

RESOLUTION NO. 216170

JUN 9 1976

WHEREAS, the San Diego City Council has been made aware through the public media of alleged misconduct on the part of past and present City employees, possibly in violation of the civil rights of several citizens of San Diego; and

WHEREAS, such alleged misconduct, in part, has resulted in the filing of Lawsuit No. 75-4-7 in Federal District Court (Bohmer v. Nixon, et al.) alleging a violation of civil rights by numerous defendants, including several San Diego police officers; and

WHEREAS, The City of San Diego is obligated to respond in damages to any liability that may be determined to fall upon those officers for actions undertaken during the course and scope of their employment; and

WHEREAS, the City Council must authorize any money needed from the taxpaying public's treasury to meet such judgments as might be rendered against the City; and

WHEREAS, such alleged misconduct may indicate a pattern of Police Department practices, past and present, that represent unwritten, but actual, policies of the Police Department that tacitly condone the violation of the civil rights of certain individuals and which might expose the City to further future civil liability; and

WHEREAS, all policies of The City of San Diego should be reviewed and established by the City Council, the legislative body that is responsible for the public treasury and who

represents the citizens of San Diego; and

WHEREAS, the City Council has a need to know the actual practices and policies that govern the conduct of all City departments, including the intelligence operations of the Police Department, for the clear legislative purpose of prospective cure of such practices and policies that the City Council determines may not be in the best interest of the public and which may expose the City to further future civil liability; NOW, THEREFORE,

BE IT RESOLVED, that the City Council of The City of San Diego hereby establishes that it is in the best interest of the people of San Diego for the Council to proceed with an independent inquiry of the intelligence operations of the Police Department.

BE IT FURTHER RESOLVED, that the City Council reaffirms the "Guidelines for Conducting Police Intelligence Inquiry" adopted by the Council on March 24, 1976 (Exhibit A).

BE IT FURTHER RESOLVED, that the City Council hereby designates Mr. Coleman Conrad as a special attorney under the provisions of Charter Section 40 for the specific purpose of conducting an independent inquiry of his own, on behalf of the City Council, of the police intelligence operations and providing Council with legal advice and assistance and recommendations designed to cure any police intelligence practices and policies that might expose the City to civil liability.

BE IT FURTHER RESOLVED, that the City Council reaffirms

the methodology to be used by the special attorney for gathering necessary background information as recommended by the Rules Committee Consultant in his April 9, 1976 memorandum to Council entitled "Status Report on Inquiry into Police Intelligence Operations" (Exhibit B).

BE IT FURTHER RESOLVED, that the City Manager and Chief of Police are hereby directed to provide the special attorney with any assistance that the special attorney deems necessary to his conduct of a complete independent inquiry, on behalf of the City Council, including assistance in providing complete access to any and all written information contained in the files of the Police Department, within the limits of the law, and any testimonial information that can be gained from interviews of past and present employees of the intelligence operations of the Police Department.

BE IT FURTHER RESOLVED, that at the conclusion of his independent inquiry, the special attorney shall provide the Council with legal advice and assistance necessary to assist the Council in determining how to proceed with a public Council inquiry into police intelligence operations in a public forum, if the Council concludes at that time that such a public inquiry is necessary and in the best public interest.

APPROVED AS TO FORM ONLY AND  
NOT AS TO LEGALITY:

JOHN W. WITT, City Attorney

RST:rb  
REV. 6-10-76

By Robert S. Teaze  
Robert S. Teaze  
Assistant City Attorney

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The Council inquiry is for the purpose of ascertaining the past and present Police Department's policies with respect to intelligence operations and any contemplated changes of those policies. It is beyond the scope of the inquiry to determine the truth of individual charges of misconduct or redress individual grievances.

The following lines of inquiry are appropriate:

1. The kinds of information gathered and retained by the Investigative Support Unit of the Police Department.
2. The methods used to gather such information.
3. The manner in which such information is used by the Police Department.
4. The types of individuals and agencies who are permitted to have access to the information stored by the Investigative Support Unit.
5. The length of time the information is presently being retained by the Investigative Support Unit.

6. Responses of the Police Department to any of the above inquiries shall not be required to be made publicly where the publicity would compromise or jeopardize either a process or agent of the Department whether currently in progress or in prospect, where that contention, that is to say, the threat of compromise or jeopardizing any process or agent is made by the Department or by another law enforcement agency, the matter would be pursued in private, with the Special Attorney to the Committee of the Whole with the understanding that the Special Attorney shall not make public the specifics by identifying actual persons and places but shall make use of the specifics as a basis for legislative recommendations. In order to facilitate and expedite the inquiry, the Council hereby designates the Rules Committee Consultant as special assistant to the City Council for the purpose of assisting the Council in conducting inquiries into intelligence operations pursuant to Resolution No. 215233.

1. It shall be the responsibility of the Rules Committee Consultant to prepare a timetable for completion of the Council inquiry.
2. It shall be the responsibility of the Rules Committee Consultant to conduct interviews of City employees as may be necessary on behalf of the Council.

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3. It shall be his responsibility to obtain and, when necessary, to solicit, statements from any person with any information relevant to the Council's inquiry.

4. It shall be the responsibility of the Rules Committee Consultant to report in a timely manner to the Council the results of his investigation and inquiries; and to recommend, as seems appropriate, the scheduling of hearings relative to the Council's inquiry.

5. It shall be the responsibility of the Rules Committee Consultant to prepare, at the conclusion of his investigations and at the conclusion of Council deliberations, a final report, including recommendations for adoption of policies or procedures by the Council relative to intelligence operations.

6. The City Attorney, City Manager and all other department heads shall cooperate and lend whatever assistance reasonable and necessary to assist the Rules Committee Consultant.

