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**OA/ID Number:** 25891
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Moore Trial, 4/21-4/22 [1977]

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From the desk of
GEORGE BUSH

Tom Crowe telephone number

314 725 8788

CIA will pick GB up at
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7:57 AM —

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

351-6111

14 April 1977

Honorable George Bush
1079 Houston Club Building
Houston, Texas 77002

Dear Mr. Bush:

Tony Lapham has asked that I respond to the questions you raised in your letter of April 6. I trust the following information will be of assistance.

Under what legislation does the DCI get his power? When was CIA founded? The Central Intelligence Agency was created on July 26, 1947, by Section 102(a) of the National Security Act of 1947. 50 U.S.C. 403(a) That Section also ~~created the position of Director~~ of Central Intelligence as the head of CIA. The DCI draws from the National Security Act of 1947, as amended, the authority to terminate employees in the national interest, Section 102(c); to protect intelligence sources and methods from unauthorized disclosure, Section 102(d)(3); to inspect and centralize the production of national intelligence, Section 102(e); and to appoint advisory committees to assist the DCI, Section 303(a). The Central Intelligence Agency Act of 1949, enacted June 20, 1949, granted the DCI's administrative authorities and housekeeping authorities, such as procurement, Section 3(a); and reimbursement, assignment and medical care of employees, Section 4; and to certify to the expenditure of funds for objects of a confidential nature, Section 8(b). In addition, the CIA Act of 1949 empowers the DCI to assist in the entry of an alien into the United States when in the interests of national security, Section 6. Although not legislation, strictly speaking, Executive Order 11905, effective February 18, 1976, vests additional responsibilities in the DCI to, among other things, act as executive head of CIA and the Intelligence Community Staff, develop a National Foreign Intelligence Program budget, act as the President's primary foreign intelligence advisor, supervise the national intelligence program, ensure the propriety of Intelligence Community activities and the protection of intelligence sources and methods, ensure the establishment of common Intelligence Community security standards, and act as principal Intelligence Community spokesman to the Congress, Section 3(d).

Are the two jobs, DCI and Head of CIA, necessarily joined? Could the President make the head of CIA a separate job from DCI? Section 102(a) of the National Security Act of 1949 provides, "There is established under the National Security Council a Central Intelligence Agency with a Director of Central Intelligence who shall be the head thereof." Thus, the positions are joined by statute and proper separation of the two would require a statutory revision by the Congress. Of course the President could supercede Executive Order 11905, which confirms the joinder of the positions, by an Order or Orders drafted so as to have the effect of separating the responsibilities of the two jobs.

What is the membership of the NSC? Is this by statute? Is [the] DCI a full member? The National Security Council, as established by Section 101 of the National Security Act of 1947, as amended, includes the President, the Vice-President, the Secretary of State, and the Secretary of Defense. (Historically, the DCI has attended NSC meetings as its intelligence advisor.) In addition, other senior officials, including the Secretary of the Treasury, the Attorney General, the U.S. Representative to the U.N., the Director of OMB, the Assistant to the President for National Security Affairs, the Chairman of the Council of Economic Advisors, the Director of the Arms Control and Disarmament Agency, the Chairman of the Joint Chiefs of Staff, and the Administrator of the Energy Research and Development Administration, attend NSC meetings as appropriate.

What is the authority for withholding the names of CIA employees from the public? Section 6 of the Central Intelligence Act of 1949, 50 U.S.C. 403g, provides, in pertinent part,

> In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of [the National Security Act] that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of ... any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency: ...

