

The original documents are located in Box 26, folder “National Security Chronological File (2)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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January 7, 1975

EYES ONLY AND URGENT

MEMORANDUM FOR: Don Rumsfeld

FROM: Phil Buchen

With Bill Saxbe's return to Washington from vacation in Ireland within a day or two, he becomes the legally responsible Attorney General until actually being installed as Ambassador to India. In the short remaining time before he is installed, it may be awkward to have him get involved in matters on which we have been relying solely on Silberman as Acting Attorney General, such as the CIA matters.

One possibility is for the President to ask Henry to request Bill's taking an interim assignment at State preparatory to his going to India. If you concur, kindly arrange for the two of us to see the President together on the point as soon as possible.

PWBuchen:ed



THE WHITE HOUSE

WASHINGTON

January 7, 1975

MEMORANDUM FOR: Brent Scowcroft
FROM: Philip W. Buchen *P.W.B.*
SUBJECT: Cabinet Committee to Combat Terrorism

I understand that there is a Cabinet Committee to Combat Terrorism, which was established by Executive Order after three Foreign Service Officers were killed in, I believe, Khartoum.

Apparently, the Cabinet Committee itself has not met in at least two years, but has a Working Group which consists mainly of State Department employees.

I would appreciate your personal appraisal of whether a need still exists for this Committee; and particularly whether the Cabinet Committee structure is still necessary.

For your convenience, I attach copies of documents concerning the origin, purposes, and structure of the Committee.

cc: John Marsh
Don Rumsfeld

*Classified
Chron*

January 7, 1975

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Don Rumsfeld

PWBuchen:ed



January 7, 1975

MEMORANDUM FOR: General Scowcroft
FROM: Philip Buchen

The President in his statement on January 4, 1975, said in part:

"I am writing to all Department and Agency heads, who are responsible for the overall intelligence activities of the United States as related to our national security and to the conduct of our foreign policy, for the purpose of emphasizing that they are at all times to conduct their activities within the scope of their respective statutory authorities."

In order to prepare a draft of such communication, I asked my office to identify and find the statutory authority for Departments and Agencies engaged in intelligence operations of the type mentioned. The following units have been identified:

1. Central Intelligence Agency
2. Defense Intelligence Agency
3. National Security Agency
4. Army Intelligence
5. Navy Intelligence
6. Air Force Intelligence (including the National Reconnaissance Office)
7. Department of State (Bureau of Intelligence and Research)
8. Federal Bureau of Investigation (Division of Internal Security)
9. Treasury Department, U.S. Customs Service
10. Atomic Energy Commission 1/

1/ The AEC was divided into an Energy Research and Development Administration and a Nuclear Regulatory Commission by the Energy Reorganization Act of 1974. It is believed that any intelligence function of the AEC would logically be given to ERDA, although, the statute does not make this clear.



Except for the Central Intelligence Agency operations under 50 U.S.C. 403, no specific mention of intelligence operations has been found in an enabling statute for any of the other units. NSA was created by a Presidential directive in 1952, and DIA by DOD directive 5105.21 dated August 1, 1961, but we can locate no copies of these directives in the White House records. Presumably the other intelligence units are operating under other directives, either issued from within the Department involved or from CIA as coordinator of all intelligence operations, but we have no compilation of these directives.

In order to prepare a meaningful communication for the President to send, I would like your thoughts on how best to learn, in an orderly and expeditious way, what documented standards are now in effect which are supposed to be controlling on each unit to be addressed. We may, of course, learn that in some cases the documented standards are so vague as to be of no consequence.

cc: John Marsh
Don Rumsfeld

PWBuchen:d



January 7, 1975

EYES ONLY AND URGENT

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PWBuchen:ed



THE WHITE HOUSE

WASHINGTON

January 8, 1975

MEMORANDUM FOR:

LAURENCE H. SILBERMAN
DEPUTY ATTORNEY GENERAL

FROM:

PHILLIP AREEDA
COUNSEL TO THE PRESIDENT

P.A.

I would like to set down my understanding of the new procedures for clearing names of White House Staff and Presidential appointees through the Special Prosecutor's office.

Until now, as you know, we have submitted to the Special Prosecutor's Office over 700 names of persons holding or being considered for positions. We realize the burden that we have imposed on the Special Prosecutor's office and are very grateful for the cooperation they have provided. We also fully understand the desire of that office to simplify the clearance procedure and to reduce the number of names that have to be processed by them.

Under the new procedure, we will rely upon the FBI to communicate with the Special Prosecutor's office and to relay relevant matters to us as part of the normal FBI report.

It is my understanding that the FBI will query the Special Prosecutor's office in two situations: (1) Where the FBI's own files indicate that the Special Prosecutor's office has had an interest in the person in question or (2) Where the subject of the check is being considered for a Presidential appointment to a fulltime position subject to Senate confirmation or for a senior White House Staff position. Persons in category #2 will be so designated in our request for an investigation and in a manner to be worked out by our Security Office and the FBI liaison official.

We recognize that this new procedure may leave us without information from the Special Prosecutor's office on some appointees in part-time positions, those not requiring Senate confirmation, or junior White House



Staff, wherever the FBI file does not already contain an indication of interest by the Special Prosecutor's office. But this lacuna is a modest one that does not seem inappropriate in balancing our desire to know everything relevant with the need for the Special Prosecutor's office to conduct its primary work without undue burdens on our behalf.

cc:

Henry S. Ruth, Jr.
The Special Prosecutor

Dick Cheney
Jane Dannenhauer
Ken Lazarus
Bill Walker

January 9, 1975

MEMORANDUM FOR: PHILIP W. BUCHEN

SUBJECT: CIA Activities

In the event anyone arranges to see me to discuss the above subject, I direct that you be present while the subject is discussed.

