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 United States should be submitted to the Department of Justice. For example, your order on January 9, 1975, establishing the Rockefeller Commission, expressly provided:

"I can assure you... that all...

During the Church Committee investigation of alleged assassination plots involving foreign leaders, you made it clear to all of your staff who worked in response to such Committee that on this subject you wanted material to be provided without regard to classification status or possible claims of executive privilege. 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 witnesses and use in evidence of documents that reveal their identification..."
and CIA connections for the purposes of Grand Jury investigation and possible trial of cases involving alleged perjury previously committed by some of these same persons and by others connected with the CIA. The investigation involves scope and The nature of requests made by Justice to the CIA and the reactions of Director Bush up to October 13, 1976 are described in a memo from George Bush to Jack Marsh which is attached to the 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 17 Agency employees, past and current, and two other persons who had supplied information on Chile to the CIA. In deference to that determined concern, Justice, that at least for Grand Jury purposes, its needs could be reasonably limited to 8 of the 17 persons involved, and that it would attempt to avoid disclosing the present location and position of one of those and another would try to bring him before the Grand Jury under an oath.

So the issue now to be resolved is whether these the stated requirements of the Department of Justice, as efforts reduced to the 8 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" is in conflict with the needs of the

(Emphasis added)
Justice Department and he has never had a directive from you on your policy as expressed in your statement in answer to a question at the San Francisco World Affairs Council meeting on September 26, 1975.

This belief is clear within the authority of George Bush to authorize the disclosures at issue on the basis of the needs of the Department of Justice and that your public statement is sufficient indication, if not, 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 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 and reveals matters some concern about various targets and tells why, the persons in question are targets of the investigation or are essential witnesses. This document shows that the only purpose of this is to show the great importance which the Department of Justice put upon upon the relevance to their testimony and other documents concerning which regard their knowledge and involvement in prior CIA activities. Even without having seen this document, it is incumbent on the CIA, I believe, I believe it, if it overcomes any argument that the Department has gone further in its request to the CIA than is necessary for a proper investigation and prosecutorial purposes.

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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 staled it to be on September 1975.

b) That his authorizing disclosure of the names and CIA connections of the persons identified at Tab C and of documents containing such names and descriptions of their share of the knowledge and involvement of such persons in relevant CIA activities is consistent with your policy.

Arguments in favor of such recommendation:

While there may be instances when prosecutorial discretion would require the disclosure of information damaging to the nation's security would be justified 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 secrets of information, when that information which 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 the sources themselves are the targets of investigation and where there is no claim that the personal damage to any of the criminally innocent people would be very serious or irreplaceable.

No one outside of the Deputy 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 national public interest vital to the security of the nation.

* Failure to permit disclosure of the requested information would force the agency to stop the pending investigation and lead to no prosecution with the consequence that otherwise prosecutable persons would be saved from prosecution merely to protect their identities and CIA connections from disclosure.

Such an outcome would be intolerable by knowledgeable people setting policy for never investigating or prosecuting a confidential source even if the evidence was strong enough to support a finding of perjury; also for not prosecuting anyone if the evidence were merely disclosing confidential CIA sources or methods.

Arguments against such recommendations are:

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

* The morale of people in the agency will be adversely affected.
b. That his authorizing disclosure 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 consequence that otherwise prosecutable persons will be saved from prosecution merely to protect