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SUBJECT: Covert Personnel Contract Practice

GENERAL:

1. The procurement of personal services of a covert nature requires the use of contractual agreements, although in some cases personnel employment actions may also be necessary. In order to clarify the use of contracts and reach a common understanding of their application, scope, and effect, the following explanation and comments are provided for the information of persons concerned. The approach is necessarily historical, involving practices that have been followed in the past as well as those that are in force at the present time. Recommendations of radical changes are not presented, although improvements in the practice will be a necessary consequence if a uniform policy is adopted.

2. A contract, of course, is simply a meeting of the minds of two (or more) people to do - or not to do - certain things. The best proof of that meeting or understanding is the written word of both parties at a given moment of time; and except for those rare exceptions where the preservation of security precludes a record, all agreements should be reduced to writing. What the agreement covers depends on the nature and duration of the services to be provided. However, certain general categories of covert individuals with whom CIA has covert contractual relationships have been evolved to provide a general framework for contractual principles.

3. The committee has already defined these categories of covert personnel as "Staff Agent," "Career Agent," "Agent," "Covert Consultant," and "Covert Detailed Personnel."

4. From a legal viewpoint, these persons are standing either in employer-employee relationships or as independent contractors. An individual in an employee relationship to the Government is normally entitled to statutory benefits and rights bestowed by general legislation. He obtains his rights as an incident to status. On the other hand, an independent contractor has no status as an employee; he is simply an independent bargaining entity who receives whatever is agreed for his services, and what is agreed is stipulated in a formal understanding. The clandestine operations of this Agency, however, will often require a person to assume the status, to the outside world, of an independent contractor even though he is essentially an employee of the Government. This is so in the case of Staff and Career Agents. We must look then to the contract for the scope of the rights even though the rights may be identical to those to which he would normally be entitled as an employee. In a similar manner and depending on the amount of administrative control and the relationship of payment to periodic intervals, a consultant may be in fact either an independent contractor or an employee. On the other hand, plain Agents are independent contractors essentially as well as ostensibly. "Detailed Personnel" are the responsibility of another agency and unless they fall within one of the above groups, we normally have no contractual concern. The persons, then, with whom we are concerned are those Staff Agents, Career Agents, Detailed Personnel, Agents, and Consultants whose relationships with the Agency are either established by a contract or whose normal legal rights are modified for operational reasons by a supplementary contract. In other words, when necessary or when warranted, the rights, benefits and restrictions pertaining to a given individual are established or are modified by a contract.

5. The person whose intrinsic position is that of an employee should generally be entitled to the rights and subject to the limitations of an employee, even though he is not an appointed Government employee in the Civil Service concept. Presumably, there is a continuity to his status and he is under close administrative control. By the same token, he is generally restricted to salary grades and promotions established for permanent appointed employees. As administrative control is reduced, the person becomes an independent player who bargains for his rights. The picture is by no means sharply delineated, however. Although there is no strict legal limitation on the benefits

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which may be extended to a plain Agent, as a matter of policy it would appear that the basic residual rights of an employee, such as death and disability benefits, leave, continuance of pay and allowances when missing, retirement, etc., should be reserved for the equivalent of an employee. Aside from this general division between employees and independent contractors, the benefits to be granted one individual may well vary from those given another. Depending on conditions of residence and location, for example, it might be inappropriate to grant certain benefits to non-citizens although such benefits might well be required for citizens. Subsequent paragraphs point out the most usual emoluments and the essential criteria for granting them.

SALARY:

6. The primary consideration for services is usually direct basic compensation in the form of salary. In the case of Staff and Career Agents, this is generally equivalent to the salary for a position established under the Classification Act, with the qualification that appropriate offsets must be made in the case of Staff Agents and are normally made in the case of Career Agents to reflect income received from the cover activity. Consultants are limited to per diem payments in accordance with maximum limitations prescribed by general legislation or Agency regulations. Beyond the dictates of common sense and standard approach, there is no limitation on the salary which can be extended to a plain Agent, and such compensation may be either reduced by offsets from cover income or augmented by profit participation or bonus. With the exception of Consultants, each category here may be entitled to additional salary incentives in the form of Foreign Post Differential for the period of overseas service.

ALLOWANCES:

7. When overseas service is contemplated, the individual may receive relief from the added cost of existence through "living-quarters," "cost of living" and the, as yet unapproved, "equalization" allowances. These allowances are based on continuous studies by the Department of State of the cost of maintaining living quarters in foreign locations and the estimated cost of living at a foreign post as compared with Washington, D. C. Normally, these allowances will be granted only to personnel who are U. S. citizens or alien residents of the U. S. who are required at CIA direction to live in a foreign country. In general, such allowances should be granted only to persons under "full" CIA control, meaning that CIA is their dominant employer and has specified the place and area of assignment as well as the duties to be performed. While certain individuals may be under "full" CIA control within the sense of this definition, the sensitivity and insulation of their cover activity and difficulties of communication may require distinctions in the forms these allowances may take. Adherence to the Standardized Allowance Regulations is a requirement for staff employees under Government cover and general conformity is also a requirement for Staff Agents. Where comparable allowances are warranted for Agents, the amount of such allowances should be dictated by the requirements of the situation but must not do violence to the basic principles of Government allowances policies. Procedural compliance with Government allowances regulations should generally be required of all "installations" or "individuals" who have good communications with headquarters and who have field access to the necessary forms and regulations, and administrative assistance. When there is a substantial security hazard, in meeting such requirements, where communications are poor, and where forms, regulations, and local administrative assistance are not available, these requirements can be relaxed to some extent by authorizing maximum allowance rates with the minimum procedural requirements necessary to establish the period of eligibility. As a third alternative, a flat sum in an amount founded upon some reasonable base may be determined by negotiation with the individual. This may be required by the peculiar bargaining strength of an individual for the particular requirements imposed by the cover activity. This last alternative is the least desirable in that it does not reflect changes in circumstances or status which may result from the transfer of the Agent or the rise and fall in the cost of living.

