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CIA HISTORICAL REVIEW PROGRAM**

OGC 77-0704

1 February 1977

MEMORANDUM FOR: Deputy Director for Operations

ATTENTION : Associate Deputy Director for Operations

FROM : Walter T. Lloyd
Associate General Counsel

SUBJECT : Mitchell Livingston Werbell, III

1. As you are aware, on the instruction of United States District Judge Peter Fay (Miami, Florida Division), incident to the Drug Enforcement Administration's prosecution of Subject for conspiracy to import and distribute multi-ton loads of marijuana, the undersigned made a detailed review of the files of this Agency concerning Subject in August 1976. This examination was to ascertain any data that ran to Werbell's guilt or innocence of the offense charged and any other data reflecting the nature of the relationship between Werbell and the U.S. Government. This latter requirement was grounded on the Court's view that Werbell's voluntary reporting to the Agency and any government condonation of his activities might be exculpatory in the eyes of the jury.

2. In response, we reviewed the files, identified Agency contacts with Subject and prepared two affidavits: one regarding non-employment by Mr. B. DeFelice and the second regarding Werbell's relationship to the Agency by the undersigned. Copies are attached. During the trial the first affidavit was shown to counsel for Werbell by DEA counsel, Mr. Sam Sheres, at which point defendant's counsel stipulated that Werbell was never a formal employee of the Central Intelligence Agency. Sheres subsequently returned the affidavits to the undersigned at the conclusion of the trial.

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3. Regarding the relationship of Werbell to the Agency, as approved by the Deputy Director, the undersigned appeared before Judge Fay in his chambers on 31 August and under oath answered questions of the Court concerning Werbell. A copy of the transcript of that proceeding is attached. You will note that Judge Fay requested that all pertinent government records be made available to the Court for its inspection. Accordingly, copies of Agency files were reproduced, culled for "Brady-type" documents, excised to protect sources and methods under the "SWP case criteria" and reviewed and approved by Assistant DD/O on the evening of 1 September. These processed documents were then handcarried to Miami by the undersigned on 2 September.

4. The undersigned advised Judge Fay at 0830 hours on 2 September that I had in my possession copies of all of the Agency files on Werbell, had culled them as to possible "Brady" documents and was prepared to review them with the Judge at his convenience. He was on the bench with a tight schedule and asked that the possible Brady documents first be reviewed by Karen Atkinson, the principal counsel for the prosecution. The undersigned subsequently briefed Atkinson on the nature of data in the possible Brady documents. This resulted in a significant reduction in the number of possibles. The undersigned gave Atkinson copies of the four unclassified OGC documents related to the DOD revocation of Werbell's security clearance in 1971. In addition, Office of Security documents edited and approved for release to Werbell under his Freedom of Information and Privacy Act request (Tabs A and B of OS response), consisting of media publications and security investigative data, were also provided Atkinson. Due to counsel for Werbell raising an issue on Werbell's use of a boat named "Venus" belonging to CIA, a declassified copy of the OS short investigative report outlining data concerning Werbell's use of the Venus to transport arms was also provided Atkinson. The related OS Headquarters assignment document was not provided. Related DDO documents on the ownership of Venus by the "JURE" Cuban group were mentioned to Atkinson but not made available.

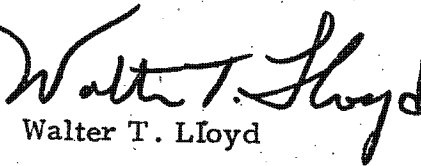
5. While the above documents were provided the Department of Justice with the understanding they could be passed to Counsel for Werbell due to subsequent events noted below, it is not certain that this occurred. Specifically, the undersigned declined to release additional "Brady" documents without consultation and instructions

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from the Court. The requested meeting was put off by Judge Fay and defendants subsequently rested their case. The DOJ had little else to add and the case went to the jury about noon on 3 September. All the remaining copies of Agency documents were returned to Headquarters by the undersigned the evening of 3 September. On 4 September the jury returned a verdict of "not guilty." As a result, the bulk of "Brady-type" Agency documents on Werbell was not provided to counsel for Werbell and Judge Fay reviewed no Agency documents. It should be noted all copies of documents taken to Miami were excised in accord with the "SWP case criteria" and on return to Headquarters, these were destroyed by the undersigned.

6. As a related matter, on 16 November Mr. Arthur Egbert of the Internal Security Division of the DEA contacted the undersigned seeking background information on Werbell. The undersigned suggested Egbert first review the files of the FBI on Werbell as most of the data we have is contained in FBI reports. Should FBI data be insufficient for his needs I suggested he seek access to our files in DDO and Office of Security via the normal DEA Department of Justice liaison channels.


Walter T. Lloyd

Attachments:

- (1) Affidavit - DeFelice
- (2) Affidavit - Lloyd
- (3) Transcript of Hearing of USDC for Southern District of Florida, August 31, 1976.

cc: Jerry Brown, SAG/OS, w/o atts
 LD/SBCH/DDO, w/o atts

OGC/ WTL/eh

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