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THE WHITE HOUSE

WASHINGTON

December 17, 1975

MEMORANDUM FOR

MEMBERS OF THE INTELLIGENCE
COORDINATING GROUP

FROM:

JACK MARSH 

SUBJECT:

RESTRICTIONS EXECUTIVE ORDER

Attached for your consideration are the following:

1. Draft decision memorandum which focuses on the outstanding substantive disagreements, based on October 28 draft Order.
2. A revised restrictions Order which is an attempt to stress the restrictions and narrow the exceptions. (We tried the approach of separating the announcement of restrictions from the exceptions -- but it is our general view that this might mislead the public as to the scope of the restrictions.)
3. Draft fact sheet explaining the draft Executive Order.

May we please have your comments on all three by noon, December 19. In reviewing the new draft Order, consider to what extent the substance of the preceding draft may have been changed.

DRAFT

MEMORANDUM TO:

SUBJECT: Draft Executive Order Imposing Restrictions
on Intelligence Activities

Attached is the most recent draft of the Executive Order imposing restrictions on intelligence activities other than those of the FBI. Its primary provisions prohibit foreign intelligence agencies (or any other agency engaged in foreign intelligence or counterintelligence activities) from:

- Collecting and analyzing information on the domestic activities of U.S. citizens (and certain aliens).
- Physically or electronically surveilling U.S. citizens (and certain aliens) within the United States.
- Opening U.S. mail in violation of law.

Strong substantive disagreements still exist among the various concerned agencies and your advisers with respect to some of its provisions. Most of the major disagreements concern proposed exceptions to the general prohibitions.

The major issues for your decision are:

(1) Whether to include an exception which would allow the collection, analysis, and dissemination of information on the domestic activities of U.S. citizens reasonably believed to be involved in international terrorist or narcotics activities or working in collaboration with a foreign nation

or organization, but only if collected abroad, or from foreign sources. (Section II (a)(2)(ii)). This exception was proposed by CIA, to allow it to gather and utilize information related to Americans involved in international terrorist or narcotics activities and Americans who may not have committed any crime but are working with foreign organizations or governments. The latter category would include an American supplying non-classified information to a foreign government, for example, on the movement of civilian ships from a U.S. port.

Pro:

- This exception recognizes that international terrorist and narcotics activities are legitimate subjects of interest for foreign intelligence agencies.
- It recognizes that the domestic activities of Americans working for foreign governments or organizations are of counter-intelligence interest.
- It contains the limitation that the excepted information must have been collected abroad or from foreign sources. Often foreign intelligence agencies are the only elements of our government who can obtain information from these useful sources.

Con:

- The exception is too broad. Any person who deals with foreign corporations would be covered.

- The CIA, prohibited by statute from having any "police, subpoena, [or] law-enforcement powers," should not become involved in identifying Americans participating in narcotics or terrorist activities.

Decision:

_____ Accept (Recommended by: _____)

_____ Reject (Recommended by: _____)

_____ Accept a more limited exception covering only citizens engaged in international terrorist or

narcotics activities or working for a foreign nation. *Instead of merely "involved in international terrorist or narcotic activities or working in collaboration with a foreign nation or organization"* (Recommended by: _____)

(2) Whether to adopt an exception which would permit sharing of information on domestic activities of U.S. citizens among intelligence agencies and other federal agencies under guidelines of the Attorney General. (Section II (a) (2) (v)). This exception, proposed by NSC, is designed to permit the CIA to obtain information from other federal agencies (primarily the FBI) on the domestic activities of U.S. citizens which it would not otherwise be permitted to collect under this order.

Pro:

- This exception would give CIA and other foreign intelligence agencies access to data helpful in determining

whether various domestic groups have contacts with foreign governments or organizations.

- Possible abuses of this exception would be limited by the Attorney General's guidelines.

Con:

- It would allow intelligence agencies to receive data from federal law enforcement agencies on the domestic activities of U.S. citizens which the intelligence agencies themselves would otherwise be prohibited from collecting under the terms of this Order.

- It would authorize the reestablishment of Operation CHAOS. (CHAOS was the program under which CIA collected ^{informatio} largely from the FBI -- on domestic groups and U.S. citizens.) The exposure of this program resulted in the forming of the Rockefeller Commission and the Congressional Intelligence Committees.

- Such an exception would likely undermine the credibility of the Order.