Also, any information given to me or to you verbally or in writing on the subject which may relate to matters within the jurisdiction of the Department of Justice, I direct be furnished to the Attorney General.



January 14, 1975

MEMORANDUM FOR:

Mr. James Wilderotter
Associate Deputy Attorney General
Department of Justice

With this document, I am transmitting to you the following documents (which are in part classified) for the use of the Department of Justice:

1. Affidavit of Karl Wagner, dated February 5, 1974.
2. Volume I - Sensitive Information Provided by CIA Orally (Supplement to Vol. III of "Documentation Provided by CIA")
OLC MASTER COPY
3. Volume II - "Supplement to Vol. III of Documentation Provided by CIA"
4. Memorandum to Director, Central Intelligence, dated February 22, 1974, "Watergate Incident" from Howard J. Osborn. [Secret].
5. Memo to Philip Buchen from John Warner dated September 24, 1974, re: Watergate Case.
6. Memo to J. Fred Bushardt from Philip Buchen dated October 1, 1974.

Contrary to the record made by my memorandum of October 1, 1974, Fred Bushardt did not return the documents requested by the Warner letter of September 24, 1974. Instead he retained those documents until he resigned his White House position later in



October, and at that time he turned all listed documents over to me in a sealed envelope, with the suggestion I should read them before disposing of them.

Not until later did I receive a CIA clearance to see any of its classified documents, and I never looked at these particular documents until the last few days of December 1974, when I began to review in behalf of the President the allegations being made in the press about domestic activities of the CIA and the Colby report on such activities. My purpose then was to see if these documents might have a bearing on the allegations made. I have since reported on their contents to the President and, as you know, had you read them in my office.

Philip W. Buchen
Counsel to the President

Attachments

PWBuchen:ed



Chron

January 18, 1975

MEMORANDUM FOR: Ken Lazarus
FROM: Phil Buchen

Am returning unused your proposed memo for me to send Don Rumsfeld. He is no longer a co-trustee of the trust containing minor holdings of securities in AT&T and IBM, and John Robeson as his attorney has undertaken to have the remaining trustees "blind" all aspects of their trust management from Don Rumsfeld even though he is still a contingent remainder beneficiary.

Therefore, I believe there is now full compliance with the suggestion made in the second paragraph of the Scalia memo for insulating this official. Accordingly, Don should have his clearance promptly recorded.

Enclosure

HEE PWB:bw



cler

THE WHITE HOUSE
WASHINGTON

February 11, 1975

MEMORANDUM FOR: Don Rumsfeld

FROM: Phil Buchen *T.W.B.*

SUBJECT: Transcripts from electronic
surveillance of Henry Brandon
and others

For the reasons we discussed, I suggest that Mr. Brandon and any others who seek destruction or sealing of any of the above transcripts be referred to the Department of Justice. The request should be made to Attorney General Levi, and then someone in his Department (probably Ed Christenbury) can advise the inquiring party of their rights and the matters to be resolved before the request can be honored.



THE WHITE HOUSE

WASHINGTON

February 11, 1975

MEMORANDUM FOR: JANE DANNENHAUER

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

Kindly arrange to obtain the necessary additional security clearances for Kenneth Lazarus so that he may review classified materials of the CIA and other agencies or departments engaged in foreign intelligence operations. It is necessary that Mr. Lazarus as a member of my staff assist me in the review of certain such materials from time to time.



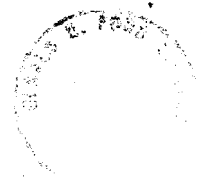
*Safe Classified
Library*

Question

Are the reports true that the CIA actively engaged in three assassination plots involving leaders of foreign countries?

Answer

I am not in a position to comment on the accuracy of the reports. However, I wish to point out that the reports involve allegations going back to the early 1960's and they have no relevance to the present practices and policies of the CIA. The important issue involves what my policy would be and I can assure you that I would never allow any intelligence agency under my Administration to engage or threaten to engage in activities of the sort which were alleged to have occurred in the early 1960's.



THE WHITE HOUSE

3/17/75

Chron

TO: Phil Buchen

FROM: Bill Casselman

Information _____

Action:

As appropriate _____

See me _____

Prepare reply _____

Concur and return _____

This will confirm the oral advice
which I gave to Jeanne Davis on Friday.



THE WHITE HOUSE

WASHINGTON

Classified material attached

March 17, 1975

MEMORANDUM FOR: Jeanne Davis
THRU: Phil Bucher *J.W.B.*
FROM: Bill Casselman *WV*

This is in reply to your memorandum of March 13, 1975 for an opinion of this office. You have asked whether, in responding to a request made under the Freedom of Information Act (5 U.S.C. 522) for a classified record, the requested record must be reviewed as to the sufficiency of its classification when it would otherwise appear to be exempted from disclosure by subsection (b)(5) of the Act or on the basis of Executive privilege.

The record in question is a report on the post-Tet situation in Vietnam prepared in February 1968 for President Johnson, at his direction, by General Wheeler, Chairman of the Joint Chiefs of Staff. The document appears to have been classified by the Department of Defense (DoD), which is now seeking the views of the National Security Council (NSC) and the White House as to its possible declassification and release.

As a general proposition, there is no legal requirement to review the classification of a record which an agency intends to withhold under an exemption of the Act other than the exemption provided in subsection (b)(1) for classified material. (Of course, any document sought under the mandatory review provisions of Executive Order 11652 (March 8, 1972), as amended, governing the classification and declassification of national security information, would require processing in accordance with that Order).

On the facts presented here, however, it is extremely doubtful that the (b)(5) exemption, regarding inter and intra agency memoranda, would be sufficient to permit the total withholding of the record involved.

