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OGC 77-2530
20 April 1977

MEMORANDUM FOR: Director of Central Intelligence

VIA: Deputy Director of Central Intelligence

FROM: Anthony A. Lapham
General Counsel

SUBJECT: Additional Comment on Mr. John D. Marks' Second Recommendation in Response to DCI Marginal Comments

REFERENCE: Inspector General Memorandum dated 17 March 1977 entitled "Request for Guidance on Six Recommendations Made by Mr. John D. Marks at the DCI's Confirmation Hearings" (First three pages, annotated by the DCI, attached)

1. Action Requested:

None.

2. Background:

Mr. Marks' second recommendation was that the DCI should make available to appropriate police agencies all intelligence it possesses on Cuban terrorism. Mr. Marks more particularly noted that CIA had turned down a request by the Dade County (Miami) police for the names of Cubans who had been trained by the CIA in the use of explosives. This is not entirely accurate. The Dade County Police, pursuant to its investigation of the murder of Johnny Roselli, had not requested the names of Cuban terrorists, but rather the names of Cubans and others who may have been associated with Mr. Roselli during the period of the Agency's involvement with him in the early 1960's. The specific questions are included as Attachment A.

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The Office of General Counsel made two points with regard to Mr. Marks' comment on the Roselli case. First, in a letter dated 14 October 1976, the Agency had sought the guidance of the Attorney General to determine whether it could legally provide the requested information. Along with this letter, we forwarded to the Attorney General, for whatever action he deemed appropriate, all relevant information from Agency files which we judged could be forwarded to the Dade County police without jeopardizing sources or methods. Second, the Office of General Counsel noted that the remaining information which was requested, relating to former or current agents of the Agency, still required protection. Your marginal comment asks whether we are not straining the concept of protection of sources when we protect those who are not now intelligence sources and whether we are protecting them from prosecution for terrorist activity today.

After referent memorandum was sent to you, the Attorney General refined an earlier opinion from former Assistant Attorney General Antonin Scalia. The Department of Justice now concludes that, to the extent Agency information either does not involve U.S. persons or falls within one of seven exceptions to the general prohibition against collection of information concerning the domestic activities of U.S. persons, such information can be provided to local police authorities. It is significant, however, that the Attorney General in his 23 March letter to you (Attachment B) expressly included the following language:

In addition to the facts above, the Office of Legal Counsel has pointed out that Executive Order 11905 does not require CIA to respond to Dade County. Indeed, the responsibility of the Director of Central Intelligence to protect sources and methods of intelligence, established by statute, 50 U.S.C. §403(g), and E.O. 11905, Section 3(d)(vii), is authority for him to withhold such information from local law enforcement officials if he believes its disclosure would threaten the security of intelligence sources or methods. (Emphasis added)

In light of the Attorney General's opinion, those offices holding the relevant files are now reviewing them to confirm that the information originally selected for passage to Dade County law enforcement officials is responsive and complete.

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By way of a more specific response to your marginal comment, we would submit that the principle of protection of intelligence sources not only requires that we protect those who are willing to collaborate with the U.S. Government while they are so engaged, but also that we protect the fact of such association after their immediate use to the Agency is over. Not only would it be cynical in the extreme to ask persons, particularly foreign nationals, to risk their lives and property on our behalf, assuring them that the relationship would develop in an atmosphere of complete confidentiality and then betray their trust, it would be self-defeating. Only the firmest assurance that the Agency can and will protect intelligence sources allows for recruitment of new sources and the continued collaboration of existing sources. Any perceived weakening of the Agency's commitment could have serious adverse consequences.

Measured against the need to protect even yesterday's sources is the fact that, in the instant case, we have no information which bears on the Roselli murder. Moreover, the Agency is in no way standing between the police and the Cuban community; the police are free to question whomever they wish and to enlist FBI assistance. The Agency is not protecting any individual against prosecution; indeed, we are unaware that there are as yet any prosecution targets.

For your information, I have included a representative sample of the types of information we wish to protect.

-- Question 2 ii requests all information on Edward Morgan, a D.C. attorney who has reportedly represented Black, Shimon, Roselli and Maheu.

The Office of Security notes that "most, if not all, of the information in our files on Morgan would have no pertinence to the police investigation. The only item of possible significance is the fact that Morgan was formerly Roselli's lawyer and therefore may have been informed by Roselli of his participation at the behest of the Agency in efforts to assassinate Fidel Castro. This information is already in the public domain and would add nothing to the knowledge already held by the Dade County authorities."

SECRET

The Office of Security goes on to say that in the 1951 period, Mr. Morgan was associated with the Agency in a covert capacity and used as a "cut out" on certain matters of interest to the Directorate of Operations. Security's reluctance to release information on Morgan is not due to a desire to hide any material facts from the Dade County authorities, but rather derives from their responsibility to protect the identities of individuals who have cooperated with the Agency to avoid damage to the careers of such persons.