Decision:

_____ Accept (Recommended by: _____)

_____ Reject (Recommended by: _____)

_____ Accept a modified provision allowing agencies to share information on the domestic activities of U.S. citizens only when the information is of the type that the receiving agency would have been permitted to collect itself under the terms of this

(3) Whether to modify the provision relating to electronic surveillance. (Section II (d)) The section now prohibits "electronic surveillance of United States citizens except in accordance with law and under procedures approved by the Attorney General." The Justice Department would add to this a blanket prohibition against domestic electronic surveillance by the CIA. The discussion below is on this proposed amendment:

Pro:

- As presently written, this provision merely requires compliance with existing law (which is unclear in this area) and procedures to be drafted by the Attorney General.

- The Rockefeller Commission recommends a blanket prohibition (similar to the Justice Department recommendation) of domestic electronic surveillance by the CIA.

- The CIA feels that such a restriction would not impact its effectiveness. It now conducts no domestic electronic surveillance.

Con:

- If the restriction is adopted, the CIA would be completely foreclosed from dealing with an unusual situation requiring domestic electronic surveillance of a U.S. citizen.

Decision

_____ Accept (Recommended by: _____)

_____ Reject (Recommended by: _____)

DRAFT: December 15, 1975

EXECUTIVE ORDER _____

ESTABLISHING RESTRICTIONS ON FOREIGN
INTELLIGENCE ACTIVITIES

Previous guidance on the relationship between the intelligence agencies and United States citizens was unclear. This order clarifies that relationship by detailing those activities which are prohibited. Without setting forth all restrictions under which foreign intelligence agencies are obliged to operate, nor derogating from any other laws, rules, regulations, or directives further restricting the activities of these agencies, it is hereby ordered as follows:

SECTION I. Definitions. As used in this Order the following terms shall have the meanings ascribed to them below:

(a) "Collection" means the gathering and storage, or the gathering and forwarding, of information.

(b) "Domestic activities" means activities within the United States.

(c) "Foreign intelligence" means information, other than foreign counterintelligence, on the capabilities, intentions, and activities of foreign powers, organizations or their agents.

(d) "United States citizens" means United States citizens and permanent resident aliens.

(e) "Foreign counterintelligence" means activities conducted to protect the United States and United States citizens from foreign espionage, sabotage, subversion, assassination, or terrorism.

(f) "Incidental reception" means the receipt of information, collection of which by an agency is otherwise prohibited by this order and which is collected in the course of an agency's authorized foreign intelligence or counterintelligence activities.

(g) "Foreign intelligence agency" means any department or agency of the United States government, or component thereof, which is primarily engaged in foreign intelligence or foreign counterintelligence activities.

SECTION II. The following activities shall not be conducted either by any foreign intelligence agency or by any other department or agency in pursuit of foreign intelligence or foreign counterintelligence:

(a) Physical surveillance of United States citizens except to the extent that such surveillance is in accordance with law and is:

(1) Upon written approval by the head of the foreign intelligence department or agency, *and is surveillance* of individuals currently or formerly employed by that agency, its present or former contractors, or such contractors' employees, for the purpose of protecting foreign intelligence sources *and methods from unauthorized disclosure, or*

(2) Of a person having contact with any persons described under subparagraph (1), or foreign nationals in the United States in connection with foreign intelligence or counterintelligence operations, but only to the extent necessary to identify such person.

(b) Electronic surveillance of United States citizens except in accordance with law and under procedures approved by the Attorney General, and in no instance shall the Central Intelligence Agency engage within the United States in the electronic surveillance of United States citizens.

(c) Testing of electronic surveillance equipment within the United States except in accordance with law and under procedures approved by the Attorney General.

(d) Any opening of United States mail or examination of envelopes except in accordance with the provisions of United States postal laws and regulations.

(e) Access to Federal income tax returns or tax information except in accordance with statutes and regulations.

(f) Infiltration or secret participation in any organization composed primarily of United States citizens for the purpose of reporting on its activities or membership.

(g) Experimentation with drugs on human subjects, except with the informed consent of each such human subject and in accordance with the guidelines of the National Commission for the Protection of Human Subjects for Biomedical and Behavioral Research.

(h) Operation of a proprietary company on a commercially competitive basis with United States businesses except to the minimum extent necessary to establish commercial credibility. No investments by a proprietary company shall be made on the basis of any substantive intelligence not available to the public.

(i) Collection, evaluation, correlation or analysis, of information other than information from public sources or given voluntarily by its subject concerning the domestic activities of United States citizens except:

(1) Information about a United States citizen who ~~in good~~^g ~~faith~~ is reasonably believed to be involved in international terrorist or narcotics activities or working in collaboration with a foreign nation or organization, but only if the information is collected abroad or from foreign sources in the United States in the course of an authorized foreign intelligence or foreign counterintelligence activity.

(2) Information related to the performance of agency contractors, for purposes of contract administration.

