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THE WHITE HOUSE
WASHINGTON

November 7, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Representative Edwards and the FBI

Hand Crime Info Ctr.
pls keep me advised

You have asked for more information on the attached story from the November 1 New York Times. (Tab A). The FBI's National Crime Information Center (NCIC) is a clearinghouse for crime information provided by law enforcement entities at the Federal, state, and local level. The NCIC is perhaps best known as the source for the Bureau's annual crime statistics, but it also provides information of active investigative significance to law enforcement agencies. For some time the FBI has been considering adding a "white collar crime" component to its NCIC files; at present information about such crimes is generally not compiled and thus not available to law enforcement agencies pursuing investigations in this area. Congressman Don Edwards (D-CA) has expressed concern that compiling and making available information on individuals suspected of involvement in white collar crime would violate the civil liberties of those individuals.

On October 12 the Bureau advised the staff of the House Subcommittee on Civil and Constitutional Rights, chaired by Edwards, that staff counsel would not be permitted to attend meetings of the Planning and Evaluation Subcommittee of the NCIC Advisory Policy Board. The meetings, which took place October 15-16, were called to consider adding white collar crime to NCIC coverage. Edwards protested this decision in an October 12 letter to Judge Webster, citing the provisions of the Federal Advisory Committee Act making the open meeting requirements of that Act applicable to subcommittees, and the separate provision directing each committee of the House to "make a continuing review of the activities of each advisory committee under its jurisdiction." (Tab B). Edwards later wrote to the Attorney General to object in general to plans to expand coverage of the NCIC. (Tab C).

Justice has not yet responded to either of Edwards's letters. Judge Webster signed a reply dated October 31, contending that the subcommittee was not an advisory committee itself but simply functioning as staff for the advisory committee, an argument recently accepted in National Anti-Hunger Coalition v. Executive Committee of the President's

Private Sector Survey on Cost Control, 557 F. Supp. 524 (D.C. 1983), aff'd, 711 F.2d 1071 (D.C. Cir. 1983). (Tab D). This reply has not been sent, because of internal Justice Department objections to the validity of its legal reasoning. I tend to agree with those within Justice who think the argument in Webster's October 31 proposed reply is not supported by the facts. The Planning and Evaluation Subcommittee, as its very name suggests, was not simply gathering data for the Advisory Policy Board but carrying out advisory committee functions in its own right. As noted, Justice is still working on a reply to Edwards, who probably is correct on the Federal Advisory Committee Act points.

Rep. Edwards Accuses F.B.I. of Breaking Law

By DAVID BURNHAM

Special to The New York Times

WASHINGTON, Oct. 31 — The chairman of a House subcommittee has accused the Federal Bureau of Investigation of violating the law when it stopped a Congressional staff member from attending a meeting of a subcommittee of an advisory panel of the bureau.

Representative Don Edwards, Democrat of California, has protested the exclusion of John Briley, a lawyer for the House Judiciary Committee's Subcommittee on Civil and Constitutional Rights, from a meeting on Oct. 16 of the Planning and Evaluation Subcommittee of the Advisory Policy

Board of the bureau's National Crime Information Center.

The subject of the closed meeting was a plan by the bureau to create a major new computer file about white-collar crime suspects and their associates. Under the proposal, 64,000 Federal, state and local criminal justice agencies could have access to the file in two years.

An F.B.I. paper said the plan would permit "a more efficient and effective field-wide coordination of major white-collar crime investigations." But civil liberties experts contended the widespread exchange of "raw investigative files" would be a dangerous threat to

innocent Americans.

Mr. Edwards, the chairman of the Judiciary subcommittee, has said that the system should not be initiated without formal Congressional approval, but the bureau had no immediate response to Mr. Edwards's request that it not proceed with the system without Congressional action.