Classified material attached



Recent court decisions have diminished the scope of the exemption to apply only to communications that evidence the "administrative policy-making process" within an agency, and not to an actual agency decision or the factual material used in arriving at that decision.¹ Since the report in question appears to contain a considerable amount of factual information, albeit classified, it would seem that the (b)(5) exemption would not be a complete one.

Therefore, with respect to the remaining factual material, it would be necessary for the classifying agency, in this case DoD, to review the remaining factual portions of the report if it wished to withhold those portions under (b)(1). Although DoD may seek the assistance of the NSC and the White House in conducting this review, the responsibility is principally that of the classifying agency.

With respect to your inquiry regarding Executive privilege, it would be inappropriate in our view to assert such a privilege to protect the report in question. The term "Executive privilege" is generally applied to the invocation by the Executive branch of its right, based on the constitutional doctrine of separation of powers, to withhold official information from the Legislative or Judicial branches of the Government. The mere fact that a record may have been prepared as a classified report for the President by an agency does not permit the invocation of Executive privilege, absent an actual case in litigation and a compelling reason to invoke the privilege.

Because of the serious separation of powers issues which are raised in such situations, the traditional guidance from the Department of Justice has been that Executive privilege is to be asserted rarely and only after the most careful consideration. It is difficult to imagine a circumstance arising out of a Freedom of Information Act request where the assertion of the privilege would be necessary, since the Act's exemptions usually cover situations in which the need for privilege arises--as would appear to be the case here. Thus, we would advise that, except with respect to the most confidential communications between the President and his advisors, not otherwise protected under exemptions to the Freedom of Information Act, that you not seek to invoke Executive privilege.

1. M. A. Schapiro & Co. v. SEC, 339 F. Supp. 467 (D.D.C. 1972); Consumers Union v. Veterans Administration, 301 F. Supp. 796 (S.D.N.Y. 1969), appeal dismissed, 436 F.2d 1363 (2d Cir. 1970).



NATIONAL SECURITY COUNCIL

TOP SECRET ATTACHMENTSURGENT ACTION

March 13, 1975

MEMORANDUM FOR: PHILIP W. BUCHEN

FROM: JEANNE W. DAVIS *JWD*

SUBJECT: Executive Privilege and the Freedom of Information Act

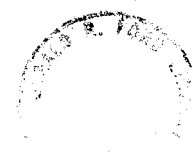
In February 1968 General Wheeler, the Chairman of the Joint Chiefs of Staff, was sent by President Johnson to Vietnam to conduct a post-Tet review of the situation. The attached document is the report prepared by General Wheeler after returning from his Presidential mission.

The Department of Defense has had a Freedom of Information Act request for the declassification of this study and has asked the NSC/White House to review it for possible release. The NSC staff is now examining the substance of the study to determine whether or not it may be declassified. We question, however, whether a report prepared for the President and at the request of the President is subject to review under the FOIA in that it would appear to be covered by executive privilege or by Section (b)(5) of the FOIA. We would therefore appreciate guidance from your office as to whether this document is so covered and guidance as to how we should handle this request.

Defense must reply to this FOIA request on Monday, March 17, so we would appreciate a response from your office by the close of business tomorrow, Friday, March 14.

Attachment

TOP SECRET ATTACHMENT



THE WHITE HOUSE

WASHINGTON

March 27, 1975

MEMORANDUM FOR:

RICHARD CHENEY

Following our discussion of March 25, I have been thinking about your idea of preparing to recommend a Presidential initiative for newly defining and controlling the respective functions at the different agencies engaged in foreign intelligence operations and covert activities. You thought of a three-category approach, whereby certain specified types of such operations and activities could be routinely carried on, others would be absolutely prohibited, and a third group would be allowed only after certain prescribed high-level clearances or directions had been given.

As a means of finding out what rethinking of the structural and operational situation was already under way within the Intelligence Community and to demonstrate how complex are the problems of formulating a comprehensive new approach to this subject, I have collected the following:

- (1) A USIB working draft of an overall directive to replace the approximately eight NSCID's under which the different agencies now operate. I understand that work on this draft was begun over a year ago, but that not all paragraphs have yet been given full consideration by USIB and that there is little innovation involved in the proposal made.
- (2) Working draft of February 6, 1975, on "Possible Clarifications in the Law and Changes in Procedures".
- (3) Draft undated which is entitled "Ambiguities and the Law".

I thought you might want to study these and afterwards meet to discuss your impressions.

P.W.B.

Philip W. Buchen



March 29, 1975

TOP SECRET/SENSITIVE
EXCLUSIVELY EYES ONLY

ACTION

MEMORANDUM FOR

THE ATTORNEY GENERAL

I have been advised that some questions have arisen as to the most appropriate procedures to be followed under my memorandum to the Attorney General dated December 19, 1974, in the case of certain previously authorized surveillance activities as requested of the Director of the Federal Bureau of Investigation by the National Security Agency. Because I also understand that previous authorizations for these activities approved under the December 19, 1974, memorandum are now about to expire, and in order to permit a reasonable time for a resolution of these questions, I direct you to approve the pending request before you from the Director of the Federal Bureau of Investigation for the continued conduct of these activities over the period ending April 15, 1975.

DECLASSIFIED
E.O. 12958 Sec. 3.0

MR 94-154, # 7 NSC Wr. 5/15/90
By KSH/NARA, Date 7/22/98



TOP SECRET/SENSITIVE
EXCLUSIVELY EYES ONLY

March 29, 1975

TOP SECRET/SENSITIVE
EXCLUSIVELY EYES ONLY

ACTION

MEMORANDUM FOR: THE PRESIDENT

FROM: PHILIP W. BUCHEN
BRENT SCOWCROFT

SUBJECT: Authorization and delegation to the Attorney General with respect to warrantless electronic surveillance for foreign intelligence and counter-intelligence operations

On December 19, 1974, you issued a memorandum to the Attorney General covering the above subject, which set forth certain procedures for his exercise of the above authorization and delegation. Certain questions have now been raised by concerned departments and agencies with respect to the most appropriate procedures to be followed under that memorandum. These questions have arisen at the time that authorizations previously made pursuant to your memorandum are about to expire in the case of certain.....

