

Executive Registry
76-893

11 February 1976

MEMORANDUM FOR: Mr. Mike Duval

Attached is a first rough-cut at the message you are working on. I realize many of the critical decisions have not yet been made; therefore, the language I have given you may turn out to be wildly inappropriate. If so, I'll be glad to give it another go.

I am also sending along another Washington quote which we have used in the past...thought you might like a choice.

Please let me know if there is anything else I can do.



Office of
the Assistant to the Director

Atts.

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RC file # I-23.1
Ex Order

To the Congress of the United States:

By virtue of the authority vested in me as President pursuant to Article II, Sections 2 and 3 of the Constitution, I have today issued an Executive Order pertaining to the organization and control of the United States foreign intelligence community. This order establishes clear lines of accountability for the nation's foreign intelligence agencies. It sets forth strict guidelines to control the activities of these agencies and specifies as well those activities in which they shall not engage.

In carrying out my Constitutional responsibilities to manage and conduct foreign policy, I believe it essential to have the best possible information about the capabilities, intentions, and activities of other governments. To this end, the foreign intelligence agencies of the United States play a vital role in collecting and analyzing information related to the national defense and foreign policy.

It is equally as important that the methods these agencies employ to collect such information for the legitimate needs of the Government conform to the standards set out in the Constitution to preserve and respect the privacy and civil liberties of American citizens.

The Executive Order I have issued today will ensure a proper balancing of these interests. It establishes a government-wide direction for the foreign intelligence agencies and places responsibility and accountability on

I believe it will eliminate abuses and questionable activities on the part of the foreign intelligence agencies while at the same time permitting them to get on with their vital work of gathering and assessing information. It is also my hope that these steps will help to restore public confidence in these agencies and encourage our citizens to appreciate the valuable contribution they make to our national security.

Beyond the steps I have taken in the Executive Order, I also believe there is a clear need for some specific legislative actions. I am submitting herewith to the Congress of the United States three measures which will go far toward bettering the protection of true intelligence secrets as well as establishing clear guidelines for the foreign intelligence agencies.

My first proposal deals with the protection of intelligence sources and methods. The Director of Central Intelligence is charged, under the National Security Act of 1947, as amended, with protecting intelligence sources and methods. The Act, however, gives the Director no authorities commensurate with this responsibility.

Therefore, I am proposing legislation to impose criminal and civil sanctions on those who are authorized access to intelligence secrets and who willfully and wrongfully reveal this information. This legislation is not

an Official Secrets Act. It would affect only those who improperly disclose secrets, not those to whom secrets are disclosed. Moreover, this legislation could not be used to cover up abuses and improprieties. It would in no way prevent people from reporting questionable activities to appropriate authorities in the Executive and Legislative branches of the government.

It is essential, however, that the irresponsible and dangerous exposure of our nation's intelligence secrets be stopped. The American people have long accepted the principles of confidentiality and secrecy in many dealings -- with doctors, lawyers, and with respect to many tax, banking, and business matters. I believe we must extend this same protection to our intelligence secrets. Openness is a hallmark of our democratic society, but the American people have never believed that it was necessary to reveal to them the secret war plans of the Department of Defense, and I do not think they wish to have true intelligence secrets revealed either.

I urge the adoption of this legislation with all possible speed.

In addition, I am supporting two proposals that would

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clarify and set limits on the activities of the foreign intelligence agencies.

With respect to prohibitions on assassination of foreign officials, I support the objectives of the bill proposed and discussed in the assassination report of the Senate Select Committee on Intelligence Activities. That bill would make it unlawful to assassinate or attempt or conspire to assassinate a foreign official.

The law now permits the opening of United States mail, under proper judicial safeguards, in the conduct of criminal investigations. I will recommend legislation to extend this authority to open the mail under the same limitations and safeguards in order to obtain vitally needed foreign intelligence information. As is now the case in criminal investigations, those seeking authority to examine mail for foreign intelligence purposes will have to convince a Federal judge of the necessity to do so and accept the limitations upon their authorization to examine the mail provided in the order of the court.

I would also like to share with the Congress my views regarding appropriate Congressional oversight of the foreign intelligence agencies. It is clearly the business of each House to organize itself to deal with these matters. Certain principles, however, should be recognized by both the Executive and Legislative branches if this oversight is to be effective. I believe good Congressional oversight is essential so that the Congress and the American people whom you represent can be assured that the foreign intelligence agencies are adhering to the law in all of their activities.

First, the Committee or Committees of Congress charged with overseeing the foreign intelligence agencies should have exclusivity of jurisdiction. The present fragmentation, in each house, of the oversight function has proved largely unworkable. A joint committee or one committee in each house charged with exclusive oversight jurisdiction would enhance the secure holding of intelligence secrets and improve coordination between the two houses and between the Legislative and Executive Branches.

Second, each house should enact appropriate criminal and civil sanctions to ensure that those of its employees who are entrusted with secrets as an aspect of their employment maintain those secrets. In addition, Congress

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should also ensure that appropriate sanctions will be applied against Members of Congress who improperly disclose secrets.

In addition, a statutory procedure should be enacted to ensure that secrets disclosed to the Congress are not unilaterally disclosed by individual Members of the oversight committees. Where the President certifies that the disclosure of a particular secret would be detrimental to the national interest, and the Congress considers disclosure imperative, the final decision should be left to the courts.

Lastly, successful and effective Congressional oversight of the foreign intelligence agencies depends on mutual trust between the Congress and Executive. Each branch must recognize and respect the rights and prerogatives of the other if anything is to be achieved.

In this context, a general Congressional requirement to keep the oversight committees "fully and currently" informed is more desirable and workable as a practical matter than formal requirements for prior notification. Specifically, Section 662 of the Foreign Assistance Act, should be repealed. This step was urged by the Commission on the Organization of the Government for the Conduct of Foreign Policy chaired by Ambassador Robert Murphy. I urge the Congress to adopt this recommendation promptly.

Both the Congress and the Executive Branch recognize the importance to this Nation of a strong intelligence service. I believe it urgent that we take the steps I have outlined above to ensure that America not only has the best foreign intelligence service in the world, but also the most unique -- one responsive to and controlled by the democratic principles we have all sworn to uphold and defend.

To Elias Dayton, an intelligence officer in New Jersey, Washington wrote on July 26, 1777: "The necessity of procuring good intelligence is apparent & need not be further urged--all that remains for me to add is that you keep the whole matter as secret as possible. For upon Secrecy, Success depends in most Enterprises of the kind, and for want of it, they are generally defeated, however well planned and promising a favourable issue."

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