

Washington, D.C. 20530

July 16, 1986

## MEMORANDUM

TO: Stephen S. Trott  
Assistant Attorney General  
Criminal Division

FROM: Americo E. Cinquegrana  
Chairman  
Department Review Committee

SUBJ: CPUSA Classification Policy

Rosemary Hart's July 8, 1986 memorandum offered an opportunity to comment upon a June 25, 1986 FBI memorandum concerning implementation of the Attorney General's May 1986 decision to reaffirm the state secrets privilege claim in Wilkinson v. FBI. The policy advocated by the FBI, and preferred by the Civil Division, is to extend that claim beyond the confines of the Wilkinson case and to "henceforth classify all sources and methods utilized in the CPUSA investigation and the information they provided, regardless of age or substance," with certain limited exceptions.

You and the Attorney General should be aware that this proposal is inconsistent with Department Review Committee (DRC) classification policies that are based upon decisions of prior Attorneys General, the DRC and the FBI dating back to at least November 1976. Since a decision by the Attorney General to adopt the FBI proposal would alter these policies and control future classification decisions, the DRC agreed it was important that our view of the background and implications of this change be provided for your information.

For the past ten years, sources and methods utilized by the FBI in the CPUSA investigation prior to 1976 generally have been considered classifiable only if they were intended to provide information concerning foreign direction, control, funding, etc., of the CPUSA. Other FBI sources and methods utilized against the CPUSA before 1976 generally have been considered to correspond more appropriately to domestic

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security, law enforcement, or personnel security inquiries than to counterintelligence investigations. Thus, they have not been considered classifiable but may be withheld from FOIA or litigation release only on the basis of other exceptions or privileges. The same dichotomy does not exist as to FBI sources and methods directed at the CPUSA after 1976, and they are generally classifiable, because FBI activities since that time have been required by Attorney General investigative guidelines to focus exclusively on foreign involvement in CPUSA activities.

The FBI's CPUSA investigation was of long duration (it began in 1919), massive proportions (it involved thousands of sources and methods) and unlimited coverage (it embodied an interest in all CPUSA activities and members anywhere). While the incentive was the identification of foreign influence and foreign-instigated threats to our government, the result was millions of pages of information, much of which deals only with local political, social, or organizational activity with no remote connection to foreign direction, funding or control. As time passed and the nature of the FBI investigation changed, it became more and more difficult, ultimately in 1976 impossible, for Attorneys General, the DRC, and even the Bureau to conclude that the release of information pertaining to these matters would result in any damage to the national security interests of the United States, i.e., is classifiable. It has also become apparent since that time that the federal courts are not blind to these distinctions or to the diminished sensitivity that comes with age.

Implementing the Wilkinson claim in the manner suggested by the FBI will require that such material be classified since to do otherwise might expose to our adversaries the "scope and thrust" of the FBI's CPUSA investigation, thereby allowing damage assessments and future avoidance measures. This will mandate the withholding of all information relating to all CPUSA sources and methods in every case and every context. The danger is that federal judges reviewing portions of this material in other cases may not be similarly persuaded of its sensitivity and order its release. If that occurs, we are assured by the Civil Division that Attorney General state secrets claims will be lodged to prevent release in each case. Aside from the proliferation of such claims that this approach may spawn, there is the risk that a state secrets claim in this context will be disallowed and undermine the solid legal basis and credibility that has attached to such claims previously due to their selective invocation.

The DRC will, of course, implement the policy adopted by the Attorney General. Please let me know if you have further questions.

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By AL NARA Date 11/13/09