

23 January 1946

MEMORANDUM

TO: General Magruder
FROM: Commander Donovan
SUBJECT: Presidential Directive Establishing NIA

Consideration of the Presidential Directive issued yesterday "with regard to the coordination of the foreign intelligence activities of the Federal government" has led me to send you a few comments, particularly with respect to questions which may arise in the immediate future in regard to interpretation of its provisions.

Paragraph 1

1. Under this paragraph the criterion of all NIA action must be whether it is necessary to the planning, development and coordination of "Federal foreign intelligence activities . . . so as to assure the most effective accomplishment of the intelligence mission related to the national security". Every proposal by the DCI to the Authority should be studied to make certain that it lies within, and is calculated to bear out, this mission. Every budget program should carefully point out its relation to the objective. The words are the basic authority of NIA.

2. Since the NIA consists of four members, with the DCI sitting as a non-voting member, a question may arise concerning a two-to-two division of opinion on an agenda. While the NIA could possibly provide for disposition of such matters by its internal rules of procedure (automatic rejection if a majority is not secured), almost all such questions would normally, I think, have to be referred to the President. Incidentally, while the DCI is a "non-voting member", I should think

23 January 1946

that the rules of NIA should provide that his opinion in all such matters should be recorded by the Secretary of the NIA (and thus transmitted to the President with the record).

While no chairman of NIA is named, governmental custom would dictate that the Secretary of State has the right to preside. It may be, however, that he will waive this privilege in favor of the "personal representative" of the President, especially if the latter is to be a full-time post (as it should properly be).

Paragraph 2

This paragraph indicates that the proper title of the new operating agency is the Central Intelligence Group (not the NIA) and all persons (including administrative, secretarial, clerical, etc.) assigned from the three Departments are members of that Group. It also indicates that the agency is to have no independent employment rights and that all employees are to be hired by one of the three Departments (which presumably would maintain all basic records) and then assigned over for duty with CIC. This looks like a breeding ground for red tape, lost motion and lack of security.

The further weakness of the paragraph is that the agency has no independent funds and is subject to the respective wishes of the three individual Secretaries. There is not even an express provision as to whether a NIA majority vote can direct a member thereof as to the particular contribution in "persons and facilities" which his Department is to make. This perhaps can be remedied by the internal rules of NIA.

The combination of the foregoing means that for all practical purposes the activities of CIC will be subject to the budget heads of the three Departments, since the agency is to subsist only on such funds as are made available to it "within the limits of available appropriations" of the respective Departments. Thereafter there will follow justification to the NIA, the Bureau of the Budget, the President and Congress.

This is a most undesirable situation and I would suggest that at an early meeting the NIA determine that CIC shall possess its own personnel and budget units. The budget unit should be authorized to prepare proper estimates of necessary appropriations for CIC and to deal directly with the Bureau of

23 January 1946

the Budget on the portions of such appropriations which should be properly allocated to the three Departments. This would appear to be the most that can be obtained if the CIC is not to have independent funds.

Under the present arrangement, it may well be that the agency is going to have to justify its existence on three separate occasions if separate sub-committees of the House Appropriations Committee consider the respective appropriations of the three Departments. This would be most inadvisable since the nature of our necessary appropriation language always attracts attention. This should be discussed with the Chairman of the House Appropriations Committee.

Paragraph 3

Since all powers of the DCI are made "subject to the existing law", this phrase assumes considerable importance. What law is meant? Does it include international law? Is the unit to be harrassed by other agencies refusing to cooperate upon the ground that to do so might constitute a violation of statutes and executive orders granting them complete authority in certain fields? One such aspect is squarely raised by Paragraph "2" of the present Directive, which compels Federal agencies to furnish information requested "pursuant to regulations of the NSA" only "within the scope of existing law and Presidential directives". It is doubtful how profitable it would be to undertake now a broad law search on the question because it would involve a consideration of almost the total structure of the Federal Government. All that can be done is to await the first refusal of cooperation based upon those grounds. If we meanwhile could ascertain from the drafters of the Directive what they had in mind, it might be helpful.

Under Paragraphs "3a", "3b" and even "3d" (the omnibus provision) the only intelligence which the CIC is entitled to collect is that relating to or affecting "the national security". This applies to the DCI the limitation in Paragraph "1" with respect to the MI, i. e., all intelligence work undertaken must relate to "national security". Only time will enable us to determine whether this language is an unfortunate limitation upon the CIC. Many national interests other than security can be served by a central intelligence agency submitting information to the policy-makers within the Government.

At a minimum the term "national security" must be broadly construed from the outset, before a limited concept of the agency's proper functions becomes established throughout the Government.

23 January 1946

As in the original proposal forwarded to President Roosevelt, dissemination is carefully limited to "within the Government". Paragraph 10 on security is a further admonition. Rigid security along such lines must be maintained, since one leak to outside interests (banking, commercial, etc.) could destroy the agency. As you know, the Federal law remains deficient in this respect since there are no effective criminal sanctions applicable to a person improperly disclosing such information. Conviction under the Espionage Act is most difficult. However, you also will remember that repeated attempts to propose such legislation have invariably failed. The tradition of free speech and suspicion of "government bureaucrats hiding the facts" are so deeply imbedded in the American mental climate that a serious outcry could be expected whenever such legislation (probably in the form of strengthening the Espionage Act, at least to the extent of the British Official Secrets Act) were proposed. Proper selection, training and fair treatment of personnel remain the practical key to the problem.