[On] the Directory - who is in it? Who is not in it? Why is it classified? Who classifies it? The damage assessment which Steve Hunt and I left with the Houston office contains a great deal of information regarding the employees named in the portion of the January 1973 directory which is involved in this case. In addition, the use to which a foreign intelligence service could put the information in the directory, and hence the basis for its classification, also is described in some detail in that damage assessment. The directory generally includes the names of overt, non-DDO Agency employees stationed at CIA facilities in the D.C. area at the time of its publication. These employees subsequently may be placed under cover, be assigned overseas, or become part of the DDO. The particular directory in question was properly classified by John Kreuge, Chief of the Office of Logistics, after consultation with Robert Gambino, the present Director of Security, then a Deputy Director of the Office of Security. The current directory is classified by the Office of Communications which currently publishes the directory.

What employees are free to admit they work for CIA? Who decides this? If a person is known to work for CIA why should this information be withheld from the press? The Office of Security briefs new Agency employees who are overt to the effect that they are free to admit and should acknowledge the fact of their employment at CIA, although this information should not be volunteered. The particular office which employs each employee determines whether that individual should be provided with cover depending upon the current or future assignments and duties for which the office intends to utilize the employee. The Central Cover Staff then devises and assigns a suitable cover to the employee. Again, the damage assessment we left with the Houston office analyzes the uses of the information in the directory to a foreign intelligence service. Although lists of alleged CIA employees have been published by various entities, until such time as Agency employment is confirmed a level of uncertainty remains as to each named individual. Confirmation by the Agency, as by official statements to the press, would remove that uncertainty and expose the individuals to the various forms of exploitation recited in the damage assessment. In our open society, information published in the press must be presumed to be available to a foreign intelligence service.

I would be happy to respond further to these or any additional questions you may have.

Sincerely,

A. R. Cinquegrana
Office of General Counsel

Central Intelligence Agency

Washington, D.C. 20505

APR 11 1977

M Moore Trial File

5 April 1977

Honorable George Bush
1079 Houston Club Building
Houston, Texas 77002

Dear Mr. Bush:

It was a pleasure to meet with you on 28 March in your offices. The session was a fruitful one and it is apparent your testimony will be an invaluable part of the prosecution.

In terms of the questions addressed to you by the U.S. Attorneys regarding each of the documents and the value of those materials to the Soviets, you should find helpful the copies of the documents and the damage assessments we left with the Houston office. The China Trip Report and the ELINT Class Notes will not be part of the prosecution and you need not concern yourself with those documents or the attendant damage assessments. I will be happy to address any further questions which you may have after reviewing the remaining documents.

As far as the testimony which the U.S. Attorneys would like you to furnish regarding the duties and responsibilities of the Director of Central Intelligence to protect classified information and information concerning intelligence sources and methods, I trust the following, which I have adapted from a Tony Lapham memorandum, will be useful.

The authority and responsibility regarding the protection of classified information largely derives from Executive Order 11652 (1972) and the National Security Council Directive of May 1972 implementing that Order. In this area the Director's obligations and powers are essentially the same as those of other agency heads. Additional authority and responsibility specifically provided the Director of Central Intelligence is contained in Executive Order 11905 (1976), a copy of which is enclosed for your use. (Note, especially, Section 3(d).) In the area of intelligence sources and methods information, the Director's authority and responsibility derive from Section 102(d)(3) of the National Security Act of 1947 which provides that the Director "shall be responsible for protecting intelligence and sources and methods from unauthorized disclosure," from National Security Council Intelligence Directives issued pursuant to that Act, and from Section 3(d)(vii) of Executive Order 11905. Section 6 of the CIA Act of 1949, in order further to implement the sources and methods proviso of the National Security Act, exempts the Agency from the provisions of any law requiring the disclosure of the organization, functions, names, titles, salaries, or number of Agency personnel. In addition, the CIA Act provides for special procedures for CIA funding and expenditures. It also specifically authorizes the CIA to expend funds on the certification of the Director and provides for the transfer of funds to or from the Agency without regard to any provisions of other laws. Sections 5(a) and 8.

