File #:

62-116395

Serial Scope:

101 THRU 150.

104 THRU 105

Released under the John F. Kennedy Assassination Records Collection Act of 1992 (44 USC 2107 Note). Case#:NW 65360 Date: 11-17-2022

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-106

UNITED STATES GOVERNMENT

Memorandum

TO :MR. W. R. WANNALL

FROM :MR. W. O. CREGAR

SUBJECT: SENSTUDY 75

1 - Mr. J. B. Adams
1 - Mr. J. A. Mintz

DATE: April 24, 1975

1 - Mr. J. B. Hotis
1 - Mr. W. R. Wannall
1 - Mr. W. O. Cregar

Assoc. Dir. ____
Dep. AD Adm. ____
Dep. AD Inv. ____
Asst. Dir.:
Admin. ____
Comp. Syst. ____
Ext. Affairs ____
Files & Com. ____
Gen. Inv. ____
Ident. ____
Inspection ____
Intell. ____
Laboratory ____
Plan. & Eval. ____
Spec. Inv. ____
Training ____
Legal Coun. ____
Telephone Rm. ____
Director Sec'y ____

This memorandum reports the receipt of a legal memorandum prepared by Mr. Edmund Cohen, Office of the General Counsel, Central Intelligence Agency, entitled "Authority of Congress to Release Classified Data." Copies of this legal memorandum have been furnished to Mr. Antonin Scalia, Assistant Attorney General, and Mr. James A. Wilderotter, Associate Counsel to the President.

Memorandum Cregar to W. R. Wannall dated 4/14/75 discussed an article contained in the 4/10/75 edition of "The Washington Post" wherein Senator Frank Church, Chairman of the Senate Select Committee, stated he reserved the right to make public any documents the Committee received. This memorandum also noted that Mr. James Wilderotter, Associate Counsel to the President, advised that The White House was preparing a letter to Senator Church recognizing that Congress can, at its discretion, declassify material it receives, but strongly urging that such declassification action not be taken unilaterally by the Senate Select Committee without approval of the agency originating the information.

As an aid to the preparation of such a letter, the Office of CIA's General Counsel has prepared a paper entitled "Authority of Congress to Release Classified Data." Copy attached. It was made available to all members of the Ad Hoc Coordinating Group for Congressional Review of the Intelligence Committee for information and any comments recipients desired to make.

REC-100 62-116395-150

ACTION: For information.

Enclosure

62-116395

WOC:ekw (6)

14 MAY 15 1975

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 1/19/01 BY SP2 ALM/MC #M0216

This memo does not solve the problem, therefore it requires no further analysis.

84 MAY 27 1975

NW 65360 DocId:32989532 Page 2

DIRECTOR OF CENTRAL INTELLIGENCE

Ad Hoc Staff
75-350

17 April 1975

MEMORANDUM FOR: Members of the USIB
Ad Hoc Coordinating
Group

This is being furnished you at Dr. Clarke's request.

Harriett D. Mowitt

Harriett D. Mowitt
Executive Secretary

Attachment

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 1-19-01 BY SP2 ALM/dlf
#mQR16

62-116395-150

ENCLOSURE

MEMORANDUM FOR: Antonin Scalia, Esq.
Assistant Attorney General
Office of Legal Counsel

Attached is a hurriedly done legal memorandum entitled "Authority of Congress to Release Classified Data." I would welcome your comments on this so that a finished document could be made available to the various agencies concerned.

John S. Warner
General Counsel
Central Intelligence Agency

12 April 1975
(DATE)

NO. G 54 101 REPLACES FORM 10-101 WHICH MAY BE USED. (47)

MEMORANDUM FOR: James A. Wilderotter, Esq.
Associate Counsel to the
President

Attached is a hurriedly done legal memorandum entitled "Authority of Congress to Release Classified Data." I would welcome your comments on this so that a finished document could be made available to the various agencies concerned.

