douglas Bennett. A list of the parties called, their locations and telephone numbers in Europe and the times the calls were placed is attached.

Ordinarily, it is not possible for calls to be placed through the White House switchboard by unauthorized persons, because the operators take the request and have the requesting party hang up while they place the call. In this instance, however, the party who represented himself to be Douglas Bennett asked to hold on the telephone while the call was placed on the pretext that the requesting party did not want a call back which would awaken others in the house.

I assume it will be possible for the Department to check with the persons named on the attached list to learn the identity of the true caller and the purpose for the calls.

101
Philip W. Buchen
Counsel to the President

Attachment



THE WHITE HOUSE

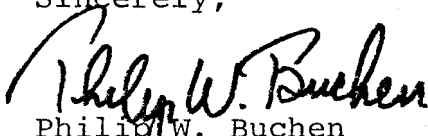
WASHINGTON

September 1, 1976

Dear Mr. Thornburgh:

In response to your request of August 13, 1976, as modified by a review by your staff of NSC documents on August 30, I forward the attached documents. The NSC has requested that these documents be submitted with the understanding that they will be maintained as classified material and returned upon completion of your investigation. Any request for their declassification, in full or in part, should be submitted through this office. However, because this material clearly contains sensitive intelligence information, it is unlikely that it will be possible to declassify substantive portions of this material.

Sincerely,



Philip W. Buchen
Counsel to the President

The Honorable Richard L. Thornburgh
Assistant Attorney General
Criminal Division
Department of Justice
Washington, D.C. 20007

Attachments

1. "DCI Briefing for 6 November 1970 National Security Council Meeting" 15 pp (SECRET)
2. Memorandum of Conversation dated November 6, 1970, Subject: National Security Council Meeting - Chile (NSSM-97). (Edited Version), SECRET, 1 page

THE WHITE HOUSE

WASHINGTON

September 13, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN *P.*

SUBJECT: Investigation by the Watergate Special
Prosecutor of Republican Committee
Records in Kent County

Under date of September 2, the Watergate Special Prosecutor caused to be issued from the Grand Jury of the United States District Court for the District of Columbia subpoenas to the Custodians of the Records for both the Kent County Republican Committee and the Kent County Financial Committee. The subpoenas cover all of the Committees' records for the period January 1, 1964, to the present. Subsequently, the Special Prosecutor advised that he also wanted records of the Fifth District Republican Committee.

Stephen Bransdorfer, Attorney for the Committees, contacted Special Prosecutor Charles Ruff and worked out an arrangement whereby the records need not be sent to Washington but will be examined by agents of the FBI in Grand Rapids.

Bransdorfer has been led to believe that the purpose of the examination is to determine whether contributions from labor union funds were made to these local committees to benefit candidates for election to federal offices. Prior to delivery of the documents to the FBI for examination, they were reviewed by Bransdorfer and his colleagues, who in turn disclosed to Niel Weathers those transactions which appeared to relate to the purpose of the Special Prosecutor's inquiry. Only records from 1966 to date are available. They do show certain contributions from union-related sources with the same address of 675 Fourth Avenue, Brooklyn, New York, namely, (i) the Seafarers Committee on Political Education, (ii) Seafarers Political Activity

Donation (SPAD), and (iii) Philip Carlip. These receipts were reported by the Committees under State law, to the extent the Committees were required to do so (which did not include receipts at times outside the periods of general election campaigns), but because the Committees did not operate in more than one State, they were not required by law before 1972 to make any Federal report.

Also, the Committees' records do show that expenditures were made for your benefit in 1966, 1968, and 1970 and for Bob Griffin's benefit in 1966. Expenditures for your benefit were itemized for 1966 and 1968 on a ledger account of the Fifth District Committee which bears your name and the number "451", and in 1970 a single payment was made to Insight Advertising Company to pay for services rendered in your behalf. The ledger account also identifies receipts of the Fifth District Committee which apparently were intended to benefit your campaigns, but none appears to be from a union-related source. However, payment of the Insight Advertising bill for \$1,875 appears to be related to the MEBA contribution of \$2,500 made on the same date in 1970.

Again, the expenditures were reported by these Committees in their State filings to the extent the Committees were required to report them.

Attached at TAB A is a summary made by Niel of these transactions. At TAB B is a copy of ledger account number 451 from the Committee records.