27.16-4
 -- Question 3 viii asks whether the police can talk to the current [redacted] The Directorate of Operations would respond in the negative in order to protect the identity and cover of this individual who has been in Miami less than a year. This is not an effort to hobble the police investigation because for the past several years the [redacted] 6-4 has been proscribed from using contacts within Cuban exile organizations for purposes of monitoring the activities of the Cuban exile community. The [redacted] is primarily targeted against those Caribbean areas where there are no Agency stations and it has no charter for domestic activities.

-- Question 1 iv asks for all Agency information about Jose De La Torriente (shot to death in his home in Miami on 12 April 1974). Most of our information is of a general character and would be known to the police who investigated his death. What is sensitive and has never been disclosed is that in October 1970, in response to a request from President Nixon, Director Richard Helms directed the DDP to establish a covert funding channel to provide financial support to the Cuban exile group headed by Torriente. The objective was to provide funds to assist this group in carrying out raids in Cuba. A total of \$250,000 was authorized in FY 1971 and 1972 for this purpose, with a total of \$226,000 actually being expended.

-- Question 1 viii seeks the identity and whereabouts of AM/LASH. This man was a contact of CIA over a five-year period, support for his activities being terminated in 1965 for security reasons. The intention was to use him to develop a coup against the Castro regime; the Church Committee describes the Agency's relationship with the man in the Interim Report on Alleged Assassination Plots Involving Foreign Leaders. He was arrested in Cuba in 1966 and served ten years of a 30-year term. He

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is reportedly now out of prison on parole. Furnishing his true identity to the Dade County police would jeopardize his safety, risking publication and a clear connection - between his cryptonym (which appears in Senate reports) and his true identity. Not only does the man's incarceration and his present parole status in Cuba make it unlikely that he was involved in anything of interest to the Dade County police, but he provides a classic example of an individual whose identity and association with the Agency should be protected.

A final and perhaps more subtle problem arises when, as here, the Agency is asked if it has any information about "A," "B," and "C." We may have no information on "A" and unclassified information on "B," but "C" may be an agent whose relationship with the Agency should be kept secret. If the Agency states in its response, we have no information on "A," we know the following about "B" but cannot comment on "C," we have, in effect, established a pattern of response which would reveal the very information we wished to protect, hence, we are sometimes required to respond with "no comment" to questions about "A," "B" and "C."

Anthony A. Lapham
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Attachments

cc: Mr. Massey, OLC
SA/DO/O
D/IG
D/OS
C/LA/DDO

OGC: EC: bm (20 April 1977)

Distribution:

Original - DCI
1 - DDCI
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✓ - INVESTIGATIONS - Roselli, Johnny
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Questions from Dade County Detectives

1. They would like to know whatever the Agency knows about certain Cuban nationals, some deceased and some still alive. They are as follows:

i. Ramon Don Estevez Dominquez (deceased by shooting) - born 2 May 1936 or 5 February 1936; reportedly a boat manufacturer who was able to go in and out of Cuba on a regular basis.

ii. Rolando Masferrer Rojas (deceased by bombing) - born 12 January 1918.

iii. Luciano Nieves (deceased by shooting).

iv. Jose De La Torriente (deceased by shooting).

v. Jose Quintana - born 3 October 1945; reportedly a nephew by marriage to Roselli.

vi. Jaquin Antonio Cortizo - born 10 January 1945.

vii. Manola Artimes (the detectives specifically asked where he is now).

✓ viii. AM/LASH - his identity and present whereabouts.

ix. What are the names of the three Cubans mentioned in the Roselli testimony? (Two of the three names are in the 9 December 1970 memorandum discussed in paragraph four of this memorandum.)

2. They asked for whatever information the Agency could provide on the following individuals whose citizenship is unknown but who are probably U.S. citizens:

i. Fred Black - identified as a lobbyist involved with Bobby Baker; he reportedly lives in the Watergate Apartments and is a friend of Mahue, Roselli and Shimon. They wanted to know if he had any connection with the Castro assassination plots.

ii. Edward Morgan - a D.C. attorney who has reportedly represented Black, Shimon, Roselli and Mahue.

iii. Joseph Shimon - identified in the Senate Select Committee Report on Alleged Assassination Plots at page 81 as "a friend of Roselli and Giancana." They wanted to know if he had any CIA relationship.

3. They asked a number of general questions which are as follows:

i. Who is the Cuban who provided the speedboat mentioned in the Senate Select Committee Report?

ii. Who is "B-1" and what is the name of the anti-Castro group both of which are mentioned on page 89 of the Report?

iii. Did Harvey actually pay Roselli \$2,700 to defray the Cuban expenses as mentioned on page 84 of the Report?

iv. Why was Roselli approached instead of Giancana or someone else?

v. Did the Agency do a background check on Roselli or Giancana and, if so, could they have access to it?

vi. Why was all contact with Roselli stopped in 1965?

vii. Would it be possible for them to talk to the man or men who served as Chief of Station in Miami during 1960 to 1965?

viii. Could they talk to the current Chief of Station in Miami?

ix. Would it be possible for the detectives to talk to James P. O'Connell, a retired senior Office of Security employee?

x. Does CIA have any evidence that the Cuban Intelligence Service may have been involved in Roselli's death or that Cuban agents were in the Miami area at the time of his death?

