



Washington, D.C. 20530

July 24, 1986

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Authority NND 30130
By AL NARA Date 11/13/09

MEMORANDUM

TO: Stephen S. Trott
Assistant Attorney General
Criminal Division

FROM: Americo R. Cinquegrana
Chairman
Department Review Committee

RE: Wilkinson State Secrets Claim

I believe two points in Richard Willard's July 18, 1986 memorandum to you require response.

Page 1 states that "[n]otwithstanding the decisions of the Attorney General, the DRC continued to apply the declassification criteria established in prior DRC precedents." This statement is highly misleading and, insofar as it implies that the DRC purposefully ignored Attorney General directions, is simply not true. As I have explained to Civil Division representatives on numerous occasions, such statements serve merely to obscure the actual basis for the dilemma the Department and the FBI have had to confront in this matter. The DRC was assured by the Civil Division at the time the NLG state secrets claim was under consideration that such claims were not coextensive with the classification system. Thus, there was no inconsistency between the continued application of the DRC classification policies in other contexts and the existence of the Attorney General's claim, nor was any DRC action contrary to the Attorney General's decision. Only subsequently, after the FBI decided on its own initiative to go beyond DRC precedents and Civil realized that its litigation position would be affected, did Civil alter its previous advice to the DRC and pronounce that these claims and DOJ classification policies must be consistent.

Page 2, footnote 1, questions the relevancy of DRC precedents in light of changes made by President Reagan in 1982 to the Carter Executive order regarding the classification system. This is mere obfuscation since the DRC precedent in question traces back to 1976 and the basic standard for classification i.e., whether the unauthorized disclosure of information will cause damage to the national security, has not been substantively changed since an order signed by President Nixon in 1972. Under 28 CFR 17.148, the DRC has primary responsibility for resolving "all issues concerning implementation and administration" of the classification system in the Department. Obviously, the DRC reports to the Attorney General and adheres to his determinations. The DRC precedents were, in fact, based on Attorney General decisions. Thus, to question their relevancy is to ignore the fact that the DRC establishes the DOJ classification policies that are supposed to guide litigation decisions by the Civil Division, not vice-versa.

The Civil Division memorandum, like its progenitors, reads like a trial brief. Another quality it shares with its predecessors is the fact that unfortunately ~~it obscures the basic issue of whether the information in question should be classified because its release would cause damage to the national security.~~ It is true that there can be reasonable differences on that score. As stated in my earlier memorandum, however, for the past ten years the answer to that question, based on careful consideration by Attorneys General and large numbers of senior DOJ and FBI officials and classification experts, has been "no". Any change in that policy should be based on reasoned consideration of the relevant facts and standards, not misapplication of responsibility or semantic agility.

cc: Richard K. Willard
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