How the records in question could relate to prosecutable charges under Federal law is difficult even to guess. Labor organizations are prohibited by Federal law from making political contributions in connection with an election to Federal office. However, unions may sponsor separate political action committees, and the contributions received by the local Republican Committees as reported by them were from such committees rather than from the unions themselves. Also, a three-year statute of limitations applies to violation of the law against union contributions, and no union-related receipts appear in the subpoenaed records after November 16, 1971.

Under the Federal law in effect during 1964-1972, you might have been required to report to the Clerk of the House receipts of the Kent and Fifth District Committees

related to your candidacy and expenditures by them for your campaigns if made with your knowledge and consent. But that was not how the former Federal Corrupt Practices Act was ever interpreted or applied. The prevailing practice was to permit and encourage multiple committees and to expect a candidate for Congress to file a Federal report for only his principal and personally controlled campaign committee, leaving other committees only to file as may have been required by the law of the single state in which they functioned. In any event, the three-year statute of limitations also applies to any failure of a candidate for Congress to file a complete Federal report.

If someone has complained to the Special Prosecutor that the Kent County Committees and the Fifth District Committee were used as conduits for monies that went not for your campaign expenses but for your personal benefit, then the subpoenaed records support no such charge except for any possible question as to the reason for the expenditure of December 12, 1966, that is described as "Union Bank and Trust Co. GRF" for \$2,200 and the one of October 26, 1966, for \$200 to Union Bank, presumably for your account. Although these transactions occurred almost ten years ago, I will ask Bob McBain to try to find out their purpose. But I am not concerned, because I believe your Union Bank accounts were thoroughly audited at the time of your Vice Presidential confirmation hearings.

Attachments

Class: Chem

September 16, 1976

~~CONFIDENTIAL~~

MEMORANDUM FOR: DOUG BENNETT

FROM: PHIL BUCHEN /
BOBBIE GREENE KILBERG BK

SUBJECT: Hobart Lewis Nomination for Reappointment
as a Member of the U.S. Advisory
Commission on Information

Newspaper accounts of Hobart Lewis' actions in regard to Wayne Andreas' contribution of \$100,000 to Richard Nixon indicate the following:

• Andreas wanted to contribute \$100,000 to Nixon in 1971, probably for his Presidential campaign. Andreas contacted Lewis and Lewis put Andreas in touch with Rose Woods. Shortly thereafter, Andreas personally delivered \$100,000 to someone in the White House.

Andreas' contribution was not used in the 1972 campaign but was kept in Rose Woods' safe.

In June 1973, a decision was made to return the \$100,000 to Andreas. Woods asked Lewis to come to the White House where she gave him the \$100,000 in cash.

Lewis asked Woods to tell Andreas that his money had been returned to Lewis. Lewis kept it for several days and then borrowed it from Andreas to pay off personal debts. This loan was first confirmed in a letter from Lewis to Andreas and then by a promissory note for the loan. The loan had not been paid back as of June 1976.

The facts available to us do not warrant a conclusion that Lewis acted illegally, and the Special Prosecutor has reported to the FBI, pursuant to their security

clearance check on Lewis for this reappointment, that he is not the subject of an investigation by that office.

However, we think that Lewis' participation, particularly in the return of the Andreas money from the White House, showed very poor judgment and could be of potential embarrassment to the President.

~~CONFIDENTIAL~~

THE WHITE HOUSE
WASHINGTON

September 22, 1976

MEMORANDUM FOR: WILLIAM HYLAND

FROM: PHILIP BUCHEN *P.*

SUBJECT: "Green Book" Matter

From my records, it does appear that when the new appointments were made to PFIAB, including the new Chairman on March 11, 1976, I had not heard about the incident of the "Green Book." The first time I heard about this matter was about April 21, 1976.

More recently, I was furnished a copy of a chronology of events which was prepared at the request of the FBI by Leo Cherne and the PFIAB staff. The first mention of information supplied to me as well as Jack Marsh and Brent Scowcroft is at Item 39 which reports events on 23 April 76, but, I believe, I had a telephone call from Leo Cherne on April 21 in which he alerted me to the information that came to me on April 23.

Attachment-- Chronology of events

Examined to be an administrative matter
Classified per E.O. 12958, Sec. 1.3 and
relativist's memo of March 16, 1983

KL NARS date *8/12/88*

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ATTACHMENTS

THE WHITE HOUSE
WASHINGTON

October 13, 1976

CONFIDENTIAL

MEMORANDUM FOR: BOB HARTMANN

FROM: PHIL BUCHEN *T.*

Attached is a copy of a letter from Garry Brown's office about which Jack Marsh talked to you.

