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11 March 1978

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MEMORANDUM FOR: Associate Director-Management
National Foreign Assessment Center

FROM :
Assistant for Information, DDA

SUBJECT : Intelligence Charter Legislation

REFERENCE : Your multiple addressee memorandum dtd 23 Feb 78,
same subject

1. The paragraphs which follow contain the comments and suggestions of this directorate on Title IV of the draft charter legislation and they make specific reference to the issues identified in the attachment to your memorandum of 23 February.

2. Section 403(b), page 179 (Issue 3)

We support the change in the definition of the term "proprietary" but suggest that the amended phrasing be "but whose relationship with the CIA cannot be publicly acknowledged by the United States Government."

3. Section 411(a), page 180 (Issue 2)

We defer to legal opinion about the difference between existing statutory language and the phrase "under the direction and control of the National Security Council" but note that the responsibilities of other parts of the intelligence community described in the charter legislation do not appear to be subject to the same "direction and control." Cast our vote for changing this language drawn from the Act of 1947.

4. Section 412(a), page 180 (Issue 4)

The OLC note suggests that the debate on the ambiguities of the provisions on the DNI and the DCI has been closed, but we feel strongly that further effort should be made to clarify the DNI's role as Director of the CIA. In this regard, it has been suggested that the term "act" appears to indicate a temporary situation and that the term "serve" would be more appropriate.

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5. Section 413(f), page 182 (Issue 9)

The proposed amendment to eliminate the reference to the Agency acting as the agent of the DNI has our full support.

6. Section 413(g), page 183 (Issue 10)

We agree that the language here should be consistent with E.O. 12036.

7. Section 413(g)(5), page 183 (Issues 12 & 13)

Given the definitions in Title I and the adoption of those definitions for this Title in Section 403, the concern here about definition of the Office of the Director seems unnecessary. Of more immediate concern to us is the question of the authorities of the CIA vis-a-vis the Office of the DNI. The question is raised, for example, whether the Director of Personnel would require dual status as Director of Personnel for CIA and also for Office of the DNI in order to appoint, promote and separate O/DNI employees. If the DNI is not the DCI, how would such powers be delegated? The confusion generated by the imprecision in the statement about the roles of the DNI and DCI is graphically illustrated here.

8. Section 413(h)(2), page 184 (Issue 15)

This subsection does appear to be redundant for the reasons outlined in the OLC issues paper.

9. Section 413, page 184 (Issue 16)

A new subsection such as that proposed by OLC should be included. We believe, however, that it would be out of sequence if left to the end of Section 413. We suggest inserting the new subsection after existing subsection (g)(4), renumbering the succeeding subsection accordingly. Thus placed, the paragraph would not need the word "above" which appears in the third line.

10. Section 421(a)(1), page 184 (Issue 17)

To the extent that this section is to provide the authority by which the Agency is to receive its "appropriation" through the appropriations of others, it seems unnecessary that the Director be required to certify that limitations on the covering appropriation would unduly impede the performance of Agency functions.

11. Section 421(a)(6), page 186 (Issue 18)

Amendment of this section is essential to provide authority to carry out an adequate investigative program. We suggest the following language: "protect the security of its installations, activities, information and personnel by appropriate means, including such investigations of applicants, employees, contractors and employees of contractors, and other persons with similar associations with the CIA or access to its facilities as are necessary." The responsibility of the Office of Security to perform investigative services for the Office of the DNI should be clarified and perhaps some reference should be made here to such responsibilities.

12. Section 421(a)(8), page 186 (Issue 19)

The various services listed in this subsection are so inherent in the bureaucratic process that they should not need specific articulation in the charter legislation. If the listing must appear, however, it should probably include budgetary and personnel services.

13. Section 421(a)(16) (Issue 20)

The Office of Finance believes that authority to expend funds for the payment of association and library dues is already covered by the charter legislation, but we have no objection to its addition to this subsection.

