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NAZI WAR CRIMES DISCLOSURE ACT  
2000

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CONTROLS  
SR2

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TEXT  
SR3

E.O. 12356: DECL: OADR  
TAGS: CFED, FR  
SUBJECT: **KLAUS BARBIE** INVESTIGATION  
REFS: A) PARIS 17882; B) STATE 121479; C) STATE 82665  
1. CONFIDENTIAL - ENTIRE TEXT.  
2. THE NEW CONDITIONS IMPOSED BY MOJ, PARTICULARLY DEGOUTTES' "PENAL CONNECTION" (PARA 8, REFTEL), CREATE DIFFICULT AND PERHAPS INSUPERABLE OBSTACLES TO ANY DOJ INTERVIEW OF BARBIE. MOJ INSISTENCE THAT THIS MATTER LOOK LIKE "A NORMAL REQUEST FOR JUDICIAL ASSISTANCE" (PARA 6, REFTEL) SIMPLY OVERLOOKS, WITTINGLY OR UNWITTINGLY THE FACT THAT THIS IS NOT A NORMAL REQUEST AND CANNOT BE MADE A NORMAL REQUEST, FOR THE FOLLOWING REASONS:  
A. BARBIE HAS NEVER BEEN IN THE UNITED STATES (ASIDE FROM TWO BRIEF BUSINESS TRIPS IN 1969 AND 1970) AND HAS NEVER, TO DOJ'S KNOWLEDGE, VIOLATED ANY U.S. LAW;  
B. USG PERSONNEL INVOLVED WITH BARBIE IN ANY INTELLIGENCE CONNECTION HAVE NOT, TO DOJ'S KNOWLEDGE, VIOLATED ANY U.S. CRIMINAL LAW;  
C. EVEN ASSUMING THAT BARBIE OR ANYONE ELSE HAD VIOLATED U.S. LAW FROM 1945-1970, THE GENERAL STATUTE OF LIMITATIONS IS SIX YEARS (18 U.S.C. 3282) AND THUS ANY PROSECUTION FOR ACTS COMMITTED PRIOR TO 1977 WOULD BE

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D. PRIMARY USG INTEREST IN CONVENING THE PRESENT INVESTIGATION IS NOT CRIMINAL PROSECUTION, FOR REASONS SET FORTH ABOVE, BUT IN COMPILING AN ACCURATE ACCOUNT OF WHAT TOOK PLACE BETWEEN USG AND BARBIE, BE IT LEGAL OR ILLEGAL.

3. WHILE, AS PREVIOUSLY NOTED IN REF (B), RYAN IS EMPOWERED TO "ASCERTAIN LEGAL OFFENSES COMMITTED BY BARBIE AND/OR OTHER PERSONS," THE INVESTIGATION TO DATE HAS NOT YIELDED EVIDENCE THAT ANY OFFENSES WERE IN FACT COMMITTED, AND, EVEN IF THE EVIDENCE WERE OTHERWISE, THE STATUTE OF LIMITATIONS WOULD ALMOST CERTAINLY BAR PROSECUTION FOR OFFENSES COMMITTED 1945-1977. THEREFORE, MOJ INSISTENCE THAT DOJ QUESTIONS "REFER TO SPECIFIC CRIMES" WITH "A PENAL CODE CONNECTION" IS A CONDITION THAT IS VIRTUALLY IMPOSSIBLE TO MEET.

4. AS PREVIOUS CABLES ON THIS MATTER HAVE INDICATED, AND AS RYAN EXPLAINED IN DISCUSSIONS WITH AMBASSADOR AND DCM MARCH 31, THE PURPOSE OF THE INVESTIGATION ORDERED BY THE ATTORNEY GENERAL IS TO DETERMINE THE FACTUAL CIRCUMSTANCES OF BARBIE'S RELATIONSHIP WITH USG AS INDICATED IN PARA 5. IF EVIDENCE OF CRIMES IS DISCOVERED, AND IF THOSE CRIMES CAN BE PROSECUTED TODAY, THEN PROSECUTION WILL FOLLOW (AND RYAN IS INDEED EMPOWERED TO RECOMMEND AND/OR INITIATE SAME), BUT THE SCOPE OF THE INVESTIGATION IS DIFFERENT FROM A NORMAL CRIMINAL INVESTIGATION. AS NOTED, INVESTIGATION TO DATE HAS NOT YIELDED EVIDENCE OF PROSECUTABLE CRIMES, ESPECIALLY CONSIDERING STATUTE OF LIMITATIONS. THERE IS THUS NO POINT IN USG OR GOF TREATING THIS AS A "NORMAL DOJ REQUEST FOR JUDICIAL ASSISTANCE."