It appears that Graham Northrop on the Minority Staff of the House Banking and Currency Committee is the author.

Please give me your comments.

Attachment

is deemed to be an administrative memo
issued per E.O. 12356, Sec. 1.3 and
analyst's memo of March 16, 1980

K12 NARS date 8/12/88

CONFIDENTIAL

H
Congress of the United States
Office of the Minority Leader
House of Representatives
Washington, D.C. 20515

*Hand delivered
4:35 p.m.*

September 28, 1972

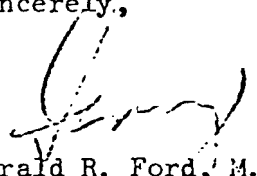
Hon. Garry E. Brown
404 Cannon H.O.B.

Dear Garry:

As you know, the House Banking and Currency Committee will meet at 10 o'clock on Tuesday, October 3 to consider an investigation of the Watergate affair. This is a matter of utmost importance, and I urge you to be present at this meeting.

Obviously, we desire to see those who have been involved in illegal activities brought to justice, but at the same time we must be careful not to impinge on the constitutional rights of those who have been indicted by reckless or irresponsible investigations motivated by political considerations. Because of the political overtones of this matter I think it would be imperative for all Republican members to be present at the Committee meeting to assure that the investigative resolution is appropriately drawn.

Sincerely,


Gerald R. Ford, M.C.

THE WHITE HOUSE

WASHINGTON

October 22, 1976

Dear Mr. Thornburgh:

In accordance with the meeting this week with Mr. Robert Andary of your office and Mr. Barry Roth of my staff, the following materials relating to Chile are provided to you:

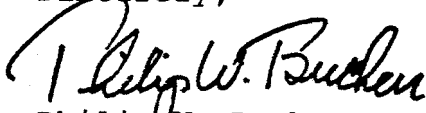
1. Testimony of Richard Helms before the Rockefeller Commission; declassified as per your request.
2. Blue Form 101, dated 22 September 1970, Memorandum for Dr. Henry A. Kissinger, from Richard Helms; and attached Memorandum for the Record, 21 September 1970 "Conversation with Augustin Edwards, owner of El Mercurio Chilean Newspaper Chain, 18 September 1970" by KYM. (In folder "Korry File" Chile 1971)
3. Notes of 40 Committee Meeting Tuesday, September 22, 1970 8:10-8:40 a.m. (In folder "Chile 1970")
4. Blue Form 101, Memorandum for Dr. Henry A. Kissinger, from Richard Helms, 18 September 1970; and attached Memorandum for the Record, 18 September 1970 "Discussion of Chilean Political Situation: by KYM. (In folder "Chile 1970")
5. Memorandum for the President from Dr. Henry A. Kissinger, Subject: Chile, dated 17 September 1970, and attached note dated September 21, 1970. (In folder "Chile 1970")
6. Six page, unsigned, undated document which begins "The following actions have been taken in response to the President's instructions of 15 September 1970." (In folder "Chile 1970")

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ATTACHMENTS

7. Memorandum for Dr. Henry A. Kissinger, from Brent Scowcroft, 28 March 1973, Subject: "White House Involvement in Chilean Election." (In folder "Chile 14 September 1970-8 November 1970")
8. Memorandum dated September 9, 1970, from Viron P. Vaky to Dr. Henry A. Kissinger, Subject, Chilean Developments; with attachments.
9. Letter dated November 9, 1970, from Henry A. Kissinger to Mr. William Merriam, with background materials.
10. Memorandum dated October 22, 1970, from Theodore L. Elliot, Executive Secretary, Department of State to Henry A. Kissinger, Subject, Message to Chilean President Frei on Attempted Assassination of Army Commander, with attachments.

I have requested that the NSC immediately review items 2, 4 and 7 for the purpose of declassifying as much of their contents as possible. As soon as the NSC's review has been completed, we will contact your office.

Sincerely,



Philip W. Buchen
Counsel to the President

The Honorable Richard L. Thornburgh
Assistant Attorney General
Department of Justice
Washington, D. C. 20530

Enclosures

~~SECRET~~/WITH ATTACHMENTS

THE WHITE HOUSE

WASHINGTON

October 22, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN

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

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ATTACHMENTS

~~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 _____

DISAPPROVE _____

THE WHITE HOUSE
WASHINGTON

October 22, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN

SUBJECT: Declassification Request
of the Department of Justice

The Attorney General has approved an investigation by the Criminal Division of possible violations of Federal law arising from testimony in 1973 and 1975 before the Senate Foreign Relations Committee and its Subcommittees on Multi-national Corporations, as well as testimony before the Rockefeller Commission. In response to a request from Justice, we have provided to them a classified copy (at Tab A) of a November 6, 1970, intelligence briefing on Chile that was prepared by the CIA for delivery by Director Helms to a meeting of the National Security Council.