John S. Warner
General Counsel
Central Intelligence Agency

12 April 1975
(DATE)

NO. G 54 101 REPLACES FORM 10-101 WHICH MAY BE USED. (47)

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 1-19-01 BY SP-2 ALM/STG

11 March 1975

#mDR16

ALL FBI INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 7-19-01 BY SP2 ALM/JTG

MEMORANDUM FOR: General Counsel

SUBJECT : Authority of Congress to Release Classified Data

1. I have found no express authority for Congress to publicly release information classified by the executive branch pursuant to an Executive order issued by the President. Moreover, on a number of occasions Congress has mandated that matters pertaining to national defense or foreign policy be kept secret.

--Congress has made it a crime for one lawfully having possession, access or control of documents relating to national defense or information relating to the national defense which the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation to communicate, deliver, or transmit same to any person not entitled to receive it. 18 U.S.C.A. 793(d).

--Congress has made it a crime to disclose to an unauthorized person or publish any classified information obtained by the processes of communications intelligence. 18 U.S.C.A. 798(a).

--Congress has made it a crime to photograph or sketch vital military or naval installations or equipment requiring protection against general dissemination of information. 18 U.S.C.A. 795. It is also a crime to publish or disseminate photographs, maps, or drawings of such defense installations without first obtaining permission of the commanding officer or higher authority. 18 U.S.C.A. 797.

--Congress, in order to prevent public disclosure of certain activities, has given various officials the power to keep confidential certain funds expended for national security or foreign relations purposes. Such authority is given, for example, to the President (22 U.S.C.A. 2364), to the Secretary of State (31 U.S.C.A. 107), and to the Director of Central Intelligence (50 U.S.C.A. 403j).

NW 65360 DocId:32989532 Page 5

--Congress has provided that meetings of the Senate Committee on the Budget may be closed to the public if it is determined by a record vote of a majority of the members that the matter to be discussed

> ...will disclose matters necessary to be kept secret in the interest of national defense or the confidential conduct of the foreign relations of the United States. 2 U.S.C.A. 190a-3.

--Congress, after requiring that the Secretary of State transmit forthwith to the Congress the text of any international agreement, other than a treaty, to which the United States is a party, goes on to provide that

> ...any such agreement the immediate public disclosure of which would, in the opinion of the President, be prejudicial to the national security of the United States shall not be so transmitted to the Congress but shall be transmitted to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives under an appropriate injunction of secrecy to be removed only upon due notice from the President. 1 U.S.C.A. 112b.

--Finally, Congress, in enacting the Freedom of Information Act, expressly exempted from disclosure matters which are

> ...specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy. 5 U.S.C.A. 552(b)(1).

2. Despite this apparent lack of authority to release classified data and the existence of the above-mentioned statutes, Congress is constitutionally immunized, at least in part, against any consequences flowing from release and disclosure of classified information. Article I, § 6 of the Constitution states in respect to Senators and Representatives that:

> ...for any Speech or Debate in either House, they shall not be questioned in any other Place.

NW 65360 DocId:32989532 Page 6

3. A long line of Supreme Court cases, beginning with Kilbourn v. Thompson, 103 U.S. 168 (1991), has held that the privilege or immunity relating to speech or debate should be given a broad and liberal construction. In Kilbourn the court stated:

> It would be a narrow view of the Constitutional provision to limit it to words spoken in debate. The reason of the rule is as forcible in its application to written reports presented in that body by its committees, to resolutions offered, which, though in writing, must be reproduced in speech, and to the act of voting.... In short, to things generally done in a session of the House by one of its members in relation to the business before it. (At p. 204.)

4. The court, moreover, has resisted arguments that an unworthy purpose should destroy the privilege. In Tenney v. Brandhove, 341 U.S. 367 the court reaffirmed its earlier holding in Fletcher v. Peck, 6 Cranch 87 (1810), stating:

> ...that it was not consonant with our scheme of government for a court to inquire into the motives of legislators, has remained unquestioned. (At p. 377.)