(3) Information concerning criminal activities received through incidental reception, provided it is only transmitted to law enforcement agencies with appropriate jurisdiction.

SECTION III. Any federal agency seeking foreign intelligence within the United States from United States citizens shall disclose to such citizens its true identity. When collection of foreign intelligence within the United States results in the incidental reception of information from unknowing United States citizens, however, the receiving agency shall be permitted to make appropriate use of such information.

SECTION IV. No information on the domestic activities of United States citizens shall be transmitted to a foreign intelligence agency (or to any other federal agency to aid it in engaging in foreign intelligence or foreign counterintelligence) from any other federal agency unless:

(a) The information had been lawfully compiled by the transmitting agency in furtherance of its authorized mission;

(b) The information is of a type which the receiving agency would itself have been permitted to collect under the provisions of this order;

(c) The information is provided in furtherance of the authorized mission and responsibilities of the receiving agency;

(d) The information is provided in good faith under a reasonable belief that the information is relevant to the receiving agency; and

(e) The information is provided under guidelines and procedures issued by the Attorney General designed to ensure the protection of the constitutional and statutory rights of United States citizens.

SECTION V. Nothing in this Order prohibits an agency from retaining information when retention is required by law, such as retention required to preserve evidence or other information for possible court action.

SECTION VI. No foreign intelligence agency shall:

(a) Provide services equipment, personnel or facilities to the Law Enforcement Assistance Administration or state or local police organizations of the United States except as expressly authorized by law; or

(b) Participate in or fund any law enforcement activity within the United States except as may be authorized by law.

Provided, that this prohibition shall not preclude:

(1) Cooperation between a foreign intelligence agency and appropriate law enforcement agencies for the purpose of protecting the personnel and facilities of the foreign intelligence agency or preventing espionage or other criminal activity related to foreign intelligence or foreign counterintelligence; or

(2) Provision of specialized equipment or technical knowledge for use by any other Federal department or agency.

SECTION VII. Foreign intelligence agency personnel may not be detailed elsewhere within the Federal government except as authorized by law. Employees so detailed shall be responsible to the host agency and shall not report to their parent agency on the affairs of the host agency except as may be directed by the host agency. The head of the host agency and any subsequent successor shall be informed of the detailee's association with the parent agency.

SECTION VIII. Nothing in this Order shall prohibit any agency having law enforcement responsibilities from discharging such responsibilities pursuant to law. Nor shall this Order apply to any activities of the Federal Bureau of Investigation.

SECTION IX. Nothing in this Order shall prohibit any agency from engaging in the collection, evaluation, correlation and analysis of information on current or former employees (including military personnel and employees of other Federal departments or agencies detailed for service with the foreign intelligence agency); applicants for employment with such agency; voluntary sources or contacts or individuals who in good faith are reasonably believed to be potential sources or contacts; current and former contractors and current or former employees or applicants for employment by such contractors; and all persons not included above who must be given access to classified information which could disclose foreign intelligence or foreign counterintelligence sources and methods; provided, however, that collection of such information is done only in accordance with law and by written authority from the head of such agency to determine the fitness of such persons to become or remain associated with such agency or to have such access, or in the case of a former employee to investigate matters related to his period of employment, or in the case of a voluntary source or contact, to determine suitability or credibility.

FACT SHEET

EXECUTIVE ORDER IMPOSING RESTRICTIONS
ON FOREIGN INTELLIGENCE ACTIVITIES

Today the President issued an executive order setting forth certain restrictions on the activities of foreign intelligence agencies and other agencies which may engage in intelligence activities. It severely restricts the following activities:

- Collection and analysis of information on the domestic activities of United States citizens and permanent resident aliens.
- Physical or electronic surveillance of United States citizens and permanent resident aliens within the United States.
- Opening of United States mail in violation of law.
- Illegally obtaining federal income tax returns or information.
- Infiltration of domestic groups for the purpose of reporting on them.
- Experimentation with drugs on humans without the subject's informed consent.
- Operation of a proprietary company which competes with United States businesses more than the minimum amount necessary to establish commercial credibility.

- Collection of intelligence from United States citizens and permanent resident aliens within the United States without disclosing the true identity of the collecting agency.

- Sharing among agencies information on the domestic activities of United States citizens or permanent resident aliens except in compliance with stringent safeguards.

- Providing assistance to law-enforcement agencies in violation of law.

Certain limited exceptions are included to the general prohibition of collection of information on the domestic activities of United States citizens. These exceptions seek to recognize all legitimate needs of foreign intelligence agencies to collect information on the domestic activities of United States citizens.

