

24 APR 1974

The Honorable William B. Saxbe
Attorney General
Department of Justice
Washington, D. C. 20530

Dear Mr. Saxbe:

On 5 April 1974 Assistant Attorney General W. Vincent Rakestraw sent to the Office of Management and Budget the Department's recommendation against submission to Congress of legislation proposed by this Agency to amend the National Security Act of 1947 to furnish additional protection for intelligence information. When I wrote to you on 22 January in connection with my submission of proposed legislation to OMB, I noted that serious damage had been done to our foreign intelligence effort as a result of unauthorized disclosure of information relating to intelligence sources and methods, and that my goal was to provide a deterrent to such disclosure and a means for successful prosecution of violators. The lack of sanctions or implementing authority to support my statutory responsibility for the protection of intelligence sources and methods is a serious problem, and I fear will become more serious in the future. While I respect your reasons for recommending against this proposed legislation, I cannot agree with all of them and still feel strongly that some legislation of this kind is needed.

Your basic reason for opposing the creation of a new criminal offense is that the subject matter is already substantially protected by existing law. My basic reason for seeking this legislation is that our experience shows the opposite; namely, that existing law is inadequate for the protection of intelligence sources and methods from unauthorized disclosure. As Mr. Rakestraw notes in his comments to OMB, a successful prosecution under the existing

statutes most likely to cover an offense of this kind would probably require self-defeating public disclosures in proving the relationship of the information to the national defense. The alternative, as Mr. Rakestraw notes, is abstention from prosecution. To my mind this is hardly adequate statutory protection.

Contrary to the Department's impression that CIA seeks harsher penalties against a larger class of persons than provided for by existing law, what we seek here is an appropriate penalty against a limited class of persons; namely, those who have had access to information relating to intelligence sources and methods as a result of employment by, or other privity of relationship to, the Government. In this connection subdivision (3) is designed to ensure that persons not in this limited class, such as newsmen, could not be prosecuted under the statute or even for a collateral offense arising out of a violation of the statute.

The Department questions the utility of subdivision (6) which would provide statutory authority to seek an injunction to forestall violations. Your question of the need for this section is based partly upon our success in getting an injunction against a former employee (U.S. v. Marchetti) and upon other case-precedents which indicate that an injunction might be granted in an appropriate case regardless of the existence of a statutory provision. This might be so, but I think the authority would be more certain and compelling if contained in a statute for the specific purpose of protecting intelligence sources and methods.

While I agree with your conclusion that this proposal may arouse stiff opposition and realize that it must be carefully drafted to avoid constitutional questions, I do not think these are adequate reasons to forgo the submission of the proposed legislation. Neither can I agree that its enactment would have only a marginal protective effect or that some of its objectives are of doubtful validity. I consider protection of intelligence sources and methods to be a critical problem that is inadequately covered by existing law, and feel that with the cooperation of the Department we can present a bill that should meet our objectives without transgressing constitutional limitations. My General Counsel, Mr. John S. Warner, has

discussed the Department's objections in general terms with Mr. Henry Petersen, who has expressed his willingness to work with us toward what the Department would consider an improved bill. I appreciate your cooperation in this effort, and hope that you will be able to give us support for the kind of legislation which I feel we must have if we are to continue a totally effective foreign intelligence effort.

Sincerely,

/s/ W. E. Colby

W. E. Colby
Director

cc: The Honorable Roy L. Ash
Director, Office of Management
and Budget