The distance to which the court was willing to go to uphold this principle was seen in United States v. Johnson, 383 U.S. 169 (1966). In that case a former Congressman was convicted for conspiracy to defraud the U.S., in part on evidence that, in pursuance of a conspiracy designed to give assistance to certain savings and loan associations which had been indicted on mail fraud charges, he was paid to give a speech on the floor of the House. The Supreme Court granted a new trial holding that a prosecution which draws in question the legislative acts of the defendant member of Congress or his motives for performing them "necessarily contravenes the Speech or Debate Clause." (At p. 185.)

5. The court addressed the issue of classified information in Gravel v. United States, 408 U.S. 606 (1972), a case which arose when Senator Gravel, Chairman of the Subcommittee on Buildings and Grounds of the Senate Public Works Committee, convened a night meeting of the Subcommittee and there read extensively from a copy of the Pentagon Papers which bore a Defense security classification of Top Secret - Sensitive. He then placed the entire 47 volumes of the study in the public record. Senator Gravel claimed that Article I, section 6 protected him from criminal or civil liability and from

NW 65360 DocId:32989532 Page 7

questioning elsewhere than in the Senate, with respect to the events occurring at the Subcommittee hearing at which the Pentagon Papers were introduced into the public record. The court stated: ".../T/o us this claim is incontrovertible." (At p. 615.)

6. The court further noted that:

> The Speech or Debate Clause was designated to assure a co-equal branch of the government wide freedom of speech, debate, and deliberation without intimidation or threats from the Executive Branch. It thus protects Members against prosecutions that directly impinge upon or threaten the legislative process. We have no doubt that Senator Gravel may not be made to answer--either in terms of questions or in terms of defending himself from prosecution--for the events that occurred at the subcommittee meeting. (At p. 616.)

7. From the above, together with the positive phrasing of Article 1, § 6 of the Constitution, it would appear that any Member may make any statement he desires on the floor of the Congress or in one of its committees. Such statement shall be absolutely privileged, notwithstanding that it was based on information secured from classified Central Intelligence Agency material either furnished the Member in confidence or containing any restrictive notice as to use or dissemination. This privilege would operate if the Member were to read the information verbatim into the record on the floor or into the record of hearings before a congressional committee. It would still be privileged when it appeared, verbatim, in the Congressional Record or in the published hearings of a congressional committee. The only sanction, apart from the individual conscience and sense of responsibility of the Member, would have to come from Congress itself, which has the power to discipline any Representative or Senator who improperly disclosed classified information.

8. One additional wrinkle might be noted. Although Congressmen would be immune from liability for introducing classified information into a committee report and immune from liability for ordering it printed and disseminated to the public at large, the Public Printer and the Superintendent of Documents may not be immune from suit for printing and disseminating such reports to the public. The court examined this question in Doe v. McMillan, 412 U.S. 306(1973), a case in which petitioners claimed that a report issued by the House Committee on the District of Columbia, containing

NW-65360 DocId:32989532 Page 8

documents relating to disciplinary problems of certain specifically named students, violated statutory, constitutional and common-law rights to privacy. The Supreme Court refused to determine whether dissemination to the public would serve the important legislative function of informing the public concerning matters pending before Congress for the purpose of holding Members of Congress liable. However, it remanded the case to the Court of Appeals, in part to undertake just such a review in order to determine whether the Public Printer and the Superintendent of Documents, who were without blanket immunity, could be held liable.

9. The discussion thus far has dealt only with congressional immunity for releasing classified information in Congress. No such immunity exists in the case of disclosures made by congressmen outside of Congress. Thus, in Long v. Ansel, 69 F.2d 386 (Ct. App., D.C. 1934), affd. 293 U.S. 76 (1934), and in McGovern v. Martz, 182 F. Supp. 343 (US Dist. Ct., D.C. 1960) it was held that if a Senator or Representative is alleged to have committed libel by republishing and disseminating remarks made in the Congress, such republication and dissemination is not within the Speech or Debate privilege even if such privilege would have been applicable to the original publication of the remarks. Again, in Gravel v. United States, 408 U.S. 606 (1972), and in Doe v. McMillan, 412 U.S. 306 (1973) the court noted that the Speech or Debate Clause does not protect "a private republication of documents introduced and made public at a committee hearing, although the hearing was unquestionably part of the legislative process."

