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WITHDRAWAL SHEET

Ronald Reagan Library

Collection: Baker, Howard H. Jr.: Files
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File Folder: Covert Action Agreement

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FOIA ID: F1997-066/6, D. Cohen
Date: 08/04/2004

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	Arthur Culvahouse to H. Baker and Kenneth Duberstein, 3p <i>R 10/28/10 F97-066/6 #2</i>	8/5/87	B1
2. draft (42006)	draft Executive Order, 8p	8/4/87	B1
3. draft	different draft of item 2, 7p	n.d.	B1

RESTRICTIONS

- B-1 National security classified information [(b)(1) of the FOIA].
- B-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- B-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- B-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- B-7a Release could reasonably be expected to interfere with enforcement proceedings [(b)(7)(A) of the FOIA].
- B-7b Release would deprive an individual of the right to a fair trial or impartial adjudication [(b)(7)(B) of the FOIA].
- B-7c Release could reasonably be expected to cause unwarranted invasion or privacy [(b)(7)(C) of the FOIA].
- B-7d Release could reasonably be expected to disclose the identity of a confidential source [(b)(7)(D) of the FOIA].
- B-7e Release would disclose techniques or procedures for law enforcement investigations or prosecutions or would disclose guidelines which could reasonably be expected to risk circumvention of the law [(b)(7)(E) of the FOIA].
- B-7f Release could reasonably be expected to endanger the life or physical safety of any individual [(b)(7)(F) of the FOIA].
- B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

THE WHITE HOUSE

WASHINGTON

August 5, 1987

MEMORANDUM FOR HOWARD H. BAKER, JR.
CHIEF OF STAFF

KENNETH M. DUBERSTEIN
DEPUTY CHIEF OF STAFF

FROM: ARTHUR B. CULVAHOUSE, JR. 
COUNSEL TO THE PRESIDENT

SUBJECT: Covert Action Executive Order

Attached at Tab A is the most recent draft of the covert action Executive Order. It has not been shown to the Senate or House Intelligence Committees, although a relatively similar prior draft has been shared with the Senate and House Intelligence Committee staff.

The draft Executive Order sets forth the procedures pursuant to which notification of covert activities ("special activities") shall be given to Congress. In its distilled essence, this Executive Order specifies that the President assumes responsibility for notifying Congress of covert activities, precludes retroactive findings (i.e., specifies that the President will not retroactively approve covert activities), specifies that prior notification to Congress is the preferred course of action, and further specifies that in extraordinary circumstances when prior notification is not given, notification shall be given within two working days thereafter. The draft Executive Order further provides, in Section (1)(d) that "Nothing in any provision of this Order shall be construed to limit the President's exercise of constitutional authorities and duties pertaining to foreign affairs or the security of the United States or of its citizens." This latter provision is intended to reserve the President's constitutional right to defer notice beyond two working days.

Current law, the "Hughes-Ryan Amendment to the National Security Act", requires the director of Central Intelligence and the heads of other Departments and agencies involved in intelligence activities to keep the Senate and House Intelligence Committees fully and currently informed of intelligence activities, including special activities, and further requires that the President shall fully inform the Intelligence Committees "in a timely fashion of intelligence operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, for which prior notice was

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NLR 197-06016 #2

BY RAS NASA DATE 10/28/10

not given." As you know, it was pursuant to this latter Section (501)(b) provision that prior notification was not provided to Congress of certain covert aspects of the Iran-Contra matter. Current law does not impose any specified time limit on the President's deferred notification, but rather obliquely refers to a "timely" notice.

Administration lawyers object to the draft Executive Order on two broad bases. First, there is substantial concern that the Executive Order does not clearly preserve the President's constitutional authority to not notify Congress of a covert activity in advance and to defer notification beyond two working days if the President so determines. The general reservation in Section (1)(d) of the Executive Order quoted above is viewed as sufficient from a technical point of view, but it is so general and unspecific that there is substantial concern that the President could be accused of bad faith should he decide at a later date to not give notice to Congress within two working days. As you know, I share that concern. One current proposal to eliminate that concern is to have the Executive Order accompanied by a letter from the President to the Chairmen of the House and Senate Intelligence Committees specifying with clarity and exactitude the President's reservation of constitutional authority not to give notice within two working days. I understand from Colin Powell that Senator Boren and others would object to such a letter on political grounds, although not on principle.

The second concern voiced by the Administration lawyers is that the Executive Order is viewed as demeaning to the President in that it constitutes the President's giving orders to himself and otherwise is not in traditional Executive Order form. In short, it is viewed as unseemly and a general infringement upon the President's constitutional and statutory authorities that is unwise as a matter of precedent and institutional prerogative. On the other hand, and as you know, Senator Boren vehemently and vigorously objected to an earlier draft which did not provide that the President had the ultimate responsibility for notification to Congress of covert activities; and it is clear that any Executive Order that does not contain a clear assumption of Presidential responsibility would not be satisfactory to Boren.

Recommendations

I believe that this Executive Order should be assessed in light of the prospect that it could preclude the passage by Congress of legislation requiring prior notice, or notice within 48 hours, of all covert activities, thereby providing the President with no statutory flexibility to defer notification beyond 48 hours (such a requirement may be constitutionally infirm). If such legislation is likely, the Executive Order could well be an attractive compromise and preemptive measure. If such legislation is not likely, then the

problems presented by the Executive Order could outweigh its usefulness.

In addition, if the Senate and House Intelligence Committees are unwilling to agree with or endorse the Executive Order if it is accompanied by a clear and unequivocal statement of the President's constitutional authority to defer notice beyond two working days, then the Executive Order should be re-evaluated. It could well be that the President should issue an Executive Order even if the Senate and House Intelligence Committees do not endorse it, but such a unilateral Executive Order should be redrafted to eliminate some of the objectionable features referred to above.

