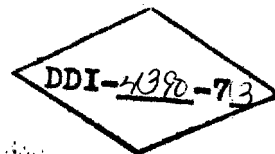


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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

28 AUG 1973



MEMORANDUM FOR: Dr. Henry A. Kissinger

PROBLEM: Congressional Pressure to Curtail or Modify CIA's
Statutory Authority to Perform Functions Directed
by the National Security Council

I. BACKGROUND

A. Congressional Hearings. A strong effort to amend the Agency's statutory charter is anticipated when Congress returns in September. The Senate and House Armed Services Committees are both committed to hearings--Stennis' announcement came in a letter to Senator Muskie opposing the Eagleton amendment which would have included CIA covert action under the War Powers bill. Nedzi announced hearings by his Special Subcommittee on Intelligence in connection with the rejection of the Reuss amendment to the Procurement Authorization bill which would have prohibited CIA obligation or expenditure of funds authorized under that bill for other than collection, evaluation, correlation and dissemination of information. Admittedly these public announcements were reactive, but Symington, Nedzi and others have independently expressed their interest in either confining the Agency to an intelligence mission or in curtailing or modifying the Agency's authority to conduct covert action.

B. Congressional History. In previous Congresses, proposals seeking to clip the Agency's wings were defeated largely because of the intercession of members of our oversight committees. New congressional assertiveness, coupled with a sincere belief that the institution of central intelligence may be seriously undermined by continued involvement in covert action, has created an entirely new congressional climate even among our supporters. For example, the staff of the Senate Armed Services Committee is drafting amendments to the CIA Act for Stennis as backfire to irresponsible proposals and as a reflection of genuine feeling that the Agency has wandered--or been led or driven by higher authority--too far off its statutory reservation.

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C. Legislative Proposals. Attached is a listing which catalogues various legislative proposals concerning CIA which have been introduced in the 93rd Congress. The principal concerns motivating these proposals are:

1. Improper Involvement in Domestic Activities. Since the inception of this Agency, a minority in the Congress has been concerned with this bugaboo. Now it has achieved political adherents among a broader spectrum of members as a result of Watergate and allegations concerning CIA involvement in police training.

2. Circumvention of the Will of Congress. This concern has been growing over the past several years, and is reflected in legislative restrictions relating to Southeast Asia which have been inserted in both military procurement authorization and foreign assistance authorization legislation. The apprehension, political or real, is that CIA's secret budgetary and appropriation process has been, or may be, used to carry out activities which Congress in its wisdom either has prohibited or has not specifically authorized; e. g., "CIA's secret war in Laos" and support for the SGU's as "local forces."

3. Instrumentality of Presidential Power. An increasing number of members contend that one means of preventing Presidential "usurpation" of the constitutional powers of the Congress is to restrict the use of CIA as an instrumentality for unilateral executive action.

4. Open Budget. There is increasing congressional pressure to disclose intelligence budget figures. One proposal would disclose the total figure for the National Intelligence Program. Another would disclose total figures of various departments and agencies, including CIA, NSA, and the armed services. I am concerned that this trend will lead to pressures for further public explanations of the programs for which the monies were appropriated and that the resulting scrutiny would be damaging to intelligence sources and methods. I have expressed this concern and my views regarding this matter in a letter to Chairman McClellan (attached).

II. COURSE OF ACTION

A. General. In examining options in connection with this upcoming legislative problem, uppermost in our minds is the desirability of quick, decisive and hopefully relatively painless action. Our concern is that the

mere opening up to amendments of our statutory charter is an invitation to a host of irresponsible proposals. The situation could get out of hand, the resulting fanfare could adversely affect our relations with other foreign services and sources, and there will be pressure to expose past Agency operations to add to the "horror stories of dirty tricks."

1. Options. The options available to us include doing nothing, hoping for the cooling of congressional ardor and a possible adjournment of Congress early in October. There is also the unlikely possibility that the oversight committees could be persuaded in hearings that no change at all is needed in the law. Also, we could hope to rely upon a Presidential veto if irresponsible legislation results. However, in view of the situation on the Hill, the most prudent course may involve providing our friends on the Hill with amendments with which we could live and to urge quick, decisive and painless action.

2. Proposal.

a. Domestic Activities. A simple amendment would go a long way to eliminating any undue concern over the Agency's possible improper involvement in domestic activity.

b. Covert Action. We can get substantially at the heart of the expressed concern that CIA has been used to circumvent the will of Congress either by writing a reporting requirement into the 1947 Act or by establishing in legislative history that our committees are given a full and complete account of our activities.

B. Discussion (Domestic Activities). While the statutory duties of CIA specified "under the direction of the National Security Council" relate solely to foreign intelligence activities, the word foreign does not appear in the law. Our proposal is simply to insert the word foreign as a modifier of the intelligence activities it shall be the duty of the Agency to perform under the direction of the National Security Council. It is believed that this simple amendment will assuage unfounded but stated apprehensions.