Paragraph 4

The use of the term "internal security" (apparently as distinguished from "national security") in this Paragraph undoubtedly will create continuing problems even within the three Departments concerned. I am not clear on what it adds to "police and law enforcement" since the U. S. has never had an agency charged with "internal security" in time of peace. It would be the first step toward a police state.

This language, together with Paragraphs "8" and "9", clearly indicates that the NIA and DCI obtain from the FBI only such information and cooperation as its Director wishes, unless it is established at the outset that (a) while CIC will not exercise "police, law enforcement or internal security functions" under Paragraph "4", (b) nevertheless certain types of information received by agencies dealing in such matters is "intelligence information relating to the national security" within the meaning of Paragraph "9".

Paragraph 7

In connection with this Paragraph, I attach a copy of a list we drew up some time ago in connection with earlier plans. The list was not intended to be a definitive one and should not be so regarded, but it may be helpful to you. It should be noted that if the FBI is represented on the Intelligence Advisory Board, being adjudged to have "functions related to national security" it should also be so considered within the meaning of

23 January 1946

Paragraph "6". It would be wise, before a determination is made under Paragraph "7" with respect to any agency, that it be ascertained whether that agency believes that it regularly secures information relating to the national security" (within the meaning of Paragraph "5").

Paragraph 8

The reference in this Paragraph to regulations of the NIA would lead me to conclude that the future of the agency may well be determined by the scope of its initial regulations. It assuredly would be wise for the NIA to have such basic regulations approved by the President.

Paragraph 9

The use of the unqualified word "investigations" in this Paragraph would appear to be unfortunate. While it probably was intended only to reassure American citizens that no investigations concerning such persons would be made, the Paragraph is so broad that it would appear to ban many of the ordinary factual investigations made by the NIA during the war. However, since the cry of "Gestapo" would be the cardinal objection to the agency, it perhaps is well that the provision is inserted and future interpretation of it be based upon a rule of reason.

Paragraph 10

On its face this Paragraph would appear to be a statement of the responsibility of the NIA and DCI to maintain close internal security with respect to the information it obtains from other agencies. However, it could also be construed as a statement that the NIA and DCI have over-all responsibility in the course of its other work for seeing to it that intelligence sources and methods are properly safeguarded throughout the Government. This would include, I assume, over-all supervision of communications, cryptanalysis, etc. However, such work could be performed in any event under the broad language of Paragraph "3b" of the Directive.

On its face the new agency would appear to be almost completely dependent upon the advice of all government

23 January 1946

intelligence units to cooperate in its mission. It possesses no independent funds, no statutory powers, no simple and coherent organization. It floats around somewhere in the Executive Office of the President, with at least three vital umbilical cords. Its powers are so broadly defined as to lead to continual bickering over what is "intelligence relating to the national security", "the national intelligence mission", "internal security", "dispositional intelligence", "existing law", etc.

But while more authority and independence are desirable, in final analysis a central intelligence agency will always be largely dependent upon the cooperation of other Departments. The present Directive is advantageous in that the breadth of its language may be used to advantage and specific details may have aroused a storm of protest which would crush the agency at the very outset. The present Directive thus enables the unit to feel its evolutionary way and hurdle obstacles only in such order as it seems best.

Its dependence upon cooperation of other agencies is such that from the outset its objective must be to give more to each other government unit than it receives. And that should normally be achieved since the principal reason for a central intelligence agency is that a properly assembled whole is greater than the sum of its original parts.

JAMES B. MAGRUDER
CHIEF, WASH.

INTELLIGENCE

OSB

C-2

A-1

ONI

Coast Guard Intelligence (in peace)

Marine Intelligence

State Department

Treasury Department (economic)

FMA (economic)

Federal Communications Commission

U. S. GOVERNMENT

OFFICE AND LAW ENFORCEMENT UNITS

Department of Justice:

FBI
Immigration & Naturaliza-
tion (including Alien
Enemy Control)
Border Patrol
Alien Property Custodian

Air Department:

Provost Marshal General
(including CIC (over-
seas) and SIC (within
U. S.))
Civilian Personnel Sec-
tion
Inspector General
Army Plant Protective
Service

Navy Department:

Civilian Personnel Sec-
tion
Office of Naval Officer
Procurement
Inspector General
Navy Plant Protective
Service

Treasury Department:

Secret Service
Bureau of Internal Revenue
Office of Coordinator
Intelligence Unit
Coast Guard (in peace)
Bureau of Narcotics
Bureau of Customs
Alcohol Tax Unit
Foreign Funds Control

U. S. GOVERNMENT

POLICE AND LAW ENFORCEMENT UNITS

Department of Interior: National Park Police
War Relocation Authority

Miscellaneous: District of Columbia Police
Civil Service
Detective Service
U. S. Maritime Commission
Office of Censorship (abolished)
Public Health Service
(Federal Security Agency)
CIA
Surplus Property Board
(new unit)