Hearings Planned Next Year

Mr. Edwards has also said he intends to hold hearings early next year on the plan, which has not yet been formally approved by either Attorney General William French Smith or the bureau's Director, William H. Webster. The bureau's test would not begin without that

approval, and the computer system would take some months to develop.

In a letter to Mr. Webster, Mr. Edwards said that the decision not to allow Mr. Briley to attend the session "appeared to violate" two provisions of a law governing the practices of Federal advisory groups.

He said one section of the law mandated that such meetings "shall be open to the public," and a second requires each Congressional committee to review the activities of any advisory group under its jurisdiction.

A spokesman said the bureau was preparing a formal response to Mr. Edwards. He added, however, that the decision not to allow Mr. Briley to attend the meeting had been "based on sound legal precedent."

On Oct. 17, the day after the closed meeting of the advisory subcommittee,

the full advisory board voted at a public session to approve a test of the computer project.

In the first step approved by the advisory panel, information about suspects and the associates of suspects being investigated for various financial crimes would be filed in the National Crime Information Center's computer network and would be exchanged among bureau agents, Justice Department lawyers and 11 other Federal law-enforcement agencies.

The staff paper added, however, that it was "fully anticipated that within two years" of the beginning of the project at the Federal level "access to what should be a significant data base regarding economic crime will be extended to all users of the National Crime Information Center."

The information the bureau is con-

templating collecting and distributing includes names of white-collar crime suspects and their associates and additional data such as Social Security numbers, passport numbers, bank account numbers, aliases, Selective Service numbers, driver's license numbers and automobile license numbers.

Mr. Edwards said the decision to prevent the staff of the House subcommittee from attending the advisory panel meeting conflicted with earlier practice. Congressional staff members attended the advisory panel's subcommittee meetings in August 1983, October 1983 and February 1984.

*John Roberts -
What is this
all about?*

11/5/84

B

JACK BROOKS, TEX.
ROBERT W. KASTENMEIER, WIS.
DON EDWARDS, CALIF.
JOHN CONYERS, JR., MICH.
JOHN F. SEIBERLING, OHIO
ROMANO L. MAZZOLI, KY.
WILLIAM J. HUGHES, N.J.
SAM B. HALL, JR., TEX.
MIKE SYNAR, OKLA.
PATRICIA SCHROEDER, COLO.
DAN GLICKMAN, KANS.
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HAMILTON FISH, JR., N.Y.
CARLOS J. MOORHEAD, CALIF.
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THOMAS H. KINDNESS, OHIO
HAROLD S. SAWYER, MICH.
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F. JAMES SENSENBRENNER, JR., WIS.
BILL MCCOLLUM, FLA.
E. CLAY SHAW, JR., FLA.
GEORGE W. GEEKAS, PA.
MICHAEL DOWD, OHIO

U.S. House of Representatives
Committee on the Judiciary
Washington, D.C. 20515
Telephone: 202-225-3951

GENERAL COUNSEL:
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STAFF DIRECTOR:
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ASSOCIATE COUNSEL:
ALAN F. CONLEY, JR.

October 12, 1984

Honorable William Webster
Director
Federal Bureau of Investigation
J. Edgar Hoover Building
Washington, D.C. 20530

Dear Judge Webster:

The purpose of this letter is to express my deep concern over the decision by the Federal Bureau of Investigation that staff Counsel to the Subcommittee on Civil and Constitutional Rights will not be permitted to attend meetings of the various subcommittees of the NCIC Advisory Policy Board, scheduled for October 15 and 16.

This decision which was finally communicated to staff on Friday, October 12, is surprising in view of the invitations extended to, and accepted by staff, for previous subcommittee meetings held on August 19, 1983, October 3-4, 1983, and February 27-28, 1984. Moreover, the closing of these meetings appears to violate the Federal Advisory Committee Act, as follows:

Section 3(2) makes the Act generally applicable to "any committee... or any subcommittee or other subgroup thereof..."; and, Section 10(a)(1) mandates that the meetings shall be open to the public.