In order to protect classified information, intelligence agencies must run security checks on applicants for employment and employees. Like any Government agency, these agencies must also check out employee backgrounds to ascertain their job suitability. Even after a person has left an intelligence agency, it has a legitimate need to maintain its records on that person should a security breach stemming from his employment occur. Similarly, each intelligence agency has an interest in

the suitability and security worthiness of persons who contract with it or are employees of its contractors working on its projects and requiring access to classified information.

Each intelligence agency must also maintain records on persons who, without necessarily being employed by it, are given access to its classified information. Such persons would include employees of other Government agencies who require access to its classified information and private citizens who voluntarily agree to be cleared to receive classified information in order to aid in their voluntary reporting of foreign intelligence information to the agency.

Foreign intelligence agencies or other foreign groups spend many resources seeking to penetrate (i.e., obtain information from) United States intelligence agencies. The United States agencies need to protect themselves from such activities. Such activities may involve domestic activities of United States citizens. Because United States intelligence agencies have a need to understand the operating modes of foreign intelligence agencies, there is a legitimate need for it to collect and use such information. However, the intelligence agencies are permitted to collect this type of information only abroad or from foreign services, since the FBI is fully capable of collecting such information from purely domestic sources. Also, because of the unique contacts of our foreign intelligence agencies with information sources abroad and

foreign sources within the United States, these agencies are also permitted to collect, but only from these special sources, information on United States citizens reasonably believed to be involved in international terrorist or narcotics activities.

In normal day-to-day business, many Americans work with intelligence agencies and tell its employees about their domestic activities; i.e., other Government employees meet with intelligence agency employees; academics share information with them; Americans who travel talk to them. In order to allow these agencies to maintain records of such day-to-day transactions, the order makes an appropriate exception. Americans who enter into such contact with intelligence agencies, however, should not therefore be subjected to security investigations or other scrutiny merely because they came into contact with an employee of an intelligence agency. Therefore, this exception only allows use of that information voluntarily supplied by the persons themselves.

The order requires that the information collected or stored under these exceptions be confined to a type appropriate to the purpose for which the corresponding exception was created. For example, an agency may not collect or store information on the political views of a United States citizen merely because he is a contractor employee working on an agency project.

The order also allows intelligence agencies to transmit to

law-enforcement agencies information relating to criminal domestic activities of United States citizens which it happens to obtain incidentally to its proper foreign intelligence activities. All citizens and Government agencies have an obligation to turn information related to criminal activity over to appropriate authorities.

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FORM NO. 241
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REPLACES FORM 36-8
WHICH MAY BE USED.

(47)

OFFICE OF THE DIRECTOR

18 December 1975

MORNING MEETING PARTICIPANTS

SUBJECT: Restrictions Executive Order

Please give your comments on the Draft Executive Order to Mr. Scott Breckinridge of the review staff.



Special Counsel to the Director

STAT

I-23.1

RC file
by Order file

FR copy

Executive Registry
75-9968

CENTRAL INTELLIGENCE AGENCY

OFFICE OF THE DIRECTOR

12 December 1975

To: Morning Meeting Participants

From:

[Redacted]

The attached was produced
at the White House. Comments
please.

STAT.

I-231

Condensation

I. PRINCIPLES AND POLICY

- A) Goals
- B) Functions and product
- C) Limits and restrictions

II. LEGISLATIVE AND ADMINISTRATIVE POSITIONS

- A) Organization and management
 - 1. Overall direction
 - 2. Organization of community
 - 3. Budgets
 - 4. Program management
 - 5. Intelligence product
- B) Oversight
 - 1. Executive
 - 2. Congressional
 - 3. Public
- C) Secrecy
 - 1. Classification
 - 2. Scope
 - 3. Legal issues

DRAFT
10 Dec 1975

Information Memorandum

ANALYSIS OF ISSUES

I. PRINCIPLES AND POLICY

A. Goals

There is widespread agreement with the statement that the intelligence gathering activities of the United States should provide for national defense needs and should assist achieving foreign policy objectives. In the words of the Murphy Commission Report "the maintenance of intelligence capabilities of the highest competence is essential to the national security and to the effective conduct of U.S. foreign policy." Similarly, the Rockefeller Commission concluded: "During the period of the Commission's inquiry, there have been public allegations that a democracy does not need an intelligence apparatus. The Commission does not share this view. Intelligence is information gathered for policy makers in government which illuminates the ranges and choices available to them and enables them to exercise judgment." The public agrees; by a 78 to 12% majority, it believes "it is very important that the United States have the best foreign intelligence agency in the world, even if it does make some mistakes."