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EXHIBIT A

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CITY OF SAN DIEGO  
MEMORANDUM

FILE NO.:

DATE : April 9, 1976  
TO : Honorable Mayor and Members of the City Council  
FROM : Coleman Conrad, Rules Committee Consultant  
SUBJECT: Status Report on Inquiry into Police Intelligence Operations

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BACKGROUND

On March 24, 1976 the City Council adopted "Guidelines for Conducting Inquiry into Police Intelligence Operations." As a part of those guidelines the Council designated the Rules Committee Consultant as special assistant to the City Council for the purpose of assisting the Council in conducting inquiries into intelligence operations pursuant to Resolution No. 215233.

It is my understanding that the intent of the City Council, in providing for a special assistant to assist them in this inquiry, was to charge the designated special assistant with the responsibility for conducting an independent inquiry for the purpose of ascertaining past and present policies with respect to intelligence operations in the Police Department. The special assistant will report his independent findings directly to the City Council at the direction of the Council.

Additionally, at the direction of the Council, the special assistant shall arrange for the appearance before the Council of members of the public who wish to testify on this matter.

PROPOSED METHODS FOR GATHERING DATA

It is my intention to use the following methods to gather necessary background data as part of this inquiry, if such methods are approved by Council:

- (1) Review City Manager and City Attorney reports on this matter.
- (2) Request Senator Frank Church, Chairman of the United States Select Committee on Intelligence, and appropriate federal and state agencies to provide any information that they might have relative to the past and present policies of the San Diego Police Department with respect to intelligence operations.
- (3) Interview past and present City employees who have knowledge of the past and present policies of the San Diego Police Department with respect to intelligence operations.

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- (4) Interview members of the public who wish to make voluntary statements relative to the past and present policies of the San Diego Police Department with respect to intelligence operations.
- (5) Personally examine the files of the Investigative Support Unit of the Police Department in order to ascertain the kinds of information gathered and retained by that Unit.

The adopted guidelines provide that the special assistant shall schedule hearings relative to the Council's inquiry. Accordingly, I have requested Mayor Wilson to call a Committee of the Whole meeting for Wednesday, April 14, 1976 at 2:00 p.m. in the Council Chambers for the purpose of discussing the inquiry into Police Intelligence Operations. This is the same date and time that Council established by adoption of Resolution No. 215355.

It is recommended that the agenda for the April 14, 1976 meeting consist of the following:

- (1) Report from the City Manager on the following lines of inquiry specified in the adopted guidelines.
  - a. The kinds of information gathered and retained by the Investigative Support Unit of the Police Department.
  - b. The methods used to gather such information.
  - c. The manner in which such information is used by the Police Department.
  - d. The types of individuals and agencies who are permitted to have access to the information stored by the Investigative Support Unit.
  - e. The length of time the information is presently being retained by the Investigative Support Unit.
- (2) Report from the special assistant on proposed methods for gathering necessary background data (as specified in this status report).

#### OBSERVATIONS AND RECOMMENDATIONS

It is apparent that there are many aspects of this inquiry that must be carefully considered by the Council. There is the need to conduct an inquiry that will be completely thorough. There is the need to ensure that the rights of all parties to the Bokner lawsuit are fully protected. There is the need to ensure that the rights of all individuals interviewed are fully protected. And, there is the need to ensure that the Council, special assistant and other employees of the City connected with this matter are proceeding in a lawful manner at each step of the inquiry.

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If I am to be effective in this assignment as a special assistant to the Council, it is my belief that I should be designated an additional attorney. It is, therefore, recommended that Council, by resolution, in accordance with Charter Section 40, designate me as an additional attorney for the specific purpose of assisting Council in this inquiry. Such a designation would provide, among other things, for a privileged attorney-client relationship to be established between the Council and myself. It would be clearly understood that City Attorney John W. Witt shall continue to be the chief legal advisor for the City in all matters, including this matter of an inquiry into Police Intelligence Operations.

By separate memorandum, I have requested City Attorney John W. Witt to provide a written legal opinion on the following:

1. Is it legal for the Council to designate me as an additional attorney for the specific purpose of assisting Council in this inquiry?
2. Assuming that such a designation is legal, what is the extent of the privilege that would result from this designation?
3. Is the City Manager prohibited from providing free access to the information contained in the files of the Investigative Support Unit of the Police Department to the Rules Committee Consultant acting as special assistant to the Council in conducting inquiries into intelligence operations pursuant to Resolution No. 215233?
4. If the City Manager is prohibited in some manner, please specify which files are not to be made available to the Rules Committee Consultant acting in his capacity as special assistant to the Council in conducting inquiries into intelligence operations pursuant to Resolution No. 215233.

Between now and April 14th I will continue to become familiar with the allegations of the Bohmer lawsuit and articles in the media concerning this matter. Aside from this, I will take no further action concerning this matter until Council gives me further direction on the 14th.

  
COLEMAN CONRAD

CC/lg

c.c. City Attorney John W. Witt  
City Manager Hugh McKinley

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Passed and adopted by the Council of The City of San Diego on JUN 9 1976,  
 by the following vote:

Councilmen	Yeas	Nays	Excused	Absent
Gil Johnson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maureen F. O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lee Hubbard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floyd L. Morrow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tom Gade	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Ellis	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jess D. Haro	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON  
 Mayor of The City of San Diego, California.

EDWARD NIELSEN  
 City Clerk of The City of San Diego, California.

By *Richard Martinez*, Deputy.

(Seal)

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Office of the City Clerk, San Diego, California	
Resolution Number	<b>216170</b> Adopted <b>JUN 9 1976</b>