EXCEPT FROM 17 MARCH
MEMO FROM IO TO DEI (OGC has copy)
"Request For Guidance in his Recommendation
Made by Mr. John D. Marks at the DEI's
Confirmation Hearings" [EXEC REG. 77-6666]

forum or by a newsmen you could reasonably reply to the effect:

CIA has and will continue to cooperate with Justice Department and Congressional investigations concerning improper activity conducted by any foreign country in the United States.

(The new DCI should announce) that the Agency will not tolerate operational activity by the "friendlies" in the US: and that it will break off liaison and stop all other forms of aid to secret services which repress human rights.

This second part of the first question is more troublesome to answer since it involves complex issues such as (a) what national intelligence, national security and diplomatic equities hang in the balance, (b) how does one define repression of human rights and (c) what constitutes proof of human rights abuse as opposed to unsubstantiated allegations, and which intelligence community activities should be sacrificed if some gesture of disapprobation must be made. If pressed by newsmen, an answer along the following lines might be appropriate:

The United States Government can and should express itself in favor of human rights in a variety of ways. Conversely, it can in many ways show disapproval of countries which violate human rights. Should national interest and policy reasons require curtailment of certain foreign liaison activities conducted by any member of the U.S. Intelligence Community, I would recommend such action.

MARK'S QUESTION

2. The new DCI should announce that while the Agency has no legitimate law enforcement role in the US, it will make available to appropriate police agencies all intelligence it possesses on Cuban terrorism, which has been particularly murderous lately. (The CIA last year turned down a request by the Dade County (Miami) police for the names of Cubans who had been trained by the CIA in the use of explosives.); and that the CIA will be committed to stamping out terrorism and drug-trafficking among its former employees.

SUGGESTED HANDLING:

(The discussion below was provided by the Office of the General Counsel)

Pursuant to statutory authority and Executive Order provisions, the Agency is clearly prohibited from engaging in any law enforcement activity. Furthermore, the Director is obliged to protect from unauthorized disclosure the identities of his intelligence sources and the methods by which intelligence is collected. Accordingly, the Agency, as a matter of policy, will consider such requests on an ad hoc basis and respond whenever possible. When, however, a question exists, the Agency seeks a ruling from the Attorney General.

The request from Dade County was not for the names of Cuban terrorists, per se, but rather, the names of those Cubans who may have been associated with Johnny Roselli during the period of the Agency's involvement with him in the early nineteen sixties. Mr. Roselli, as you will recall, met an unnatural and untimely demise last year at the hands of an unknown assassin. The request came to the Agency through the Senate Select Committee on Intelligence which was particularly interested in Roselli because of his subpoenaed appearance before it. The names sought by Dade County were, in fact, either former or current agents of the Agency. Because of our obligation to protect sources, the DCI sought the advice and guidance of the Attorney General in a letter dated 14 October 1976. That letter has not yet been answered. While the Agency has then not responded to the Dade County Police request, it has not, in fact refused the request, pending Attorney General advice. In addition, it should be pointed out that the Agency's complete holdings on the Roselli matter and the assassination attempt on Castro have been made available to the FBI and the staff members of the Senate Select Committee on Intelligence.

Should this question or a variation on the theme arise in the future, the following response would seem appropriate:

The CIA promptly makes available to the Department of Justice or to the FBI directly information which comes into its possession dealing with the subject of terrorism. The Agency, and I, personally, would deplore and regret any incident in which former CIA employees involve themselves in terrorism, drug-trafficking, or any other illegal act. However,

*Seems to me
this is stat-
ing the part-
for all
intelligence
sources any
more - we are
protecting them from
prosecution
from terrorism
activity today*

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this Agency has no legal control or law enforcement rights over former employees, who come within the police jurisdictions of their state and community and, when appropriate, under the jurisdiction of federal law enforcement agencies.

3. *The new DCI should announce that the CIA will no longer make covert use of American universities or academic activities; that the CIA will stop secretly employing professors to "spot" foreign students for recruitment as CIA agents (and hence, become traitors to their own countries); that all CIA sponsored research on campus will be identified as such (even if the results must on occasion remain secret); and that academic exchange programs will not be used for cover purposes.*

SUGGESTED HANDLING:

This involves sources and methods and could, in some circumstances, be handled by "no comment". It would certainly seem unnecessary and not useful to volunteer any statements concerning CIA's relationship with academe. But, should this kind of question be asked in a responsible forum where a response is unavoidable, the substance of a letter from former Director Bush to the President of Amherst College might be paraphrased and drawn upon:

"The Agency has several kinds of relationships with scholars and scholarly institutions. They include negotiated contracts for scientific research and development, contracts for social science research on the many matters that affect foreign policy, paid and unpaid consultations between scholars and CIA research analysts, contracts with individuals who have travelled abroad, and other similar contracts that help us fulfill our primary responsibility; i.e., to provide the policy makers of our government with information and assessments of foreign developments.

"We seek the voluntary and witting cooperation of individuals who can help the foreign policy processes of the United States. Those who help are expressing a freedom of choice. Occasionally such relationships are confidential at our request, but more often they are discreet at the scholar's