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OLC 78-1608/1

20 April 1978

Dept Justice

MEMORANDUM FOR THE RECORD

SUBJECT: 17 April 1978 Conversation With Bob Carlstrom, OMB, Re Attorney General Bell's Proposed Testimony Before the Senate Judiciary Committee, 20 April 1978

1. On 20 and 25 April 1978, the Senate Judiciary Committee is scheduled to hold "background" hearings on the subject of "FBI Charter." Neither H.R. 10400, a House version of an FBI charter, nor S. 2525, intelligence charter legislation, in general and Title V of S. 2525 in particular (FBI Charter) are being specifically addressed by the Committee. The hearings are merely for the purpose of exploring further the very concept of an FBI Charter.

2. On 14 April 1978 OMB forwarded an advance copy of Attorney General Bell's prepared statement for CIA comment by 3:00 p.m. Monday, 17 April 1978. The statement was circulated to [redacted] DDO, and was discussed with [redacted] Office of Security, after referral by [redacted] Deputy Director of Security. STAT STAT STAT STAT

3. Overall, the prepared statement poses no problem for CIA. While Attorney General Bell in theory is "committed to the idea of a legislative charter for the FBI," his statement before the Senate Judiciary Committee, like his previous testimony before the House Judiciary Subcommittee on Civil and Constitutional Rights on H.R. 10400, stresses the need to keep and consider as separate and distinct the topic of charters for the Intelligence Community, including the intelligence components of the FBI, and the topic of charters for the non-intelligence functions of the FBI. It is the latter topic to which Attorney General Bell confines himself in his prepared statement for the 20 April testimony.

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4. There is, however, one paragraph of the testimony that is problematic for the Agency. After reviewing the varied functions the FBI currently performs, Attorney General Bell states that in his opinion "the underlying issue in any charter is whether the FBI should continue to perform some or all of the functions it now undertakes." In this regard Attorney General bell raises as an issue the matter of whether any FBI charter should not provide clear statutory authority for the FBI to do background investigations of Federal officers and employees of all U.S. Government agencies, the Congress and the Judicial Branch. At page ten Bell states:

> 'More difficult issues are posed in connection with the background investigation of federal officers and employees. As you are aware, the Executive Orders covering this matter are old and out of date and the statutes seem to have been passed on a hit-or-mis basis. I can see no reason why the Bureau should do investigations for the Arms Control and Disarmament Agency, for example, but not for the Department of State. Moreover, many of the investigations now conducted by the Bureau are based entirely on custom and have no clear statutory authorization. If this work is to continue, the FBI should be given a clear mandate and should not be asked to exceed that mandate as a matter of comity to other agencies, the Congress or the Judicial Branch."

5. Implicit in the second sentence of the above highlighted paragraph is the thought that the FBI should perhaps be statutorily charged with the duty to do all background investigations for all U.S. Government agencies, to include the CIA, the Congress and the Judicial Branch.

6. The Agency's position in this regard is that because of its unique requirements in the area of personnel and security, it should be permitted to conduct its own background investigations. According to the Office of Security to have to rely on an outside agency would be administratively burdensome, cost ineffective and otherwise unworkable.

7. In talking with Mr. Carlstrom, I indicated our concern with the paragraph in question. Mr. Carlstrom said he understood our concern and asked how the paragraph might be amended to reflect our concerns. I indicated that the second sentence was particularly bothersome since in making explicit reference to the State Department as an anomoly it implicitly groups thereunder all Government agencies which conduct their

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own background investigations, to include CIA. It was agreed to delete the second sentence of the paragraph in toto. In so doing no reference, either explicit or implicit, to any Government agencies will remain. The paragraph, devoid of the second sentence, merely raises the issue of wherein lies the Bureau's authority to conduct the background investigations it conducts and states Attorney General Bell's preference to have such authority clearly spelled out in statute; in such a way implicit reference to the CIA is avoided. Mr. Carlstrom indicated that he would contact the Department of Justice so that the Attorney General's prepared statement could be amended subject to our agreements.

8. I closed by reiterating that there was nothing else in the testimony that warranted our comments.

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