OGC 75-3313

11 September 1975

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Responsibilities of the Director of Central Intelligence

1. The question posed is what are the responsibilities of the Director with respect to giving classified testimony to a congressional committee in executive session when there are indications that such testimony would be publicly released. It is assumed that no opportunity would be afforded the Director to sanitize and delete the classified information before public disclosure. The Director is charged by law with the protection of intelligence sources and methods from unauthorized disclosure. It would appear that the Director would be derelict in his responsibilities under that law if he were to proceed to give the classified testimony containing sensitive intelligence sources and methods if he were on notice that it would be publicly disclosed either by the committee or by any individual member of the committee. Furthermore, Executive Order 11652 prescribes procedures for safeguarding classified information from public disclosure. Again, I believe the Director would be acting irresponsibly in the face of E.O. 11652 to give testimony in executive session when he had reason to believe that it would be publicly disclosed. Also, in my opinion the Director would not be subject to legal action even if he were under subpoena in such a situation. The matter clearly becomes a political question.

2. Depending upon the rules of the particular committee concerned, there might be required a vote of the full committee to release publicly. In any event, an individual member could release it within the Congress with impunity under the law because of the immunity clause in the Constitution. It is possible that there may be disciplinary aspects under either the Senate or the House rules or the committee rules, but the member would not be subject to any criminal action.

STAT

[redacted]

JOHN S. WARNER
General Counsel

cc: DDO
DDI
DDA
DDS&T
D/DCI/NIO
D/DCI/IC

Approved For Release 2006/10/20 : CIA-RDP78B02992A000100040017-5

9/8/75

Executive Registry
75-8386

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

6 SEP 1975

Honorable Edward H. Levi
Attorney General
Department of Justice
Washington, D. C. 20530

Dear Mr. Levi:

A number of civil actions have been filed in various Federal courts naming CIA employees and former employees as defendants. In these cases plaintiffs claim damages arising out of actions allegedly taken by the individual defendants in the course of their official duties. Recently the Department has refused requests by some former employees for representation in civil actions on the grounds that on-going investigations of certain CIA activities by the Criminal Division create a potential conflict of interest.

This refusal to represent former employees is particularly disturbing in the Rhode Island case -- Rodney Driver, et al. v. Richard Helms, et al. (U.S.D.C.D.R.I. Civil No. 750224). The problem here is that there are [redacted] former Agency employees and [redacted] current Agency employees listed as defendants being sued in their official and personal capacities. Specifically, the former employees have been served with summonses which require an answer to be filed within 20 days. This time for an answer would be proper if they were sued only in their personal capacities. However, there would be a 60-day period for an answer if they were sued in their official capacities. These former employees have requested representation in their personal and official capacities and have been refused by the Department of Justice due to a pending investigation of the CIA mail intercept program. If they do not engage private counsel, the court may enter default judgments against them in their personal capacities. At this stage in the proceedings, there appear to be valid defenses available to them such as the jurisdiction of the Rhode Island Court. If the former employees are required to engage private counsel for these procedural actions, they will have assumed an unwarranted expense.

STAT STAT

I am distressed by the difficult position of our employees and former employees because of the Department's refusal to give them any representation or counsel in civil matters arising out of their official duties until the ultimate resolution of the investigations by your Criminal Division. These individuals enjoy not only a presumption of innocence, but a presumption that whatever acts they performed were in the normal course of their duties and under proper orders from their superiors. The Department's position places an unwarranted financial burden on a great number of Government employees and former employees, most of whom cannot afford to retain private counsel. To me it seems unconscionable for the Government to permit a civil action to proceed to the point where a judgment may be obtained against a Government employee or former employee simply because it has not completed its own criminal investigation. In view of the statutory responsibilities which you have under 28 U.S.C. 516, I would appreciate your answers to the following questions:

1. If the Department of Justice cannot provide counsel to employees or former employees, will you retain private counsel to defend them?

2. Until the Department of Justice (Criminal Division) recommends the indictment of the employee or former employee being sued, may the Department of Justice (Civil Division) defend that individual?

3. If the Department of Justice refuses to defend Government employees or former Government employees, can you delegate to me the authority to hire private counsel for them?

4. Are you aware of any statute which precludes my using appropriated funds to retain private counsel for present or former Government employees?

The attorneys in the Civil Division have advised my attorneys that these problems will continue as long as the Department is investigating CIA activities which might be related to civil suits filed against present or former employees.

I would appreciate your earliest response to this problem since the time for some of these answers expires on 20 September.

Sincerely,

W. E. Colby
Director

STAT

CC: [redacted]

SEC. CL.	ORIGIN	CONTROL NO.
Un	OGC	NIO#2039-75

DATE OF DOC	DATE REC'D	DATE OUT	SUSPENSE DATE	CROSS REFERENCE OR POINT OF FILING
11 Sept 75	12 Sept	75		

TO DCI
FROM John S. Warner
SUBJ. Responsibilities of the DCI
OGC 75-3313

1 - Senate Select

ROUTING	DATE SENT
D/NIO	

COURIER NO.	ANSWERED	NO REPLY

1