OPERATIONAL EXPENSES:

8. In addition to the allowances indicated above, funds can be provided to meet the operational needs of entertainment, purchase of information, etc. Whenever possible, these should be subject to strict accounting, but here again the preservation of security may open the door. Where communications are extremely hazardous and detailed accountings cannot be submitted, provision can be made for the occasional submission of a general accounting or even the grant of a flat sum for a specified period.

TRAVEL:

9. Travel expense is an item which is applicable to all the categories of personnel under consideration. Accounting in accordance with CIA regulations is required in every situation except those where communications are extremely hazardous, if not impossible. Exceptions must be justified by a clear demonstration of the need in each particular case, and the most approximate standard Government accounting requirements should be sought. In cases where the difficulties of accounting are most extreme, provision can be made for the payment of a flat sum based upon sound estimates of the cost of travel.

MISCELLANEOUS PROVISIONS:

10. All of the foregoing are tangible emoluments with a specific monetary significance. There are, however, other contingent and consequential benefits which appear either as concomitants of status or specific grants of an agreement. As a Staff or Career Agent, and therefore actually as an employee, the individual or his survivors, will be entitled to death and disability benefits, sick, annual, or home leave, establishment of a retirement reserve, the continuance of pay and allowances under the Missing Persons Act, access to certain private overseas Government employees' Insurance Plans, and rehabilitation assistance. There is no strict legal limitation on the grant of some of these benefits to the independently contracting agent, but indiscriminate largess to such people could well destroy the incentives of a staff status. A general policy to be followed is that the extent and complexity of Agency contractual commitments should be in direct ratio to the degree of control exercised over the agent, the anticipated permanency of the relationship, the trustworthiness of the individual and the risks and hardships involved.

11. We have described the rights and benefits bestowed on the individual. There are as well certain terms and restrictions placed on his services which affect his obligations. He is, of course, subject to rigid security conditions and is controlled at all times by briefing instructions which are incorporated by reference in his agreement. Although his agreement provides for a definite tenure of service which may be renewed, depending on the availability of appropriations, it may at any time be terminated in the sole discretion of the Government, with or without advance notice. In the event of voluntary termination by the individual, or termination for cause by CIA, the individual may be required to forfeit return travel expenses to the United States and possibly even incur a debt to the Government for the expenses of travel to the post of duty overseas from the United States.

12. Insofar as the contract itself goes, the format and precise phrasing is the responsibility of the legal staff and is being provided at the present time through the Coordinating and Contracting Unit. Behind the face of the formal document, however, there must be a clear marshalling of the facts to reflect the intentions of the Agency and the individual. This can be best provided by a written memorandum which will assure clear understanding. For that purpose, it is suggested that all pertinent data provided by the Foreign Division for review and approval of the Planning Staff be forwarded to the CCU with the request for drafting of the agreement. It is assumed that the facts contained in this agreement will reflect the selection of the best available person for the job in mind and will provide a preconceived plan for preservation of security and use of appropriate cover. On the basis of this "memorandum", an agreement can be prepared which will not only formalize an understanding, but will also furnish a lucid and unequivocal instrument for payment of funds and personnel administration.

We suggest this data can be best summarized by a "check list" in the form attached.

13. To review the evolution of the contract, it commences with preliminary negotiations between a case officer and a prospect. After the suitable person is found, the check list is submitted to the Covert Office sponsor and should be hand delivered and discussed with a member of the CCU, who will collaborate in the preparation of the formal contract. The contract will be returned to the Case Officer who is responsible for securing necessary approvals of his office and for securing the acceptance of the principal. The contract is then finally executed by the Contracting or Personnel Officer, and at this point, the contract is an executed document and becomes effective in accordance with its terms. The original is submitted to CFD and a single copy is returned to the Case Officer for the operations files.

14. The conditions under which the contract was first effected may alter as time goes on. If this occurs, the agreement must be formally revised and the cycle described above should be repeated. However, the detailed information required in the first check list should no longer be necessary. A memorandum stating the nature and scope of the change desired, together with the need and justification should suffice, provided that approval of the Covert Office sponsor is again obtained as in the case of the basic agreement.

15. This summary is unfortunately somewhat general. While certain aspects will fall into recognized patterns, each contract must be tailored to fit the facts. For that reason in particular, the CCU earnestly requests verbal discussion, in addition to the check list,

16. In passing, we should like to point out that the processing of Covert Consultants has caused a good deal of confusion. Normally, it would appear that they should be handled by established personnel actions, and a contract should be justified only in those situations where the individual must be denied access to CIA premises and property, or where the security requirements of a particular project impose a condition of extreme internal security.