

C. Grant

MEMORANDUM

JUN 10 1975

Out 6/10/75

TO: Leonard F. Chapman, Jr.
Commissioner, INS

Henry S. Dogin
Acting Administrator, DEA

Clarence M. Kelley
Director, FBI

Richard W. Velde
Administrator, LEAA

FROM: Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

SUBJECT: International Agreements by the Justice Department

On May 15 I testified before the Separation of Powers Subcommittee of the Senate Judiciary Committee on S. 632 and S. 1251 concerning executive agreements. A copy of my prepared statement is enclosed.

During the course of my testimony, questions were raised about Justice Department compliance with the Case Act, P.L. 92-403, 1 U.S.C. 112b (Supp. III, 1973) and about the extent to which the Department makes international arrangements which may not fall under the Case Act (see transcript pp. 377-380, attached).

The Case Act, which became law on August 22, 1972, provides as follows: "The Secretary of State shall transmit to the Congress the text of any international agreement, other than a treaty, to which the United States is a party as soon as practicable after such agreement has entered

into force with respect to the United States but in no event later than sixty days thereafter." Special provision is made for secret handling of matters whose disclosure would be prejudicial to national security. 1 U.S.C. 112b. As far as I am aware, this Department has not made any filings under the Case Act. I would appreciate confirmation of that fact insofar as your agency is concerned.

In order to comply with the other request made by the Senate Subcommittee, I would appreciate receiving a description of the kinds of international arrangements (not qualifying as "international agreements" under the Case Act) that you make, and an estimate of how many are made each year. For your guidance, I attach a copy of letter which we sent to the same Subcommittee on the occasion of similar hearings in 1972, listing five examples in the drug and immigration areas.

Finally, I ask that you keep the requirements of the Case Act in mind and promptly transmit material to the State Department (Assistant Legal Adviser for Treaty Affairs; 632-1074) as required by the Act so that it may be furnished to Congress. As a guide to your future compliance, I attach a letter written by the State Department in 1973 to executive agencies. You may also consider the following guidance found in the House Report:

"1. What constitutes an international agreement.--During committee hearings a State Department spokesman raised the question of what kind of arrangements constitute international executive agreements within the meaning of the legislation. He pointed out that many exchanges involve administrative working details for carrying out a treaty or agreement or are in the nature of commercial contracts relating to sales of equipment and commodities.

"Clearly the Congress does not want to be inundated with trivia. At the same time, it would wish to have transmitted all agreements of any significance." H. Rep. 92-1301.

Attachments (4)