There are specific goals which must be met:

- . We must be able to predict "Pearl Harbors" with sufficient time to anticipate and react.
- . The government must be able to identify and assess the threats to the United States from whatever source they may come.
- . There is clearly a need for timely military intelligence provided to the military command during times of war and in preparing to meet military threats.
- . The intelligence community must be able to prevent the loss of the effectiveness of our national defense and the intelligence resources through loss of secrecy.
- . We should assist friendly governments and allies to meet their own national defense needs through intelligence resources.
- . The understanding of issues, plans and developments and personalities of world leaders is important for policy making.
- . We must meet the economic, commercial and even natural resource intelligence needs.

The most controversial area is the degree to which the United States should take actions or assist in actions which have the effect of hindering unfriendly governments and adversaries. The types of action which can be taken are numerous, ranging from the merely inconvenience to the extreme acts of assassination, paramilitary operations, and covert actions such as sabotage. Your directives to the community with regard to extreme actions such as assassination are clear, but other areas along the spectrum of activities have not yet been defined.

In elaborating the problem of organization of the intelligence community, the Murphy Commission identified three standards of performance:

- (a) It must respond to the evolving needs of national security and foreign policy decision makers: its estimates and analyses must address the issues of real concern, and do so at high levels of competence and integrity.
- (b) Economy. Intelligence is a necessity, and some forms of intelligence gathering are extraordinarily expensive. Where unavoidable, such costs must be borne, where necessary they must be avoided.

- (c) The U. S. Intelligence Community must operate in such a manner as to command public confidence.

The community must maintain foreign respect for its intelligence resources and capabilities. The community must also have the resources to develop new technologies, skills and capabilities.

B. Functions and Product

1. Intelligence Collection

There seems to be little disagreement that the community should continue to collect intelligence from foreign sources, both governmental and private, using human and technical means. The degree to which the foreign service and overt sources are used or can be used for collection to limit the activities of clandestine services is a matter you should address. There is also the related issue of collecting information from private organizations such as banks, companies and cooperatives. The very expensive technical means of collection (satellites, electronics and underwater sensors used to intercept messages and locate various foreign sources such as radar screens, missiles emissions, missile-related telemetry, and other electronic sources, as well as straight photographic image reconnaissance) are examined continually through the budget process

and the normal coordination mechanisms within the community itself. There is, however, a feeling that coordination, particularly on budget preparation, will become more important as we intend to rely more on these technical means. The 1971 Schlesinger and PFIAB studies (reported earlier) saw this question as primary, and the Nixon November '71 order (which you have reaffirmed) attempted to strengthen the coordination mechanisms under the leadership of the Director of Central Intelligence. There remains, however, a question as to the effectiveness of these mechanisms.

Domestic collection activities by the community have been examined intensely in the past year by the Rockefeller Commission, the Select Committees and the Attorney General. These include entry to foreign embassies in the United States, electronic eavesdropping both by the FBI and by other agencies, mail opening, surveillance, etc. The Attorney General is in the process of formulating guidelines for FBI behavior. There is also under review within the Executive an Executive Order more broadly stating restrictions on certain types of activities. This area is being dealt with now, but only in bits and pieces. It is advisable to state clearly Administration policy in response to the findings of these various investigations.

2. Analysis and Intelligence Production

There is little disagreement that the intelligence community should continue to analyze and produce finished intelligence for a variety of users. In the traditional view, the highest form of intelligence is "national intelligence" produced for the President and his advisers, including Cabinet Officers. This is augmented by a continual flow of routine intelligence reports and special studies of somewhat greater relevance to senior analysts, such as those on the National Security Council staff.

The military command specifies, through the services, the Joint Chiefs and DIA, its own requirements. This leads to a separate conception of "tactical intelligence": knowing where the enemy is and what strength is immediately opposing a field commander. The distinction between tactical and national intelligence is blurred, depending on questions of definition to a large extent.

There is a third generalized area of intelligence meeting specialized governmental needs, such as those of economic policy-making. Economic users can be found in most every Department and their interests range from the central questions, such as the pricing intentions of the OPEC countries, to the more routine reporting of ordinary commercial transactions

between, say, Eastern Europe and third world countries. In recent years, economic issues have become increasingly important and thus intelligence has been in great demand in the Departments. A problem remains, however, as to determining how much of the intelligence communities resources should be devoted to economic and other specialized issues; to put it another way, would we maintain the CIA and the National Security Agency merely to collect economic intelligence? To what degree are additional resources employed for collecting this information, and how good is it?