Attachment

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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20508

August 4, 1987

URGENT/IMMEDIATE

MEMORANDUM FOR CHARLES COOPER
DAVID DOHERTY
LAWRENCE GARRETT
ABRAHAM SOFAER
EDWARD WILSON

FROM: PAUL SCHOTT STEVENS *h N.*
SUBJECT: Draft Executive Order

Attached is a further draft of the Executive Order revised to reflect our meeting yesterday and additional comments received today. In light of the Cabinet-level meeting scheduled for tomorrow, I request that you review the attached draft and forward it to your principals ASAP.

In final form, we would anticipate it being accompanied by a presidential letter further clarifying his intent in implementing the existing statutory notification provisions. Justice is preparing a draft letter, which it shall forward to you directly.

Attachment
As stated

cc: Colin L. Powell
A.B. Culvahouse
Dean McGrath
John Carley
Richard Debobes

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1987 AUG -4 PM 6: 22

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7 Aug

THE WHITE HOUSE
WASHINGTON

John Tuck,

Back to you.
HAB's copy.



THE WHITE HOUSE
WASHINGTON

6/8

Frank,



FYI. P/s RETURN.

To → C → ✓

From the Desk of

DAVID L. BOREN

Howard,

The xerox copy is for your
file. I would appreciate if
you would give the original to
the President.

David

DAVID BOREN

OKLAHOMA

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WASHINGTON, DC 20510

621 NORTH ROBINSON
OKLAHOMA CITY, OK 73102

440 SOUTH HOUSTON
TULSA, OK 74127

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SEMMOLE, OK 74868

United States Senate

WASHINGTON, DC 20510

CHAIRMAN,
SELECT COMMITTEE ON INTELLIGENCE

MEMBER, COMMITTEE ON FINANCE
CHAIRMAN, SUBCOMMITTEE ON
ENERGY AND AGRICULTURAL TAXATION

MEMBER, COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY
CHAIRMAN, SUBCOMMITTEE ON
AGRICULTURAL CREDIT

MEMBER, COMMITTEE ON SMALL BUSINESS

August 2, 1987

Dear Mr. President,

I hope that you will have an opportunity to read this letter personally. It is written to you in the sincere hope that it will be helpful to you as our President and helpful to our country.

I truly believe that the decisions which you make as the Iran-Contra hearings come to a close will have a profound influence on the future of this country for decades to come. We are in a crucial period.

We spoke recently in the Cabinet Room about the need to restore a bi-partisan partnership in foreign policy between the Congress and the White House. The President can initiate a foreign policy action but even if he is right, he cannot sustain it without the support of Congress.

Long before you became President, during the Vietnam period, the old-fashioned concept of bi-partisanship in foreign policy began to erode. For twenty years we have been in a cycle of escalating distrust between the Executive and Legislative branches.

The rest of the world has observed our lack of unity. We have had a "stop and start" foreign policy which has damaged our credibility. The failure of the United States to speak to the rest of the world with a single voice has been devastating to our national interests. It has demoralized our allies and emboldened our enemies.

Boren - 2 -

as these hearings come to a close, we have a real opportunity to replace confrontation with cooperation, and polarization with partnerships. There are many wars in this world that we hope to see ended but for the sake of our country, which we all love, we must start by ending the war between the two ends of Pennsylvania Avenue.

As I sat in the hearings, I said sadly to myself, "How could we have become so divided when all of us in both branches of government are supposed to be serving the same cause and the same people?"

I believe that you share my hope for a new era of consensus and bi-partisanship in foreign policy. As a Democrat and as Chairman of the Senate Intelligence Committee, I pledge to you that I will walk the extra mile to try to make it work. In the year and a half remaining in your term, you have a chance to make a great and positive mark on our future in areas like arms control and Central American policy. As an American, without regard to party, I pray that you will succeed.

If a consensus can be developed in key areas, these policies can survive for years to come. If there is a confrontation, many opportunities for action will be missed. In other areas, like Central American policy, about which you and I share a strong concern about Communist subversion in our own hemisphere, your policies will not survive beyond the end of your term without a broad coalition in the Congress as well as in the White House which will continue to fight for them.

Twenty years of growing mistrust and divisiveness cannot be overcome in a few days or weeks but we have a rare opportunity to start moving in the right direction.

Boren-3-

Your staff and the members of the bi-partisan leadership in the Intelligence Committee of the Congress are close to a broad agreement in the important area of national security oversight. If we can build a spirit of partnership in this most sensitive area and demonstrate our cooperation to the nation, I am convinced that it will make it much easier to build a truly bi-partisan foreign policy in the future.

Please call upon me if I can help in any way with this effort.

Sincerely,
Dan Boren

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

August 7, 1987

STATEMENT BY THE ASSISTANT TO THE PRESIDENT
FOR PRESS RELATIONS

The President today met with Senator David L. Boren and Senator William Cohen, Chairman and Vice Chairman, respectively, of the Select Senate Committee on Intelligence (SSCI), to indicate his agreement to new procedures concerning the approval, review and notification to Congress of covert action programs.

The principles outlined in the President's letter to the Chairman and Vice Chairman of the SSCI were developed over a period of intensive and fruitful consultations between the White House and the SSCI. They evidence a desire for close cooperation between the President and Congress with respect to these very sensitive and important programs. The President responded to a letter to National Security Advisor Frank Carlucci from Senators Boren and Cohen on behalf of the SSCI. The measure of agreement reflected in the President's letter demonstrates the vital importance he attaches to cooperation between the Congress and the Executive branch in the intelligence area. On this there is agreement. The new procedures we are putting in place will strengthen that cooperation, and facilitate the work of the Committee in fulfilling its important responsibilities.

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