.....

.....

.....

In order to allow time for resolution of these questions while avoiding any interruption of these previously authorized and continuing activities, we recommend that you approve and sign the attached direction to the Attorney General.

Attachment

TOP SECRET/SENSITIVE
EXCLUSIVELY EYES ONLY

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

NW 94-154, #8 NSC LV. 5/15/98

By KBH, NARA, Date 7/22/98

PWBuchen:ed

C/H/ [unclear]

THE WHITE HOUSE

WASHINGTON

March 31, 1975

Dear Mr. Belin:

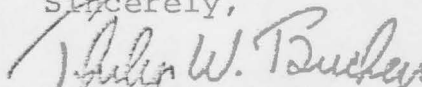
We have previously discussed interpretation of the President's Executive Order of January 4, 1975, by which he established a Commission on Central Intelligence Agency Activities within the United States, as the specified functions of the Commission may relate to allegations of assassination plots by persons involved with the CIA.

The President on March 17 stated he would determine the best course of action to handle these charges, and he and the Vice President have since discussed whether this Commission may properly under its present authority investigate what may have occurred.

I understand that you have met with the Vice President and the other members of the Commission and that all of you came to the conclusion that, subject to the President's concurrence, you could proceed under your present authority to (1) ascertain whether the charges of assassination plots have a basis in fact and involve unlawful domestic CIA Activities and (2) determine whether existing safeguards would prevent activities of that nature in the future regardless of whether they might involve domestic or foreign conspiracies.

I now wish to confirm the fact that the President has concurred in this approach. Once you complete your investigations in that regard, you should advise the President of the outcome, through me, and then it can be decided whether the subject should eventually be included as an integral part of the Commission's final report or whether it may call for an earlier submission to the President and possible immediate Presidential action.

Sincerely,



Philip W. Buchen
Counsel to the President

Mr. David Belin
Executive Director
Commission on Central Intelligence
Activities Within the United States
Washington, D. C.



C/H Grant.

THE WHITE HOUSE

WASHINGTON

March 31, 1975

Dear Mr. Belin:

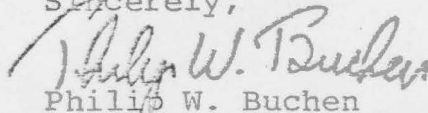
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Sincerely,



Philip W. Buchen
Counsel to the President

Mr. David Belin
Executive Director
Commission on Central Intelligence
Activities Within the United States
Washington, D. C.



THE WHITE HOUSE

WASHINGTON

April 2, 1975

MEMORANDUM FOR THE PRESIDENT

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

SUBJECT: Request of Senate Select Committee to Study
Governmental Operations with Respect to
Intelligence Activities for Information

By letter dated March 12, 1975, Senator Frank Church on behalf of the Select Committee requested production of four categories of White House documents (Tab A).

We have now reviewed substantially all of the subject documents with representatives of the offices of Jack Marsh and Brent Scowcroft and with representatives of the intelligence community. Based upon that review we are now ready to recommend that a significant number of the documents be made available for review by the staff of the Select Committee no later than Tuesday, April 8, 1975. It is the joint judgement of all those who have reviewed the items that they will be helpful to the Committee in its initial objective of establishing the legal structure within which the intelligence community has operated and further, that the material contained in the documents to be released for review will not raise any undue security risks. In this regard we have been reassured by Director Colby's office that the security arrangements made by the Select Committee are satisfactory for the consideration by the Committee and its staff of classified documents.

We have attached (Tab B) an analysis prepared in the White House of the materials which have been requested under categories 2, 3 and 4 of Tab A so that the distinctions which we have made between materials that can now be released for review and those that cannot may be better understood.

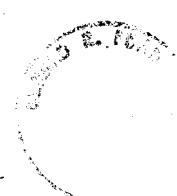


It is our expectation that an additional number of documents requested by the Select Committee in its letter of March 12 will be appropriate for review by the Committee staff within 14 days.

It is our further expectation that following the later release there will remain certain documents which are so sensitive or so central to the Presidency that they may be studied by representatives of the Select Committee, if at all, only under special circumstances. It may be, for example, that we will recommend that certain of these remaining items be revealed only to the Chairman and Ranking Minority Member of the Select Committee. Such a procedure has been agreed to in principle by the Select Committee.

Item number 1 requested by the Select Committee is the report submitted to you on December 24, 1974, by Director Colby concerning alleged improper activities by the CIA (Tab C). By reason of the substantial progress which we have made in processing all other items (2, 3 and 4) in the Select Committee's request of March 12, we must consider now the question of whether the Colby Report should be released in the very near future. Our present recommendation, subject to further consultation with Director Colby and other representatives of the intelligence community, is that we be prepared to release that report for review by the Select Committee during the week of April 14. Our reasons for this recommendation are:

- (1) Much, if not all, of the Annexes to Director Colby's Report have been independently requested from the CIA which will be releasing such reports during this same time period and with our approval, and the Colby Report puts that material in a better perspective than if staff and Committee members read such material by itself.
- (2) Neither our office nor any of the other representatives of the intelligence community have any reluctance to release the Report for review.
- (3) A withholding of the Colby Report at the same time we are furnishing substantially all of the balance of the documents requested by the Committee letter of March 12 will focus unnecessary controversy on the Report.
- (4) It is apparent from our discussions with the Committee staff that Select Committee members



regard the White House response to its request for the Colby Report as a major test of the White House willingness to cooperate.