3. Paramilitary and Covert Action

Perhaps the most troublesome area in the Congressional investigations and the public press has been the conduct of paramilitary and covert operations. At one extreme there is stated the opinion that these actions are not only necessary but desirable as a part of our foreign policy. At the other extreme are the assertions that such activities should not only be banned domestically and overseas against enemies, but under any circumstances and at all times. The birth of OSS and the CIA reflected a fascination with these activities, carrying through /Iran, Cuba and Laos;

this is not today considered appropriate. Specific types of covert action, such as assassination attempts, have been subjected to minute scrutiny and your instructions to the intelligence community - that you find these actions abhorrent - are clear on this subject. Further, it is unlikely that large-scale paramilitary operations (of the kind planned for Cuba and carried out in Laos) could be conducted today without public exposure and direct attribution to the President. Enough is now known about the process of mounting such operations that any objector could assert a plausible linkage to the Presidency.

4. Counterintelligence

Dating from a general understanding between the CIA and the FBI after World War II and the terms of the National Security Act of 1947, the FBI has had no overseas intelligence or counterintelligence responsibilities. The CIA has had no domestic responsibilities beyond protection of its own facilities, operations and personnel; these were explicitly recognized by the Rockefeller Commission. The conception becomes blurred in specific cases. To what extent, for example, should the Director of Central

Intelligence be allowed to use resources directly under his control (the CIA) to carry out his statutory-required responsibility of protecting intelligence sources and methods? To the extent he conducts surveillance of U. S. citizens in the United States is he either infringing on their rights or transgressing on the responsibilities of the FBI? It is recognized that in the community that some clarification of responsibilities and authority in this area is required as well as better guidelines for the FBI's own activities.

C. Limits and Restrictions

II. LEGISLATIVE AND ADMINISTRATIVE POSITIONS

As a result of the Murphy and Rockefeller Commission reports, a plethora of books and articles on the community, two major Congressional investigations, you will be asked to take positions on a number of specific legislative and administrative issues dealing with:

- . Organization and Management - the proper organizational structures and authorities required to manage resources, including personnel, materiel, budgets, and intelligence product. From an examination of the experience under the Nov. 1971 Presidential Directive, the missions of the intelligence community, and the existing structure, it is clear that improvements can be made.
- . Oversight of the Intelligence Community - much of the Congressional interest and the public concern focus on the question of appropriate oversight by those outside the Community, - legal advisers and Inspectors General within the intelligence agencies, the President, Presidential agents, committees within the Executive Office, others in the Executive Branch, Congressional Committees, the General Accounting Office and perhaps completely independent public bodies.

- . Secrecy and its protection - there is concern about the basis for and misuse of the classification system, the powers and sanctions of those charged with protecting classified information, the special problems of those protecting intelligence sources and methods, and the relationship of all of these questions to other developing standards of law with regard to the rights of individuals.

A. Organization and Management

1. Overall Direction

The President necessarily must accept responsibility for the activities of the intelligence community; "plausible deniability" is no longer possible as a result of numerous revelations and admissions. In delegating that responsibility, you must assure:

- . accomplishment of particular missions is essential, primarily a matter internal to the intelligence community;
- . effectiveness of intelligence and its usefulness to policy-makers, the consumers of intelligence;
- . compliance with laws and standards which are established primarily by those outside the intelligence community.

By Presidential Directive in November 5, 1971, the leadership of the community was vested in the Director of Central Intelligence. Although

he chairs the community's coordinating committees, the leadership role has not been spelled out in detail nor made effective through other administrative changes.

2. Organization of the Community

Of critical importance to the management of the community (and being examined in detail by the NSC/OMB study group) is the question of the appropriate organizational structure to deal with these issues. Central to that consideration is the continuing validity of the leadership role of the DCI. Various alternatives to the organizational structure are being examined from a highly centralized structure (which would include the CIA and the Defense Department Intelligence Components in one new agency) to even more decentralized services than today. Various criteria can be used to judge the effectiveness of various solutions, such as effectiveness, degree of control provided, etc.

3. Budgets

A more specific form of resource management comes through the budget. Since the budget controls dollars directly, it controls indirectly programs, manpower and materiel. The effectiveness of previous budgetary decisions is evaluated, first, in the agencies,

and second, in the Office of Management and Budget (with some assistance from the Director of Central Intelligence). While the DCI does have impact on decision-making by the agencies, and thus can affect budget submissions to the Executive Office, he has little or no role in the decision-making process within the Executive Office.

A related issue is budget presentation, disclosure and public release. At the present time, intelligence budgets are contained within other budget line items, primarily within the Defense Department. There is, however, a great deal of misinformation circulating about the amount spent on intelligence, and arguments for its continued secrecy are being reexamined.