Section 5(a) requires that "each standing committee of... the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction..." The attendance of Subcommittee Members and staff has not been sought or obtained as a matter of public participation.

Honorable William Webster
October 12, 1984
Page Two

I would greatly appreciate your personal reconsideration of this matter. The operation of the NCIC and its future direction are issues which will continue to receive close scrutiny by the subcommittee. The subcommittee staff's first hand observation of the development of recommendations which the Director receives from the Board, will assist the subcommittee to fulfill its responsibilities.

I look forward to your early response.

Sincerely,

Don Edwards

Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights

DE:jbb

cc: Robert McConnell
Fred Wynbrandt

C

DEPARTMENT OF JUSTICE
ODAG EXECUTIVE SECRETARIAT CONTROL DATA

From: EDWARDS, CHRIS DON, SUBCOMM ON CIVIL & CONSTITUTIONAL RIGHTS
To: AG.
Date Received: 10-31-84 Date Due: 11-13-84 Control #: 4103115273
Subject & Date:
10-26 LETTER EXPRESSING CONCERN OVER THE PROPOSED ADDITION
OF AN ECONOMIC CRIME INDEX TO THE NATIONAL CRIME INFO
CENTER. HE FEELS THAT IT IS ESSENTIAL THAT THERE BE AMPLE
OPPORTUNITY FOR APPROPRIATE CONGRESSIONAL OVERSIGHT
COMMITTEES TO EXAMINE THIS PROPOSAL. REQUESTS COPIES OF ANY
MEMORANDA ON THE PROPOSED INDEX WHICH WERE CIRCULATED TO
MEMBERS OF THE ECONOMIC CRIME COUNCIL.

Referred To	Date	Referred To	Date	File
(1) LIA; MCCONNELL	10-31-84	(5)		
(2)		(6)		
(3)		(7)		Prt:
(4)		(8)		1
Interim By:		Date:		Opr
Sig. For: LIA		Date Released:		HED

Remarks:

CC DAG (BLUNT), DAG, AAG.
LIA TO MAIL INTERIM RESPONSE IF APPROPRIATE.
ADVISE EXEC. SEC. OF ACTION TAKEN.

Other Remarks:

10-31-11:00

PETER W. RODINO, JR. (N.J.), CHAIRMAN

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 N EDWARDS, CALIF.
 HN CONYERS, JR., MICH.
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U.S. House of Representatives
Committee on the Judiciary
 Washington, D.C. 20515
 Telephone: 202-225-3951

October 26, 1984

EXECUTIVE SECRETARIAL
 OFFICE OF
 DEPUTY ATTORNEY
 GENERAL

1984 OCT 31 AM 9:15

DEPT OF JUSTICE
 RECEIVED

The Honorable William French Smith
 Attorney General of the United States
 Department of Justice
 Washington, D.C. 20530

Dear Mr. Attorney General:

The purpose of this letter is to express my concern over the proposed addition of an "Economic Crime Index" to the National Crime Information Center. According to an FBI staff paper, this index has been endorsed by the Department's Economic Crime Council, but will not become operational without your concurrence.

As I understand it, this new file would be comprised of information identifying individuals and their associates who have come under investigation for white-collar crime matters. In addition, the proponents anticipate that all NCIC users will eventually have access to the file.

This "intelligence file" appears to represent a major deviation from the system's current dedication to data bases derived from public record information. Accordingly, I hope you will give this proposal your personal attention and review.

In addition, it is essential that there be ample opportunity for the appropriate congressional oversight committees to fully examine this proposal. To assist the Subcommittee in its review, I would appreciate it if you would furnish copies of any memoranda on the proposed index which were circulated to members of the Economic Crime Council.