Hopefully, this amendment will head off a move to strike from the National Security Act a proviso in section 102(d)(3) "That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure." This proviso was cited before

various committees of Congress as a basis for legitimate CIA concern over unauthorized disclosure of intelligence sources and methodology leading to cooperation with E. Howard Hunt's efforts to locate the source of leaks and [REDACTED] 25X1

Also, Ambassador Helms recently exhorted Congress in his testimony on Watergate to take a close look at the dilemma imposed by a statutory charge which the Director has no authority to enforce. I believe we should resist any change in this proviso as it has produced good case law. Instead, I propose clarifying the responsibility under the proviso.

C. Discussion (Covert Action). Section 102(d)(5) of the National Security Act specifies that the Agency shall perform "such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct."

1. Statutory Language. Reasonable men could disagree on whether this provision constitutes a legal basis for covert action programs by CIA. The organizational predecessor of the Agency, the Central Intelligence Group, which operated as an establishment of the President under similar language, was not directed to engage in such activities. Accepting a limited definition of the phrase "related to intelligence" forms a basis for arguing that the provision contemplates only information activities. This normal definition is somewhat rebutted by the Encyclopedia Britannica which recognizes that "At one time, intelligence referred largely to information on foreign powers which was used in the formulation of military plans and policies and the conduct of military operations. Both the meaning and scope of intelligence, however, have been greatly extended by national and international revolutionary movements and by the increased resort of nations to political, economic and psychological measures, in addition to the employment of armed forces, in the pursuance of foreign policy objectives."

2. Constitutional Basis. In the attached 1962 memorandum by the Department of Justice on the constitutional and legal basis for covert activities by the Agency, it was recognized that many, if not all, covert activities assigned to CIA are at least "related" to intelligence within the scope of the law in the sense that their performance may require intimate dovetailing with collection operations, use the same or similar sources and methods and yield important intelligence results. Even so, the Justice memorandum justifying

such activities leans more heavily on the exercise of constitutional power of the President not needing an expressed statutory authorization, which is subsequently ratified by the Congress in appropriations for CIA ("ratified" as a result of specific knowledge on the part of responsible committee members and the imputation of general knowledge to the Congress as a whole).

3. Congressional Role. Any participation of Congress in covert actions raises a constitutional question, particularly when conducted under the inherent power of the President. Clearly, the President in carrying out such initiatives should not be concerned with or distracted by possible congressional reaction to the action contemplated, particularly where dispatch, efficiency, and secrecy are indispensable to success.

4. Practical Considerations. As a practical matter, our oversight committees presently review our budget in detail, including funds programmed for covert action. Moreover, those actions directed under the authority of the National Security Council and not programmed in the Agency's budget are generally funded out of the Agency's reserve. Expenditures from the reserve, under a long-standing procedure, must be reported to our Appropriations Committees within 24 hours. To our knowledge there has never been a breach of security resulting from our committees' knowledge of our covert action programs. We are unaware of whether the Chairmen of our committees have ever used this information as a basis for contacting any Administration on the issues involved.

Most of the proposals designed to clip the Agency's covert action wings consist of a flat-out prohibition. Other proposals would impose reporting requirements to our committees on the basis that otherwise no one in Congress is aware of what is going on. Statements by the Chairmen of our committees that they do know what is going on have sometimes been deterred by political considerations and in other instances seem to have little effect on stemming the tide of dissatisfaction.

5. Proposal. In view of the way the system works and our experience to date, it is believed that a statutory amendment requiring that all activities not related to intelligence and directed by the National Security Council be appropriately reported to the Congress would not be an undue burden. Such an amendment first, would provide a statutory basis for covert action; second, would meet substantially the concern that Congress does not know what is going on; third, would formalize in statute the procedures presently followed.

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III. RECOMMENDATION

Attached are suggested amendments to the National Security Act of 1947 incorporating the thoughts expressed above. If the amendments meet with approval, it is recommended that:

A. The Senate and House Armed Services Committees be provided the amendments informally by the Agency as suggestions with which we could live.

Approved: _____ Disapproved: _____

B. The amendments be submitted formally to the Congress as an Agency proposal subject to Office of Management and Budget clearance prior to transmittal to the Congress.

Approved: _____ Disapproved: _____

C. Other action you may suggest:

151 Bill
W. E. Colby

Atts

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SUBJECT: (Optional)

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Deputy Legislative Counsel

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14 September 1973

TO: (Officer designation, room number, and building)

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COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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Attached is a copy of Mr. Colby's memorandum of 28 August 1973 to Dr. Kissinger concerning our statutory authorities. A copy of Dr. Kissinger's response is being forwarded to you by the Director's office. STAT



Deputy Legislative Counsel

Att

cc: DDCI, DDO, DDM&S, DDS&T, IC, IG, Mr. Thuermer

MEMORANDUM FOR: Dr. Henry A. Kissinger
Assistant to the President for
National Security Affairs

Andy Marshall expressed interest in various possible Congressional moves affecting CIA's statutory authority. We had him out and discussed these in some depth. The attached is an overall rundown of the situation and suggests a way of reacting to it. I hope it will meet with your approval.



W. E. Colby
28 August 1973
(DATE)