Justice has now requested from the NSC staff that as much of this briefing as possible be declassified in order that they can present it to witnesses before a grand jury. As a matter of policy, Justice will not take classified materials before a grand jury.

In response to this request, Bill Hyland has sent me the memorandum at Tab B, objecting to complete declassification. Although Bill states that "the material itself might not damage the national interest," he objects to declassification on grounds that it will imperil the ability of CIA Directors to provide the President a briefing in complete candor and with no reservations. He concludes that declassification in this instance means that every Director will henceforth have to assume that his briefing to NSC meetings may be publicized at any time. He suggests that relevant excerpts be declassified.

~~SECRET~~/WITH ATTACHMENTS

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ATTACHMENTS

SECRET/WITH ATTACHMENTS

I cannot agree with Bill's conclusions. Under E. O. 11652, classification of information is not justified when release of the information will not damage national security. It is substance, not form, that controls the question of classification. The contents of this briefing are such that disclosure at this time could not be expected to cause damage to national security, which is the minimum test for classification. The issue then is not classification, but whether executive privilege should be maintained with respect to this document. In this regard, the briefing appears to be primarily factual in nature, rather than containing recommendations and opinions. Therefore, disclosure in this instance means only that government officials cannot be assured of protection of information that later is directly related to criminal investigations.

Justice needs virtually all of the briefing in order to question witnesses before the grand jury, and in its judgment, it cannot in advance of use before the grand jury limit its request to specific portions as NSC suggests.

RECOMMENDATION

For the above reasons, and for reasons given in another memorandum to you concerning differences between the CIA and the DOJ in connection with the same investigation, I recommend that you authorize NSC to declassify this document in order that Justice can make necessary use of it in connection with such investigation.

APPROVE _____

DISAPPROVE _____

Attachments

SECRET/WITH ATTACHMENTS

THE WHITE HOUSE

WASHINGTON

~~SECRET~~/WITH
ATTACHMENTS

October 22, 1976

MEMORANDUM FOR:

BILL HYLAND

FROM:

PHILIP BUCHEN ¹.

Attached is my draft of a proposed memorandum to the President which I expect to take up with him before he leaves Richmond early tomorrow morning.

May I please have your suggested changes promptly, if you have any to make.

Attachments

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ATTACHMENTS

~~SECRET~~/With
ATTACHMENTS

THE WHITE HOUSE

WASHINGTON

*Class
chion*

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 "Declassification Request of the Department of Justice," along with a copy of my memorandum of October 25 to William Hyland.

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 William Hyland.

The attached should therefore become a part of Presidential records.

Attachments

THE WHITE HOUSE

WASHINGTON

November 2, 1976

Classified

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

Classified

~~TOP SECRET~~/SENSITIVE

THE WHITE HOUSE
WASHINGTON

November 23, 1976

MEMORANDUM FOR WHEATON BYERS

FROM: PHILIP W. BUCHEN *P.*

In accordance with our conversation, I am returning the two PFIAB papers which you delivered to me on November 19 with the recommendation that these materials be included in the report of PFIAB to the President.

I have read both documents and I have made a comment to Leo Cherne about the item that appears at the bottom of page 2 and the top of page 3 in the memo summarizing the recent activities of PFIAB.

Attachments

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ATTACHMENTS

~~TOP SECRET~~/SENSITIVE

THE WHITE HOUSE
WASHINGTON

December 20, 1976

TO: JACK MARSH

FROM: PHIL BUCHEN *P.*

For transmittal by
courier if you agree.

RECEIVED
JAN 1 1977

THE WHITE HOUSE

WASHINGTON


December 20, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN *P.*

Attached is a secret briefing paper supplied to me by the General Counsel of the CIA. I recently received an oral briefing concerning this matter, and I asked for this written paper to pass on to you so that you would be informed in the event the briefings to the Congressional Committees which are now going on should result in publicity about the situation.