5. RYAN WISHES TO INTERVIEW BARBIE ON MATTERS DESCRIBED IN REF (C), PARTICULARLY INTELLIGENCE ACTIVITIES 1945-1951, TRAVEL TO BOLIVIA 1951, INTELLIGENCE ACTIVITIES AFTER 1951, AND TRAVEL TO U.S. 1969 AND 1970. RYAN IS WILLING TO COMPLY WITH FRENCH CONDITIONS ON PROCEDURES TO BE FOLLOWED IN SUCH AN INTERVIEW. WE CANNOT COMPLY WITH REQUIREMENT OF "PENAL CODE CONNECTION" BECAUSE THERE IS NO DISCERNIBLE CONNECTION TO BE DRAWN.

6. EMBASSY IS REQUESTED TO OUTLINE FOLLOWING APPROACH TO MOJ. OUR DESIRE FOR AN INTERVIEW SHOULD NOT BE TREATED AS A CONVENTIONAL "REQUEST FOR JUDICIAL ASSISTANCE" SINCE THAT CALLS INTO PLAY CONSIDERATIONS THAT DO NOT APPLY TO THIS CASE. OUR REQUEST SHOULD INSTEAD BE TREATED AS NON-JUDICIAL, I.E., THE INTERVIEW; THE INFORMATION GATHERED WOULD NOT BE USED IN ANY U.S. PROSECUTION. WE ARE ASKING ONLY THAT WE BE ALLOWED TO INTERVIEW (OR HAVE A FRENCH OFFICIAL INTERVIEW FOR US, IN OUR PRESENCE) A PERSON IN FRENCH CUSTODY ON MATTERS HAVING TO DO WITH "JUDICIAL ASSISTANCE." THE INTERVIEW WOULD BE FOR THE SOLE PURPOSE OF COMPILING A REPORT THAT ILLUMINATES A CHAPTER OF POSTWAR EVENTS. IF THE GOF CAN SEE ITS WAY CLEAR TO ALLOWING AN INTERVIEW ON THIS BASIS, OUR NEEDS WOULD BE SATISFIED. IN THE REMOTE EVEN THAT A PROSECUTION DOES ARISE FROM THIS INVESTIGATION, WE WOULD NOT USE THE BARBIE INTERVIEW AS EVIDENCE.

7. WE DO NOT INTEND TO SUGGEST BY THIS APPROACH THAT ANY

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FRENCH LAWS SHOULD BE BENT OR THAT WE ARE ABANDONING THE PREVIOUS CONDITIONS WE HAVE AGREED TO, E.G., PRESENCE OF BARBIE'S COUNSEL. A MUTUALLY SATISFACTORY RESULT CAN BE ACHIEVED THROUGH A MORE REALISTIC APPRAISAL OF WHAT WE ARE ACTUALLY INTERESTED IN, WHICH IS NOT "JUDICIAL ASSISTANCE." IN ANY EVENT, THE MOJ SHOULD UNDERSTAND THAT ITS LATEST CONDITIONS, IF ADHERED TO, EFFECTIVELY PRECLUDE ANY GENUINE ASSISTANCE ON ITS PART. UNLESS THE IMPASSE CAN BE RESOLVED THROUGH APPROACH SUGGESTED ABOVE OR SOME OTHER MEANS, THE MOJ POSITION WOULD PRECLUDE AN INTERVIEW OF BARBIE ON ANY REALISTIC CONDITIONS.

8. ACTION REQUESTED: EMBASSY IS REQUESTED TO CONVEY SUBSTANCE OF ABOVE TO APPROPRIATE GOF AUTHORITIES AND TO CONTINUE ITS EFFORTS TO SECURE GOF PERMISSION TO INTERVIEW BARBIE.

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