

THE WHITE HOUSE

WASHINGTON

October 10, 1989

MEMORANDUM FOR C. BOYDEN GRAY

FROM:

STEPHEN G. RADEMAKER *SR*

SUBJECT:

Talking Points for Lawyers' Meeting on Panama

Following your conversation with John Schmitz this morning, he suggested that we draft talking points for your use in this afternoon's meeting. The approach suggested in the talking points has been thoroughly discussed by Nelson, Lee and myself. They have reviewed the talking points and I have incorporated their suggestions.

Because Bill Barr has already begun work on the legal authorities outline, we recommend that you call him prior to the meeting to advise him of what you intend to say.

INTRODUCTION

- Last week's coup attempt in Panama revived concerns about the legal implications of steps that we could take to bring Noriega and other narcotics figures to justice.
- We cannot discuss the details of Panama or other possible or proposed operations in this meeting, and it is not necessary to discuss such details in order to reach the issues of concern to me. [NB--some persons present at the meeting may lack the proper security clearances to discuss particular operations.]
- Traditionally we have placed foreign operations into distinct categories, such as military action, covert action, or law enforcement, in which the objective sought defined the means employed, and there was general consensus about the applicable legal authorities and restrictions.
- Our problems with Noriega and the narcotics cartels have caused some blurring of these lines, resulting in confusion about the legal authorities and restrictions applicable to operations that we could undertake.
- I suspect, with no firsthand knowledge of what actually happened, that the Administration could have responded faster and with greater assurance to last week's coup attempt had there been more advance thinking by Administration lawyers about the legal issues raised by the coup, such as our authority to arrest Noriega.
- The coup attempt has also heightened my concern over the process by which this Administration takes decisions in this area where law enforcement, covert action, and military action come together.
- To my knowledge, there was little consultation by the decision makers with their lawyers as the coup unfolded.
- This is perhaps understandable in the crisis atmosphere surrounding the coup, but if repeated in future crises it could result in serious embarrassment to the Administration.
- Outside of crisis situations, for example in the area of operations targeting major drug traffickers, involvement of Administration lawyers is absolutely essential.
- I think we need to think about establishing a mechanism by which the lawyers of the concerned agencies are consulted and can consult with one another in connection with these kinds of foreign operations.

DISCUSSION

- Before discussing this idea further, I want to know whether you share my concerns.
 - Do you agree that more systematic study of the legal issues surrounding these kinds of foreign operations would be useful?
 - Do you feel that a mechanism for consultation among us in connection with such operations would be useful?

CONCLUSION

- Bill Barr is undertaking a systematic review of the legal issues raised by the various types of operations that we could undertake against major drug traffickers. It would be useful for the various agencies represented here to have input into this review.
- We will be examining the question of how we could improve consultation and coordination among us in connection with specific operations.