This memorandum is to alert you to the fact that we will seek final approval of the release of certain documents (see Tab B) for review by the staff of the Select Committee no later than April 8, 1975. We will also wish to review with you our preliminary opinion that the Colby Report be released for review no later than the week of April 14, 1975.



EYES ONLY

THE WHITE HOUSE

WASHINGTON

April 8, 1975

MEMORANDUM FOR:

DONALD RUMSFELD

FROM:

PHILIP BUCHEN

I believe you should be alerted to the enclosed secret communication from Bob Ingersoll to the Attorney General which is undated but which was drafted on April 5. It came to me on April 7 from the Attorney General and I have responded to him to call attention to the recent Report from the Judiciary Committee dealing with the proposed Immigration and Nationality Act Amendments of 1973. In this Report the Committee questions whether the parole authority under Section 212(d)5 should be used to bring in large classes of refugees inasmuch as there is another section of the Act which has been in effect since 1965 that allows for the entry of a maximum of 10,200 refugees annually.

The Judiciary Committee was recommending that action on a broad scale to bring in refugees should only be taken after appropriate consultation with Congress.

The Attorney General agrees that he should take no action under his parole authority unless it is first considered and approved by the President, and I would assume the President would certainly want to consult with Congress before making any decision in this regard.

EYES ONLY



EYES ONLY

THE WHITE HOUSE

WASHINGTON

April 9, 1975

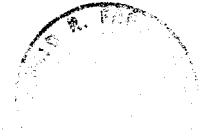
MEMORANDUM FOR: DON RUMSFELD

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

Supplementing my memo to you of April 8 covering the subject of admission of refugees to this country, I enclose a copy received today from the Attorney General of a refugee status report done by the Acting Commissioner of the Immigration and Naturalization Service.

Enclosure

EYES ONLY



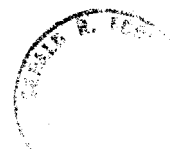
VIET NAM-CAMBODIA REFUGEE STATUS REPORT - #1

1. During the testimony before the Subcommittee on Immigration, Citizenship and International Law, Mr. Dan Parker, Administrator of AID, Mr. Leonard F. Walentynowicz, Administrator, Bureau of Security and Consular Affairs, General Chapman, Commissioner of Immigration and Naturalization were all asked what the Administration is planning to do with regard to orphans, immediate relatives, Vietnamese and Cambodians (including higher government officials and military officers) who may have assisted this government. Each indicated the matter was under study at the highest level of government. The Committee Chairman and members emphasized time and time again that there should be consultation with that Committee if there is any plan to enlarge the program by the use of immigration parole.

Mr. Dan Parker had advised the Committee that he was designated by the President to coordinate the Administration's Vietnamese-Cambodian refugee program and that he had set up an interagency committee to carry this out.

2. On April 8 the Office of Refugee and Migration Affairs requested that we authorize the parole of 15 Cambodians identified as the Charge d' Affairs and his staff who have been stationed in New Delhi, India representing the Cambodian government and who have been ordered by the Indian government to depart because that government now recognizes the government of Prince Shinouk. These aliens clearly fall within Category 2 mentioned in the letter of the Acting Secretary of State dated April 5 which was transmitted to you under date of April 7.
3. To date 1298 Vietnamese orphans have been paroled into the United States under the orphan program.

• James F. Greene
Acting Commissioner



THE WHITE HOUSE
WASHINGTON

April 16, 1975

ADMINISTRATIVELY CONFIDENTIAL


MEMORANDUM FOR

THE ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

The enclosed memorandum which was prepared by Laurelle Sheedy of the Presidential Personnel Office was brought to my attention just yesterday. The "Fred deBaca" referred to in the memo is Fernando E. C. De Baca, Special Assistant to the President for Hispanic Affairs.

I have taken no action whatsoever in response to these allegations against Mr. De Baca and have no further information tending to support or refute them.

Kindly take such action as you deem appropriate in the circumstances and keep me advised only to the extent that you uncover any evidence which relates to Mr. De Baca's suitability for continuance in office.



Philip W. Buchen
Counsel to the President

Enclosure

ADMINISTRATIVELY CONFIDENTIAL

April 17, 1975

MEMORANDUM FOR:

THE PRESIDENT

FROM:

PHILIP BUCHEN
JOHN MARSH
GENERAL SCOWCROFT

Section 212 (d) (5) of the Immigration and Nationality Act provides inter alia that "The Attorney General may in his discretion parole into the United States, etc. etc.

memo is filed in EVACUEES folder.



April 18, 1975

MEMORANDUM FOR: Jeanne Davis

FROM: Philip Buchen

Memo responding to Jeanne Davis' memo of 4/11/75
is filed in the safe under "NSC -- Freedom of Information".



THE WHITE HOUSE

WASHINGTON

May 12, 1975

MEMORANDUM FOR: JEANNE DAVIS

THRU: PHIL BUCHEN *P.W.B.*

FROM: BILL CASSELMAN *BC*

SUBJECT: Appeal under the Freedom of Information Act (from the denial of a 1952 Presidential Memorandum on the National Security Agency)

At your request we have reviewed the draft letter, attached at Tab I of your May 6, 1975, memorandum, rendering a denial under the Freedom of Information Act (FOIA) of the appeal by Mr. Halperin for disclosure of the above-cited document. In addition, as required by Department of Justice regulations, we have sought consultations with the Department's Freedom of Information Act Committee regarding the defense of any lawsuit arising from this denial. Although the constraints of time did not permit the formal convening of the Committee, we are advised that Committee has recently considered another request for the same document and informally concurs in your decision not to release this document under 5 U.S.C. (b)(1) and (3).