10. From the above it is apparent that a Member is not privileged to circulate CIA documents to his constituents, to the press, or by reading to a meeting or on radio or television. Such action could well make the member liable for prosecution under the espionage laws, but in any event would expose him to the same liability for these actions as any other citizen. As a practical matter, however, the prosecution of a Member for unauthorized disclosure of classified CIA material, or disciplinary action by Congress itself, is very unlikely.

EDMUND COHEN
Office of General Counsel

NW 65360 DocId:32989532 Page 9

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-106

UNITED STATES GOVERNMENT

Memorandum

Assoc. Dir. ___
Dep. AD Adm. ___
Dep. AD Inv. ___
Asst. Dir. ___
Admin. ___
Comp. Syst. ___
Ext. Affairs ___
Files & Com. ___
Gen. Inv. ___
Ident. ___
Inspection ___
Intell. ___
Laboratory ___
Legal Coun. ___
Plan. & Eval. ___
Spec. Inv. ___
Training ___
Telephone Rm. ___
Director Sec'y ___

TO : Mr. J. B. Adams

DATE: May 2, 1975

FROM : Legal Counsel

SUBJECT: SENSTUDY 75

#mor16
ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 1-19-01 BY SP2 ALM/JTG

The April 29, 1975, Congressional Record - Senate, pages S 7054 through and including S 7056, sets forth rules and procedures for the captioned Committee. The rules cover such topics as the convening of meetings, meeting procedures, news media coverage, investigations, subpoenas, procedures related to the taking of testimony, procedures for handling classified or sensitive material, preparation for committee meetings, staff, and reporting of measures or recommendations.

The key sections of these rules are subpoenas, investigations, and procedures related to taking of testimony.

Concerning the issue of subpoenas, subpoenas may be issued by the Chairman or any other member designated by him with the consultation of the Vice Chairman.

Procedures relating to the taking of testimony provide that testimony shall be given under oath or affirmation. It also provides that a witness may be accompanied by counsel. Witnesses may also request that there be no news media coverage of their testimony. Witnesses will also be given the opportunity of furnishing a statement prior to, and/or at the conclusion of his or her testimony. With regard to inspection and correction of testimony, witnesses will be allowed a reasonable opportunity to inspect their testimony, and corrections are permissible, but must be made in writing within five days of the availability of the transcript containing their testimony. Names of witnesses cannot be made public prior to their testimony unless authorized by the Chairman.

Contempt procedures as set forth, require that after notice to all members of the Committee, and the affected person has had the opportunity to state in writing or in person why he

Enclosure
1 - Mr. Adams
1 - Mr. Wannall
1 - Mr. Mintz
1 - Mr. Hotis
1 - Mr. Daly
1 - Mr. Cregar
PVD:eek
(8)

ENCLOSURE

REC-100 62-116395-149

6 MAY 20 1975

(CONTINUED - OVER)

LEGAL COUNSEL

84 MAY 27 1975

NW 65360 DocId:32989532 Page 10

or she should not be held in contempt, a vote would be taken by the Committe with a majority being necessary for the referral of a contempt citation to the full Senate.

The rules concerning sensitive material limit access to such material to employees on a need-to-know basis and to only those staff members with appropriate security clearances.

Reporting procedures for the Committee provide that where the Committee is unable to reach a unanimous decision, separate views and reports may be printed by any member or members of the Committee.

A complete Xerox copy of the rules as they appear in the Record is attached.

RECOMMENDATION:

Action. For Information.

NW 65360 DocId:32989532 Page 11

imperceptible, while 2.5 can be felt near the point of origin and 3 can be felt over a fair-sized area. Slight damage can be caused at 4.5, a level of 5 is considered damaging, 7 is major, and 8 is a "great earthquake."

The issue, most geologists and seismic experts agree, is not whether another block-buster quake will occur, but when. It could happen any time.