Attachment



THE WHITE HOUSE

WASHINGTON

January 11, 1976 [1977]

MEMORANDUM FOR: BRENT SCOWCROFT

FROM: PHILIP W. BUCHEN *P.*

SUBJECT: Intelligence Oversight Board
Report to the President

After reviewing your memorandum of December 16 on the above subject, I wish to make the following suggestions:

1. The analysis made by Sam Hoskinson and Rob Roy Ratliff ought to be sharpened somewhat. For example, the letter from the IOB says that the Secretariat of the Fourth International moved its meeting place in 1974, that the apartment thereafter came to be occupied by two Americans, and that the CIA learned of this circumstance by April 22, 1975; whereas these points are not directly covered by the memorandum to you.
2. After clarifying all of the facts, I suggest the general contents of the memorandum to you be put in the form of a letter for you to send in behalf of the President to the IOB with a copy to the Attorney General. In this way, the files of the IOB will show a response which helps to clarify the situation.

If you approve of this suggestion, I would very much like to see the letter going to the IOB.

[Circular stamp: JAN 14 1976]

THE WHITE HOUSE
WASHINGTON

~~SECRET~~

January 17, 1977

Dear Tony:

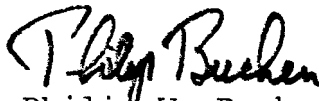
On October 4, 1974, J. Fred Buzhardt, who was then employed at the White House, delivered to me certain materials which he advised had come from the files of the CIA. Reference to this material was contained in a memorandum of September 24, 1974, from John Warner to me, a copy of which I enclose.

Later on January 14, 1975, we furnished copies of these documents to the Department of Justice and a copy of the transmittal and receipt dated January 14, 1975, is enclosed.

We still find in our files two copies of Item 1 and single copies of Items 2, 3 and 4 as listed on the transmittal to the Justice Department.

At this point, I believe it is desirable that we return to you the foregoing materials so that no copies will remain here in the Presidential files.

Sincerely,



Philip W. Buchen
Counsel to the President

The Honorable Anthony Lapham
General Counsel
Central Intelligence Agency
Washington, D. C.

Enclosures

UNCLASSIFIED UPON REMOVAL
OF CLASSIFIED ATTACHMENTS

~~SECRET~~

WITHDRAWAL ID 01433

sanitized 6/96 wt.

THE WHITE HOUSE

WASHINGTON

January 17, 1977

~~TOP SECRET SENSITIVE~~

Dear Mr. Ambassador:

This is in reference to your letter of November 29, 1976, reporting to the President a case of "the intentional interception, through electronic surveillance, of communications of United States persons" which the Intelligence Oversight Board concluded raised "a serious question of legality." As Jack Marsh advised you on December 3, 1976, your letter was brought to the attention of the President and was referred to me for consideration.

Since that time, the following additional information has come to my attention:

- [REDACTED]
 - Only after March 1976 did the question of legality arise as a result of Executive Order 11905 when CIA continued to receive items [REDACTED] which included interceptions of communications of U. S. persons derived from electronic surveillance. However, it is important to note that CIA was not conducting or monitoring the operation, provided no operational direction or guidance, and made no use of the items.
 - When senior officials of CIA discovered that this material existed, in July 1976, the Agency ordered its field station to disengage from the activity, [REDACTED]
- [REDACTED] This directive to withdraw came three months prior to CIA's quarterly report to the Intelligence Oversight Board, and five months prior to your letter to the President.

1.5C
1.3(a)(4)

1.5C
1.3(a)(4)

1.5C
1.3(a)(4)

~~TOP SECRET SENSITIVE~~

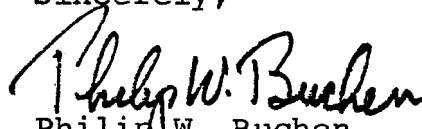
DECLASSIFIED • E.O. 12958 Sec. 3.6
With PORTIONS EXEMPTED
E.O. 12958 Sec. 1.5 (c)

MR 94-156, #23, NSC 68/44 4/24/96

By lit, NARA, Date 1/18/97

We should be concerned over the bureaucratic shortcomings in CIA's handling of this situation -- especially its failure to respond to a cable of March 1976 in which the field station asked confirmation of its conclusion that the operation was not prohibited by Executive Order 11905. However, there does not appear to be evidence of intentional CIA misconduct. Moreover, this incident has served to alert CIA's senior management, as well as others, to the need for being more vigilant in observing both the letter and the spirit of the Executive Order.

Sincerely,



Philip W. Buchen
Counsel to the President

The Honorable Robert D. Murphy
Chairman
Intelligence Oversight Board
The White House
Washington, D. C. 20500