With respect to the (b)(3) exemption, we have revised your proposed denial letter to reference appropriate statutes. In addition, we would recommend that you consult with other agencies having a subject matter interest in the document in order to permit the proper invocation of the (b)(3) exemption based on these statutes.

With respect to the (b)(1) exemption, we note that the National Archives and Records Service has denied a similar request for the same document, stating that "[t]he status of the document's security classification is the



subject of further administrative review." After discussion with your office, we understand that this review has been completed and does not alter the initial determination to withhold the document from disclosure under (b)(1). Therefore, we have not alluded to this classification review in the revised denial letter.

Finally, in view of pending lawsuits brought by Mr. Halperin against Dr. Kissinger, we would advise that General Scowcroft sign the denial letter on behalf of Dr. Kissinger. As you know, such a procedure is provided for National Security Council FOIA regulations and is consistent with the treatment of Mr. Halperin's earlier requests.

Enclosures



THE WHITE HOUSE

WASHINGTON

May 12, 1975

MEMORANDUM FOR THE PRESIDENT

FROM:

PHILIP BUCHEN

P.W.B.

SUBJECT:

Requests of the Senate Select Committee
on Intelligence Activities for Information
on Covert Actions

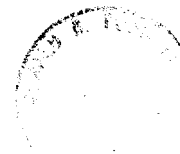
The Senate Select Committee has requested CIA Director Colby to testify on covert actions next Thursday or Friday, May 15 or 16. The ground rules are not yet established, but it is clear that the Senators are interested in learning the details of specific covert actions, i. e., secret attempts to influence or control the internal affairs of other nations. This subject is one of great concern to the Senators -- indeed, some of the Select Committee members, including Chairman Frank Church, have already publicly questioned the appropriateness of covert action. The Committee staff -- which is quite large and rather aggressive -- has also been pressing on many fronts for details of covert actions and numerous documents with respect to specific operations.

The principal issues for your consideration are:

1. Whether a comprehensive briefing to Senators Church and Tower alone can be relied on to set effective limits on scope and depth of subsequent Committee and staff investigations into covert actions. Senator Tower has agreed with our office to try to accomplish this step, but it appears that no such preliminary step will be accepted by Senator Church and that if he still did concur, the step would do little to limit the subsequent investigations.
2. Whether the Committee will accept a limitation on the testimony to be provided by CIA Director Colby as set forth in the attached memorandum (Tab A). From information we have obtained of the Committee meeting on May 9, 1974, the Committee is immediately out to get:

- a) The same information on current covert actions as has been reported verbally to other committees of the Congress under Sec. 663 of the Foreign Assistance Act of 1974.
- b) Details of past covert actions covering those specific operations which CIA Director Colby may select for disclosure to the Committee.
- c) Details of plots to assassinate foreign leaders (in the words of Senator Church: "We want to scoop the Rockefeller Commission.")
- d) Matters brought out in the Colby report to you and in the Inspector General's report on which it is based and those matters questioned in employee responses which led to the IG report but which are not treated as questionable in the report.

If the Director is to follow Tab A in restricting his upcoming testimony and is to refuse answering questions dealing with the above points, he should be advised whether:

- (i) To decline answering for the present until there has been an attempt to negotiate a tightly controlled investigation of covert actions, covering documents as well as witness interviews and testimony (in which event this Administration will be charged with trying to set the pace and pattern of the Committee's investigation); or
 - (ii) To refuse answering at your direction on grounds of an Executive claim to confidentiality for reasons of national security (in which event the challenge will be that you are distrusting the security precautions taken by the Committee and are thwarting a most important aspect of its assigned investigatory responsibilities).
- 

3. Whether candor in the verbal testimony of Director Colby (as well as in that of Secretaries Kissinger and Schlesinger, when they are called to testify) if promptly forthcoming, could be advantageous. A detailed explanation of specific covert actions -- including the extent of Presidential and Cabinet involvement and the degree of Congressional notification and acquiescence in specific actions -- will alert the Senators to the seriousness and sensitivity of the issues involved, and could encourage a non-partisan and responsible treatment of these matters.

Such a result could bring agreement on limiting the use of documents and other available witnesses on covert activities, so that the ultimate effect of the Committee's work is not to compromise or eliminate covert action capabilities. A sharp clash or court fight between the Committee and the President over the Committee's access to information on covert actions may do much more damage to the ultimate effects on the covert-action capabilities of the U. S. from the Committee's work than would an uncontentious and frank presentation to the Committee of the legal and policy issues raised by past and ongoing covert actions. So long as this aspect of intelligence community operations is kept enshrouded in mystery, the chances are dim of gaining the appreciation and respect of presently uninformed and suspicious committee members for covert actions.

4. Whether this Administration should initiate new standards and controls for covert actions that will have a fair chance of saving from blockage by Congress of the most essential Executive capabilities in this regard.

An objective re-assessment by the Executive of covert-action needs and possibilities in the condition of today's world and of American Congressional and popular opinion could bring an initiative from this Administration that would avoid the adverse impact on all such operations which is likely from committee investigations in both the Senate and the House. Such a step, if taken promptly, could be the best possible way to restrict the scope of the Committee investigations into past and current covert actions.

5. Whether there should be a Presidential policy to control terms on which witnesses may be interviewed or examined by the Committee.

Our office has been negotiating at length for acceptable terms with the Committee staff. Because of the Committee's subpoena power, we have no legal means of conditioning the Committee's access to witnesses. Therefore, any policy set by you would not bind the Committee, nor even current Executive branch employees under subpoena except at the risk of exposing them to contempt of the Congress.

However, despite newspaper reports to the contrary, I believe we can achieve cooperation from the Committee staff:

- a) For us ordinarily to be notified of witnesses to be called and the subject matter to be covered so as to take precautionary steps against uncontrolled disclosure of sensitive information.
- b) For us to be told afterwards of information obtained from witnesses so as to be able to overcome the effects of biased or incomplete statements by particular witnesses.