4. Program Management

There has been little public examination of intelligence program management. Some review of program management is conducted through the Office of Management and Budget and the DCI's intelligence community staff. (The President's Foreign Intelligence Advisory Board conducts ad hoc studies on particular issues.) These program management reviews must have continued and strengthened access to program data, the mechanisms and tools for analysis and evaluation, and means to exercise control. If, for example, the Director of Central Intelligence is to be given a leadership

role, then some consideration must be given to his ability to control budgets and programs as well to maintain and improve quality.

5. Intelligence Product

The last element which must be considered in management is the dissemination of intelligence product within the community, to the users, to the Congress and to the public. On the one hand, it is unobjectionable that more product should be made publicly available. On the other hand, there are extremely sensitive items which cannot and should not be known outside very small circles. The present classification systems represent one way to strike a balance between these competing concerns, but one may ask the broader question of who makes future decisions, and how are specific cases dealt with to build public confidence.

B. Oversight

1. Executive

One of the findings emerging from the Rockefeller Report was the need for increased oversight both by Congress and the Executive Office. We can expect similar findings from the Senate and House

Select Committees. There seems to be no question that the public has already concluded that increased oversight is necessary: in September 1975, Harris found 41% of those surveyed believe "the trouble with the CIA is that it got out of control of civilian authority" (with 21% disagreeing) and that 66% believe "in the future, the CIA must be monitored more closely by Congress and the White House" (18% disagreeing). Thus the question of accountability to the public, the Congress and to civilian authority is posed, and the issue is to what degree will the Administration respond.

The Rockefeller Commission examined the degree to which "internal" controls (within the CIA) can be strengthened. It noted problems the legal advisers and the Inspectors General have affecting CIA operations, and it proposed changes which have been implemented by CIA. Similar problems could be found, no doubt, in other Departments outside the Rockefeller Commission's scope of examination.

There is a concern that civilian control has not been properly exercised within the Executive Branch. It may be that visible and fundamental improvements will have to be made to strengthen the

authority of Presidential agents, Committees, and non-participating departments, such as the Justice Department, in overseeing intelligence community operations. The PFIAB is already charged with oversight responsibilities and these have been strengthened in the proposed Executive Order now before you.

2. Congressional

The area of greatest concern will be the degree to which Congress oversees the community and participates in making decisions about its activities, ranging from approval of specific covert operations (as proposed by some select Committee staff) to a more generalized oversight through periodic reporting. The number and jurisdictions of committees is also being considered. A parallel issue is the degree to which the General Accounting Office becomes involved in examining CIA activities, a function it has not had since the early 1960's.

3. Public

Lastly, the role of the press and the interested public in understanding and appraising community activities is inextricably mixed with questions of secrecy dealt with in the following section. With the passage of the Freedom of Information Act, the Privacy Act, and a general opening up of intelligence activities to public scrutiny, there may be less concern today for access (even though such access poses significant security and workload problems for the community). Yet confidence cannot be maintained without some appreciation for the public's right to know. Some balance must be worked out, perhaps to be addressed publicly by the President.

C. Secrecy

1. Classification

The public accepts the need for secrecy; the Harris Survey showed that a majority (71%) feels that "any successful foreign intelligence agency must be operated in secrecy" (13% disagreed). Classification was not directly addressed in the Rockefeller Commission Report. The

Murphy Commission recommended certain improvements, including a statutory basis for classification. It is, however, an issue which has been of long-standing interest to critics of the intelligence community and more recently an issue of operational significance to the Select Committees of the House and Senate. But the public is worried (52% to 28%) that "so many secrets of the CIA have been made public that the future ability of the CIA to operate well has now been threatened."

The existing basis for classification (Executive Order No. 11652 issued by President Nixon on March 10, 1972) is criticized both within and outside the Executive. There is some feeling that the Executive Order still makes too many documents subject to the security classification and the definitions have proved to be essentially unworkable. Suggestions are made from time to time that Congress enact classification system. The community feels the existing system of "compartmentation" (special clearances giving access to information only on a need to know basis) poses operational problems. Whatever mechanisms are used, however, there must be some continuing attention given to the standards of the classification.

2. Scope

A second issue arises as to the scope of protection to be given to that information. The criminal law reform pending Bill S. 1 would establish new standards and penalties, but these are proving controversial. A separate but closely related issue is the extent of protection of intelligence sources and methods. The National Security Act of 1947 vests the responsibility for such protection in the Director of Central Intelligence, but does not provide him any authority or sanctions, except over CIA employees in a limited fashion. Whether specific legislation is required to protect sources and methods is being examined by your Intelligence Coordinating Group.