Classified Information. The term "classified information" of course refers to information classified on the basis of its significance to national security. Classified information is not well defined in the Executive Orders creating the classification system, and the intelligence sources and methods information is not defined at all in the National Security Act proviso making the Director responsible for its protection, or elsewhere for that matter. Executive Order 11652 requires that information the disclosure of which "could reasonably be expected to cause damage to national security" is to be classified at TOP SECRET, SECRET, or CONFIDENTIAL, "depending upon the degree of its significance to national security." The Order contains examples of the TOP SECRET ("exceptionally grave damage") category and the SECRET ("serious damage") category. Examples of exceptionally grave damage include "armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security." Examples of serious damage include "disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; and compromise of significant scientific or technological developments relating to national security." Heads of certain agencies and departments are authorized to classify information at each of these three levels and they may delegate to certain subordinates the authority to classify at one or more of the three classification levels.

The protection required for classified information is prescribed by the May 1972 National Security Council Directive which implements Executive Order 11652. That directive establishes the three basic rules concerning access to classified information and requires certain protection for storing and transmitting such information. The need-to-know rule requires that classified information may be made available only to persons who have a need for access "to the particular classified information or material sought in connection with the performance of his official duties or contractual obligations." No one, including persons who have a need-to-know, may be given access until he has been security cleared under the standards of Executive Order 10450, in effect a determination as to trustworthiness of the individual. And, under the third-agency rule, except as provided in the National Security Act of 1947, classified information originating in one department is not to be disseminated outside any other department to which it has been made available, "without the consent of the originating Department."

Agency heads are required by Executive Order 11652 to issue implementing regulations and of course the head of an agency has general responsibility for implementing and administering the requirements of the Order. In addition, departments may impose "special requirements with respect to access, distribution and protection of classified information and material, including those which presently relate to communications intelligence, intelligence sources and methods and cryptography." This provision of the Executive Order is the basis for the compartmentation systems used by intelligence community and other agencies. Additionally, the head of each department "is directed to take prompt and stringent administrative action against any officer or employee of the United States, at any level of employment, determined to have been responsible for any release or disclosure of national security information or material in a manner not authorized by or under this order or a directive of the President issued through the National Security Council."

Sources and Methods Information. As mentioned, a provision of the National Security Act provides that "the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure." This language has been read to authorize, if not require, the Director to take action for the protection of such information by agencies other than CIA. For example, a National Security Council Directive requires the Director to develop and review security standards and practices as they relate to the protection of intelligence sources and methods from unauthorized disclosure. Also, he is to "establish procedures for review by intelligence authorities of all classified intelligence information contemplated, proposed or prepared for release to the public or for use or disclosure in other unclassified activities in the course of which there is danger that intelligence sources and methods might be revealed." As you know, these provisions are implemented by Director of Central Intelligence Directives which are applicable throughout the intelligence community agencies and set minimum security standards for employees of those agencies and all other persons to whom sensitive compartmented intelligence information is to be made available. They provide for appropriate investigations in order to accomplish the necessary security clearances for these people. They provide guidance and procedures for protecting intelligence information disseminated within an agency or to other agencies. And they provide security guidance for contacting and cooperating with intelligence services of other governments. One of these DCIDs establishes a Security Committee composed of members of the intelligence agencies and prescribes its charter.

Section 3(d) of Executive Order 11905, which prescribes the duties of the Director of Central Intelligence, provides that he shall ensure "that appropriate programs are developed which properly protect intelligence sources, methods and analytical procedures," and further ensure "the establishment, by the Intelligence Community, of common security standards for managing and handling foreign intelligence systems, information and products, and for granting access thereto." As to the first of these mandates, Section 3(d) also provides guidance, in the form of restrictions, relating to the exercise of the Director's responsibility within the United States. In addition, Section 7 of the Order provides for secrecy agreements to be signed by all members of the executive branch and its contractors who are given access to information containing sources or methods of intelligence. In the event of an unauthorized disclosure of sources or methods of intelligence, the names of those responsible are to be forwarded to the agency head for disciplinary action and to the Attorney General for appropriate legal action. Further, threats of unauthorized disclosure are to be transmitted to the Attorney General for appropriate legal action "including the seeking of a judicial order to prevent such disclosure." And the Director of Central Intelligence "is authorized to promulgate rules and regulations to expand the scope of agreements secured from those persons who, as an aspect of their relationship with the United States Government, have access to classified intelligence material."