Sincerely,

Don Edwards

Don Edwards
 Chairman
 Subcommittee on Civil and
 Constitutional Rights

DE:jbb

cc: Robert McConnell

D



U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

October 31, 1984

Honorable Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights
House of Representatives

Dear Mr. Chairman:

In your letter of October 12, 1984, you expressed concern over a recent decision of the FBI to limit attendance at meetings of the various subcommittees of the NCIC Advisory Policy Board. I approved this step because I believe that the purposes of the subcommittee can be best served by limiting attendance to NCIC Advisory Policy Board members, regional chairmen, and FBI and Department of Justice representatives. The Board Chairman and the subcommittee chairmen support this decision.

I have been advised that limiting attendance at subcommittee meetings does not violate the Federal Advisory Committee Act. Section 3 of the Act contains the following language:

"For purposes of this Act--
... (2) The term "advisory committee" means...
any subcommittee or other subgroup thereof,
which is established...in the interest of
obtaining advice or recommendations for the
President or...agencies or officers of the
Federal Government...."

As to advisory committee procedures, Section 10 of the Act states that subject to the ten exceptions embodied in Title 5, U. S. Code, Section 552b(c), all advisory committee meetings "shall be open to the public". Application of this requirement of the Federal Advisory Committee Act to NCIC Advisory Policy Board subcommittees presupposes that subcommittees are "advisory committees" for purposes of the Act. It is my conclusion that considering the functions of the subcommittee, and despite the language of the statute, subcommittees should not be so characterized.

Honorable Don Edwards

In National Anti-Hunger Coalition v. Executive Committee of the President's Private Sector Survey on Cost Control, 557 F. Supp. 524 (D.C. 1983), aff'd, 711 F.2d 1071 (D.C. Cir. 1983), the court considered the question of whether task forces set up to do "fact-gathering, statistical evaluations, and the formulation of preliminary reports" for a committee appointed by the President, but which had no authority to make recommendations to the President or federal agencies, were "subcommittees" for purposes of the Federal Advisory Committee Act. The court held such task forces were not advisory committees within the terms of the Act, and thus were not subject to its procedural requirements. Judge Gesell observed:

"... (T)ask forces are not subject to FACA requirements. They do not directly advise the President or any federal agency, but rather provide information and recommendations for consideration to the Committee. Consequently, they are not directly 'established or utilized' by the President or any agency 'in the interest of obtaining advice or recommendations'.

The Act does not cover groups performing staff functions such as those performed by the so-called task forces.

The language of the statute itself distinguishes between advisory committee members and advisory committee staff. Compare 5 U.S.C. App. I. §5(b)(2) with §5(b)(5). Staff would be expected to perform exactly the sort of functions performed by the task forces at issue-- gathering information, developing work plans, performing studies, drafting reports and even discussing preliminary findings with agency employees." 557 F. Supp. at 529.

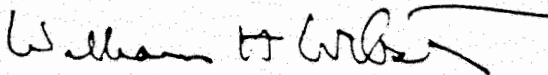
Given their duties, the subcommittees are the functional equivalent of the task forces in National Anti-Hunger Coalition. Accordingly, subcommittees are not advisory committees for purposes of the Act, and the open meeting requirement does not apply to them.

Honorable Don Edwards

As you point out in your letter, Section 5(a) of the Act imposes on each standing committee of the House of Representatives an obligation to make a continuing review of the activities of each advisory committee under its jurisdiction. But if subcommittees are not advisory committees, Section 5(a) has no application. Moreover, the review authority of the standing committees does not equate with a right of access to subcommittee meetings, since the activities of the subcommittees may be adequately reviewed by an examination of their written reports and by attendance at the full NCIC Advisory Policy Board meetings, where oral reports of the subcommittee are given.

It is our aim to carry out the business of the NCIC Advisory Policy Board effectively while at the same time insuring that the congressional review authority is not impeded. I am satisfied that a restriction on attendees at subcommittee meetings will in no way interfere with the latter objective.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "William H. Webster", with a stylized flourish at the end.

William H. Webster
Director