3. Legal Issues

Finally, the question of secrecy can not be considered out of the Constitutional context in which it most often arises - disputes with Congress and the Courts over Executive Privilege and legal determinations on the relevance of the Fourth Amendment. Executive Privilege disputes are not now effectively resolved except through negotiation. Courts are increasingly interested in examining the reasons for

classification of information and the necessity for intelligence activities, particularly where individual liberties and civil rights may be infringed. The Rockefeller Commission devoted considerable attention to this series of problems and its recommendations are now being reviewed by all Executive Agencies for appropriate solution.

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CENTRAL INTELLIGENCE AGENCY

OFFICE OF THE DIRECTOR

10 December 1975

The Morning Meeting Group

The attached, prepared by [redacted], is a draft charter for a Legislative Group. Presumably, it picks up where the OMB/NSC group leaves off.

[redacted] wants our comments on this proposed charter. Your comments should be forwarded to me by close of business 12/11.

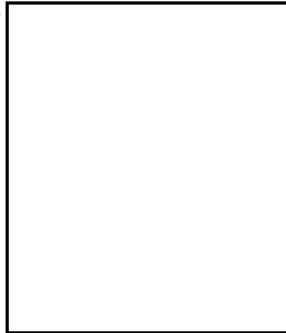
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SECOND STUDY GROUP OF THE
ICG'S LEGISLATIVE GROUP

Steering Group:



STAT

Working Group:

Ron Carr, Justice (Chairman)

, CIA

, State

, Defense

Mason Cargill, ICG

, NSC (?)

, OMB (?)

I. Broad Areas of Interest

A) General Constitutional, legal and ethical issues involved in foreign intelligence operations.

- Separation of Powers
- Individual rights (e.g., privacy)
- Treaties and other forms of international law
- Domestic jurisdiction of CIA, DOD

B) Secrecy, protection of sources and methods, etc.

C) Domestic intelligence, which is not for foreign intelligence or prosecutorial reasons.

II. Preliminary List of Specific Tasks

- 1) Research papers (compilation of existing opinions, analysis of law, etc.)
 - Separation of powers viz Congressional oversight
 - Legality of covert action
e.g., consistency with treaty obligations and U.S. law.
 - Individual rights (see Levi testimony and Rockefeller Report).
 - Constitutional requirement for public intelligence budget.
 - Applicability of Freedom of Information and Privacy Acts on foreign intelligence.

- 2) Legislative Issue Papers
 - Statutory charters for: NSA, DIA, others(?)
 - Domestic jurisdiction of: FBI, CIA, DOD
 - Secrecy and protection of sources and methods

- 3) Catalog areas where legislative or administrative action may be needed (see draft attached - Tab A).

- 4) Develop decision papers.

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Problem areas by function --

- (1) Collection of intelligence information -- 4th amend., privacy problems -- What sorts of protections are needed to ensure that U.S. citizen's/resident's privacy is not unduly invaded by intelligence gathering techniques?
 - (A) abroad
 - (B) in U.S. -- warrants
- (2) Dissemination and use of intelligence information -- What sorts of protections are needed to ensure that information gathered, abroad and in U.S., is employed solely for legitimate governmental purposes, to prevent abuse for partisan or otherwise illegitimate reasons?
- (3) Covert operations -- What sorts of protections are needed to ensure that covert operations are both necessary to legitimate governmental interests and ethically responsible?
 - (A) with respect to foreign governments, organizations, activities;
 - (B) in U.S.

Problem areas of organization --

- (1) Division of function, for foreign intelligence gathering and operations, between Defense/CIA and FBI.
- (2) Division of function between foreign intelligence gathering/counterintelligence and domestic law enforcement -- is it possible or wise?

Problems of protection/accountability --

- (1) What sanctions or other devices are necessary to ensure that confidential materials will not be disclosed by individuals -- officials or others -- without authorization?
- (2) What sorts of changes in responsibility for and structure of classification system to identify materials that must remain confidential, and only those? Who should formulate/apply standards?

- (3) To what extent and to whom can intelligence budgets be disclosed without endangering functions?
- (4) What form and degree of Congressional oversight and review is both consistent with Congress' constitutional responsibility and the integrity of the Executive, and, at the same time, not injurious vital intelligence functions?

TRANSMITTAL SLIP

TO: *ER*

ROOM NO. BUILDING

REMARKS:

This was distributed at the Morning Meeting on 11 Dec.

FROM: [Redacted]
ROOM NO. [Redacted] ION [Redacted]

FORM NO. 241
1 FEB 55

REPLACES FORM 36-8 WHICH MAY BE USED.

(47)

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