The chances of such cooperation would be reduced, of course, if we reach a major impasse on the extent of information we would willingly allow the Committee or its staff to receive.

cc: Marsh
Rumsfeld



A

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Presidential Libraries Withdrawal Sheet

WITHDRAWAL ID 01396

REASON FOR WITHDRAWAL National security restriction
TYPE OF MATERIAL Memo(s)
CREATOR'S NAME Brent Scowcroft
RECEIVER'S NAME William Colby
DESCRIPTION re briefing on covert action for Senate
Select Committee
CREATION DATE 05/1975?
VOLUME 2 pages
COLLECTION/SERIES/FOLDER ID . 001900629
COLLECTION TITLE Philip W. Buchen Files
BOX NUMBER 26
FOLDER TITLE National Security Chronological File
(1)-(7)
DATE WITHDRAWN 08/08/1988
WITHDRAWING ARCHIVIST WHM

Sanzitized 9/9/04

~~SECRET~~

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR:

William E. Colby, Director
of Central Intelligence

SUBJECT: Briefing of the Senate Select Committee
on Covert Action

The President has directed that a briefing on covert action be prepared for the Chairman and Vice Chairman of the Senate Select Committee on CIA Operations for delivery on Wednesday, May 14. The purpose of the briefing is to open that phase of the Committee's work dealing with covert action by presenting in full the legal and political position of the Executive Branch toward covert action as well as the operational approach to the conduct of these actions since enactment of the National Security Act in 1947. The briefing should address the following areas of Committee interest:

- Fundamental rationale of the Executive Branch in justification of covert actions to include specific and thorough treatment of the relationship of these actions to the national security.
- B -- The objectives to be met through covert operations. ILLEGIB
- Authorities which historically have formed the basis -- in the U.S. and other countries -- for the conduct of covert actions.
- The conceptual approach that has been pursued since 1947 in the planning and conduct of political, economic and paramilitary operations. ILLEGIB
- An historical summary of the organization of the U.S. Government for providing policy guidance, considering, approving and evaluating covert operations. ILLEGIB

Presidential Library Review of NSC Equities is Required

~~SECRET~~

~~DECLASSIFIED~~, with Andrew excoff

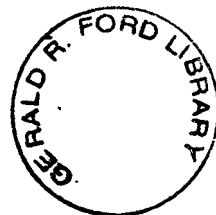
AUTHORITY OAC NLF-PB-1-10-4-4 9/9/04
BY llg ^{NSC guidelines} NLF DATE 6/29/09



- A summary presentation of specific illustrative operations selected from the entire experience of U.S. covert action. The presentation of these illustrative operations should not, however, include the names of individuals or places involved in the particular operation.

It is requested that the text of the briefing, which is to be delivered orally, be submitted for review to the Counsel to the President no later than noon on Tuesday, May 13, 1975.

Brent Scowcroft
Lieutenant General, USAF
Deputy Assistant to the President
for National Security Affairs



THE WHITE HOUSE

WASHINGTON

May 13, 1975

MEETING WITH SECRETARIES KISSINGER,
SCHLESINGER AND DIRECTOR COLBY

Wednesday, May 14, 1975

3:00 p.m. (30 minutes)

The Cabinet Room

From: Philip W. Buchen

P.W.B.

I. PURPOSE

To resolve issues raised by the Senate Select Committee investigation of the intelligence community.

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

- A. Background: As the Select Committee pushes for access to particularly sensitive information, it is desirable to resolve differences within the Administration over the degree and manner of disclosures and to emphasize the need for giving discretion within broad guidelines to your Counsel's office of responses to the Committee.
- B. Participants: Secretaries Kissinger and Schlesinger, CIA Director Colby, Don Rumsfeld, John Marsh, Philip Buchen, Rod Hills and General Scowcroft.
- C. Press Plan: No announcement or photos.

III. TALKING POINTS

1. General Comment

A. I am told that in 1960 Scoop Jackson in a report for the Subcommittee on National Policy Machinery wrote:

"The golden word of intelligence is silence. More can be lost by saying too much, too soon, than by saying too little, too slowly."

That is still the principle to be followed.



B. However, I have assured Senators Church and Tower that this Administration will cooperate with the investigation of the Senate Select Committee in order that the Committee may complete its work as quickly as possible.

C. The purpose of this meeting is to set out how we can best cooperate without undue delays and avoid damage to the activities and capabilities of the intelligence community. We now have some specific issues to be resolved promptly that I am bringing up at this meeting.

2. Disclosure of covert action

A. By "covert action" I mean secret attempts to influence or control the internal affairs of other nations, as distinguished from the mere secret gathering of information.

B. I think we can all agree that the Committee should be given complete information on the following:

- Fundamental rationale of the Executive Branch in justification of covert actions to include specific and thorough treatment of the relationship of these actions to the national security.
- The objectives to be met through covert actions.
- Authorities which historically have formed the basis -- in the U. S. and other countries -- for the conduct of covert actions.
- The conceptual approach that has been pursued since 1947 in the planning and conduct of political, economic and paramilitary actions.
- A historical summary of the organization of the U. S. Government for providing policy guidance, considering, approving and evaluating covert actions.

C. In addition, the Committee will want the following:



- The same information on current covert actions as has been reported verbally to other committees of the Congress under Sec. 663 of the Foreign Assistance Act of 1974.
- Details of past covert actions covering those specific operations which CIA Director Colby may select for disclosure to the Committee.
- Details of plots to assassinate foreign leaders.
- Matters brought out in the Colby report to me and in the Inspector General's report on which it is based and those matters questioned in employee responses which led to the IG report but which are not treated as questionable in the report.