The statutory authority of the Director to protect sources and methods has been tested in the courts in numerous instances in recent years. In every instance in which the issue was raised, with one possible exception (Weissman v. CIA, D.C. Cir., decided January 6, 1977), the courts have held that the action taken by the Director to protect sources and methods was lawful. In addition to the case law to the effect that 50 U.S.C. 403(d)(3) (the National Security Act) and 50 U.S.C. 403g (the CIA Act) provide authority for withholding information from public disclosure, regardless of other laws, there is a small, but nonetheless important, body of case law that addresses itself to the Director's authorities to take certain other measures in furtherance of his responsibilities to protect classified information and intelligence sources and methods. The most significant of these cases in Knopf v. Colby in which the 4th Circuit Court of Appeals held that, if an individual has entered into a secrecy agreement with the CIA, as has Mr. Moore, such individual can be prevented, by means of prior judicial restraint, from publishing classified information; and that the First Amendment is no bar to such prior restraint. Specifically, the court stated:

> We decline to modify our previous holding that the First Amendment is no bar against an injunction forbidding the disclosure of classifiable information within the

guidelines of the Executive Orders when (1) the classified information was acquired, during the course of his employment, by an employee of a United States agency or department in which such information is handled and (2) its disclosure would violate a solemn agreement made by the employee at the commencement of his employment. With respect to such information, by his execution of the secrecy agreement and his entry into the confidential employment relationship, he effectively relinquished his First Amendment rights.

I will be pleased to respond to any further questions this summary may raise and look forward to seeing you again in the near future in Baltimore.

Sincerely,

A. R. Cinquegrana
Office of General Counsel

federal register

THURSDAY, FEBRUARY 19, 1976

PART III:

# THE PRESIDENT

# UNITED STATES FOREIGN INTELLIGENCE ACTIVITIES

Executive Order 11905

# Title 3—The President

Executive Order 11905 February 18, 1976

## United States Foreign Intelligence Activities

By virtue of the authority vested in me by the Constitution and statutes of the United States, including the National Security Act of 1947, as amended, and as President of the United States of America, it is hereby ordered as follows:

TABLE OF CONTENTS

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(Revised as of October 1, 1975)

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Moore Trial

April 21-22

put these in it

also my letter

to Lapham.

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<u>File</u>

<u>Moore</u> Trial

<u>Tony</u> Lapham – 2 <u>20</u> 4-11

1. Legisl NSAct – 47 act

2. DCI – Head CIA –
yes are inextricably
statute says <u>both</u>

3. NSC – Nat'l Sec Act
Pres VP Sec St Def

<u>DCI</u> = ~~not~~ statutory member

4. Sec 6 CIA Act '49

5. Directory

SET UP FILE: "Moore Trial"

April 6th

Dear Tony,

Yesterday I had a one hour chat with Tom Crowe.

Here are some questions that I need answers to pretty soon. I will e leaving here on the 20th to come East.

1. Under what legislation does the DCI get his power?When was CIA founded?
2. Are the two jobs, DCI and Head of CIA, necessarily joined? Could the President make the head of CIA a separate job from DCI ?
3. What is the membership of the NSC? Is this by statute? Is DCI a full member?
4. What is the authority for withholding the names of CIA employees from the public?
5. One the DIRECTORY- who is in it? who is not in tt? Why is it classified? Who classifies it?
6. What employees are free to admit they work for CIA? Who decides this? If a person is known to work for CIA why should this information be withheld from the press?

I would appreciate someone sending me this information directly or through our local DCD office.

Many Thanks,

Office of General Counsel
C.I.A.