Should that earthquake occur "tomorrow," these experts believe, the following realities await Californians:

Tens of thousands of buildings built in the first half of the century, clearly hazardous under severe earthquake conditions, in use in San Francisco and Los Angeles, could topple, endangering thousands of lives (an estimated 250,000 in Los Angeles alone).

Other thousands of buildings, built on or near faults face destruction from ground shaking and land fill.

High-rise buildings, built to more modern standards, may not topple, but face serious hazards of fire, disabled elevators and inadequate stairwell safety.

Earthquake disaster urgency plans are in the nascent stages throughout the state, hampered by apathy among public officials, lack of funds and infrequent exercises.

The public is ill-prepared to cope with earthquakes or their aftermaths. There is virtually no publicity about what to do during or after a major quake. Earthquake drills are rarely, if ever, held in communities or in public buildings (schools are an exception).

A recent federally sponsored study gives these estimates of death and injury should a temblor of more than 7 or 8 on the Richter scale occur in or near San Francisco or Los Angeles:

San Francisco—as many as 10,000 persons dead and 40,000 injured. (Should a major dam break, the death toll could rise to 60,000.) Another 56,000 could be left homeless (not including dam evacuees).

Los Angeles—as many as 20,600 deaths and up to 600,000 injured. Additional deaths possible due to major dam failure—up to 14,000. Homeless (not including dam evacuees), up to 180,000.

At the very best, Californians are fatalistic about earthquakes, accepting that they will come, and hoping they will be out of the affected area when it happens.

"You don't know when it is going to be or how it's going to be," said one West Los Angeles resident. "I should put money into making my house earthquake-proof when I could be in some skyscraper swaying when it happens? Who cares?"

In San Francisco, a college professor recently asked 125 residents in a random sampling what they would do if an earthquake comes. Sixty per cent said, in effect, "Start praying. What else is there to do?"

What can be done? In fact, quite a lot—and some of it is being accomplished in the areas of building code upgrading, land-use planning, emergency preparedness, earthquake prediction, and public education. But the effort of a few aggressive legislators, state and local officials, and private citizens is frustrated by the low level of priority generally assigned to earthquake protection.

The "kill ratio" of past California earthquakes is extremely low compared to, say, traffic accidents. About 900 persons have died as the results of quakes since the turn of the century compared to an average annual highway toll of 4,800. Thus there are those who argue against expenditures of time and effort on something as mercurial and unpredictable as an earthquake.

California's new governor, Edmund G. Brown, Jr., is said to be one of those. According to a recent news story, Brown suggested that money being allocated for safe buildings might be used to improve the quality of education, to rehabilitate housing for the poor, or to create construction jobs.

After the San Fernando quake, there was a flurry of studies, hearings, plans and legislation.

In Los Angeles, the building code requirements were toughened. Explained Bob Williams, general manager of Los Angeles' Department of Building and Safety: "We doubled the loading strength requirements and required standards twice as strong in reinforced concrete and reinforced masonry."

Los Angeles' building code is in some respect tougher than the Uniform Building Code to which most jurisdictions in the state adhere. One official, Long Beach building director Edward M. O'Connor, a leading proponent of better preparedness, contends that the Uniform Building Code falls short.

"It does not fulfill the purpose of the code: to preserve life, limb, property and the public welfare in the event of an earthquake," he said.

Changes in the uniform code come slowly. They are modeled after recommendations by the California Structural Engineers Association, composed of professional engineers who help design buildings.

The recommendations usually represent a balance of conservative and liberal strains within the association, and, according to some observers, are strongly influenced by economic considerations.

The drafters of the uniform code are still wrestling with one of the central lessons of the San Fernando earthquake—the fact that major buildings are being constructed with little knowledge or consideration of soil and geological conditions and how they might respond to ground shocks.

Geologists and seismic experts admit they know very little about what causes earthquakes or precisely how buildings are affected by local or even distant shocks. Now, for the first time, California is placing instruments that measure motion in key buildings around the state. But they must await another earthquake to produce usable data.