D. It is proposed that initially Director Colby should provide this information verbally to Senators Church and Tower only, in order to get them to appreciate the extreme sensitivity of much of this information and the need to protect it from disclosure in order to avoid damage to our foreign relations with the foreign countries affected, death or harm to foreign officials or politicians involved, and impairment of our covert-actions capabilities.

The purpose of this initial limited briefing will be to induce the Chairman and Ranking Minority Member to impose limitations on the further investigation of the subjects covered. However, we must be prepared to allow some in-depth investigation by one or two acceptable staff members. This further investigation should be subject to the limitation that only certain covert actions must be explored, and that documentation in the form of written histories or records of operation can be read but cannot be removed to the Committee files except in paraphrased form. If any of you see any difficulties with this course of action, let us get them resolved here. Insofar as the specific implementation of this plan is concerned, I will ask that the participants rely on my Counsel's office to negotiate with the Committee and its staff in order to minimize the risks involved.

BERNARD E. YORD

3. Agency Relationships to Persons Interrogated by the Committee or its Staff

Although the Committee has rejected the principle of having agency counsel present at all interviews, each agency should seek to have this practice followed in as many cases as possible. However, where it is not possible, the agency representative should seek to obtain the following:

- Advance notification with respect to any witness to be called and the specific areas or items of inquiry.
- An opportunity to acquaint the witness in advance with the rules and guidelines on disclosure of sources, methods and other sensitive information.
- A right to receive and review any transcripts or other memoranda of the interview.
- A right for the employee to consult with an agency representative during the course of the interview on any matters as to which he has a question.
- "Secret" witnesses should be held to an absolute minimum. In these cases, the Select Committee should notify us of the area or item of inquiry. It is in neither the Select Committee's interest nor our interest not to tell us the areas of inquiry. Indeed, if we know the areas of inquiry, we may well be able to propose alternative witnesses or lines of investigation in a way to avoid the Committee's being misinformed or misled.

4. Central Coordination of Responses to Committee

The Director of Central Intelligence is prepared to maintain a central registry of all responses made by any intelligence agency to the Committee. This registry is important and I want all of the community to cooperate in seeing that it is complete and accurate so that we have one place of reference for all the kinds of information that goes to the Committee.



This does not mean that copies of all documents must be filed in one place but abstracts of documents and summaries of information should be supplied for inclusion in the central registry. Before any information is supplied to the Committee, it should still be cleared through the Counsel's Office in the White House. In this way we will be aware here of what information the Committee is seeking from the different agencies and can avoid responses by one agency that could cause problems for the Administration as a whole or for another agency.

Also, when an agency desires to refuse a request for information by the Committee, the matter should be taken up with the Counsel's Office at the White House. The ultimate responsibility for refusing information to the Committee will fall upon me, as President, and if there is to be a claim of privilege on particular matters, it is up to me to assert it and to take the responsibility for having done so.



THE WHITE HOUSE
WASHINGTON

classified
China

May 16, 1975

*(see
Exec
Agreements)*

MEMORANDUM FOR: JEANNE DAVIS

FROM: PHILIP W. BUCHEN

SUBJECT: Senate Foreign Relations
 Committee Request for
 Presidential Correspondence
 on Saudi Arabia

In response to your memorandum of May 12 on the above subject, I comment as follows:

1. Preferred option: I prefer option 2 of this draft memo under which appropriate representatives of the Senate Foreign Relations Committee would be permitted to review the classified letters, but would not be provided with copies of those letters. Option 1 -- providing copies to the Committee on a classified basis -- tracks too closely the procedure required under the Case Act for "international agreements." Adopting that option might be interpreted as an acknowledgement that these letters in fact represent an "international agreement," a position we have rejected in the case of the Nixon-Thieu letters. Option 3 -- total denial-- strikes me as unnecessarily belligerent and inappropriate in view of the low sensitivity of these particular letters and the Senate's unquestionable legitimate inquiry into the scope and nature of U. S. commitments in the Middle East.
2. Legal basis for denial: For language to support option 3, I would suggest the following:

The letters in question do not constitute international agreements because they do not bind the U. S. as a Nation. They are not in any way analagous to treaties and do not abrogate in any way treaty power of the Senate.

In truth and in fact the letters in question represent nothing more than confidential communications between heads of state. As such, to provide them to the Congress would irreparably harm the ability of a President to conduct the foreign relations of the United States. If the President's correspondence with other heads of state is subject to being provided to the Congress, the result would be a significant chill in the candor and utility of such confidential exchanges. As President Ford recently indicated, "it would not be wise to establish the precedent of providing correspondence between the heads of state."



~~CONFIDENTIAL~~
THE WHITE HOUSE
WASHINGTON

May 23, 1975

*Chen
relating to
(see
hsc)*

MEMORANDUM FOR:

THE HONORABLE EDWARD H. LEVI
ATTORNEY GENERAL

SUBJECT: Eldridge Cleaver

Attached is a copy of a letter dated May 5, 1975, to General Brent Scowcroft from an Attorney in Paris. I would appreciate your advice on how to respond to Attorney Carl F. Salans.

P.W.B.

Philip W. Buchen
Counsel to the President

Attachment

KR 8/12/88

CONFIDENTIAL

THE WHITE HOUSE
WASHINGTON

*Class.
Chen*

May 30, 1975

MEMORANDUM FOR: BUD MCFARLANE

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

SUBJECT: Response by Attorney General
Levi to letter from
Senator Kennedy

Attached are the following:

1. Letters to the Attorney General from Senator Kennedy of April 10, 1975 and April 24, 1975.
2. An initial reply by the Attorney General of May 12.
3. A draft response supplementing letter of May 12.

The Attorney General is particularly concerned in respect of the further reply as to whether we concur in his providing the material starting with the second paragraph on page 2 and continuing through most of page 3.

Attachments