In the meantime, seismic considerations are working their way slowly—some say too slowly—into building requirements.

New laws ban construction directly over active faults, require satisfactory geologic studies before new hospitals are built, require that a "seismic safety element" be included in local planning, and require the correction of unsafe dam conditions.

This legislation added up to the most progressive package of earthquake measures in 40 years, but it was not accomplished without resistance. The restriction on building on or near faults, for example, inspired a storm of protest from real estate developers and individual lot owners that eventually forced a modification softening the restriction.

A hospital law passed in 1972 requires that detailed geological and soil reports for proposed hospital construction be reviewed by state geologists.

James Flosson, director of the state Department of Mines and Geology, promptly ran into problems.

"The reports the first few months were a disgrace to the profession," Flosson said. "We insisted that they be redone, and done again until they were right. I've had my head bloodied many times as a result. I've been threatened, told my career would be ruined—a few geologists tried to get me fired. But we stood by our guns and now the quality of the reports is excellent."

Another area of controversy is highrise safety. Berkeley architect Karl V. Steinbrugge believes the modern steelframe construction will withstand intense shocks. But Henry J. Degenkolb, a San Francisco structural engineer and frequent critic of safety standards, said:

"I would not find it unreasonable to expect . . . there will be 15 to 30 total collapses with another 50 to 100 severely damaged" in San Francisco.

While there is disagreement about highrise collapse, there is a broad consensus that most existing high rises are vulnerable to extensive internal damage from unbolted equipment and, most significantly, from fire.

The dangers are serious enough to have prompted major changes recently in fire regulations for all future buildings.

All future high rises (above 75 feet) will be built with automatic governors that bring elevators instantly to ground level, and, most importantly, with sprinkler systems at every level.

All but a minuscule number of the nearly 2,000 high rises presently in Los Angeles and San Francisco lack sprinkler systems.

Requirements that they be installed were written into a state law last year, but efforts to draft regulations ran into fierce opposition from builders, the Chambers of Commerce and other businessmen.

The battle is still being fought.

San Francisco's disaster plan is advanced over those of other municipalities, but it suffers from lack of a central communications network, insufficient coordination among departments and inadequate practical exercises, according to a city planning department study.

"All it is is a paper organization," said Alfred Goldberg, head of the city's building department.

Goldberg's concerns are echoed by James Halgwood, state emergency services officer in charge of helping to create state-level disaster plan for Southern California.

Commented Halgwood: "I don't think most elected and appointed officials understand they have a real responsibility to have their jurisdictions prepared. They are only doing a barebones job."

RULES OF PROCEDURE FOR THE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES

Mr. CHURCH. Mr. President, in accordance with the provisions of the Legislative Reorganization Act of 1970, I submit now for publication in the RECORD the rules of procedure for the Select Committee To Study Governmental Operations With Respect to Intelligence Activities. These rules were adopted by the members of the Select Committee on April 9, 1975. I ask unanimous consent that they be printed in the RECORD.

There being no objection, the rules were ordered to be printed in the RECORD, as follows:

RULES OF PROCEDURE FOR THE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES, U.S. SENATE, ADOPTED APRIL 9, 1975

These Rules are issued pursuant to the 1st Section of Senate Resolution 21, 94th Congress, 1st Session, agreed to January 27, 1975, and printed in full in the appendix hereto.

RULE 1. CONVENING OF MEETINGS

1.1 The Committee may schedule a regular day and hour for the Committee to meet.

1.2 The Chairman shall have authority, upon proper notice, to call such additional meetings of the Committee as he may deem necessary and may delegate such authority to any other member of the Committee.

1.3 A special meeting of the Committee may be called at any time upon the written request of six or more members of the Committee filed with the Clerk of the Committee.

1.4 In the case of any meeting of the Committee, other than a regularly scheduled meeting, the Clerk of the Committee

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE DATE 1-19-01 BY SP2 RKM/JFG

ENCLOSURE 62-116395-149

NW 66360 Docld:32989532 Page 12