14. Section 421(a)(18) (proposed), page 187 (Issue 21)

We support the idea of a new subsection on the subject of property management, but the Office of Logistics would prefer the following language: "Dispose of excess foreign property by destruction, abandonment, or by donation, sale, or transfer to a foreign government, notwithstanding other provisions of law and under procedures approved by the Attorney General, when the Director deems such action necessary to the successful performance of the functions of the Agency or to protect the security of Agency activities." (I have provided their language as drafted but defer to OGC on the need for the reference to the Attorney General.)

The Office of Finance raises the question whether it is our intent to remove the limitation generally applicable to government agencies which limits the use of sale proceeds for replacement to a time period which expires at the end of the end of the fiscal year following the fiscal year in which the sale takes place.

15. Section 421(b), page 187

The purpose of this section as a separate section in addition to 421(a)(1) is not completely apparent. Do either or both of these sections have the affect of subjecting Economy Act transfers to the specific approval of the Director of National Intelligence and the Director of Management and Budget? We recommend opposing such a requirement, if intended, inasmuch as the authority for Economy Act transfers is available to all Government agencies when necessary to promote effectiveness of operations and we believe it inappropriate to subject this Agency to any unique approval requirements.

16. Section 421(d)(1), page 188 (Issue 22)

The entire thrust of this subsection is too restrictive. Current Agency regulations recognize a number of circumstances in which it may be necessary and prudent for a proprietary to possess funds in excess of "normal" requirements. We should not lose the flexibility of allowing proprietaries to retain funds which they may need for non-recurring costs or in order to appear to be adequately funded.

17. Section 421(d)(2), page 188

The threshold of \$50,000 proposed in this subsection seems unreasonably low.

18. Section 421(g), page 189 (Issue 23)

The Agency budget should certainly be included in the list of items to be protected against disclosure under other provisions of law.

19. Section 421(h)&(i), page 190 (Issue 24)

The Office of Security observes that the explicit authority to carry firearms in Section 421(i), following as it does the reference in 421(h) to "police powers," could be construed as limiting the carrying of firearms for the purpose of protecting installations and grounds. Such implication should be eliminated. It is also important that authority to carry firearms should be understood to include the protection of classified material not only in transit, but also in temporary or permanent storage. Express provision should also be made for transportation and utilization of firearms for authorized training.

20. Section 421(j), page 191 (Issue 25)

As written, this subsection would require the Director to go to Congress for any promotion to EP-IV. The charter legislation is silent on the grades of the General Counsel and Inspector General, and Title I no longer specifies the grades of the Assistants to the DNI. Confusion results about whether these officers or Deputy Directors of CIA may be appointed at the EP-IV level. Some clarification is necessary.

Additionally, the use of terms "separate" in subsection (j)(1) and "terminate" in subsections (j)(2) and (4) causes some confusion. Separation can be for cause as well as being brought about by personnel surpluses. Termination for reasons of national security is another version of separation for cause. The reasons for the use of the different terms should be made clear in the legislation or in the legislative history.

In subsection (j)(3) on page 192, the use of the term "positions" could be construed to include substance as well as number. Would we be required under this subsection to return to Congress when reallocating positions to other purposes or only when we propose to exceed the existing ceiling?

21. Section 422, page 192 (Issue 26)

While the procurement authority is adequately covered in Section 422, there is a procedural problem with subsection 422(b). It is not clear if the report of waiver must be rendered prior to or subsequent to the exercise of the waiver authority. Also, proposed S.1264, the Federal Acquisition Act of 1977 (Chiles Act), will replace the current Armed Services Procurement Act contained in Title 10 U.S.C. Apparently Section 422 was written without considering the impact of S.1264.

22. Section 422(c), page 194 (Issue 27)

It is difficult to judge, without knowing what the Attorney General procedures will be, whether the phrasing here would hamper certain types of procurements. Procurement and contracting activities could be impeded if the Director must obtain approval for each transaction.

23. Section 423(a)(1), page 195

This subsection should be amended to reflect the authority to seek assistance in conducting investigations "as authorized by subsection 421(a)(6) above." This assumes implementation of our recommendation on the latter subsection.

24. Section 425(a), page 196 (Issue 31)

STAT We support the proposed additional language which would re-establish the authorities of paragraph 8b of the existing charter and refer to paragraph 4 of [redacted] memorandum of 27 February 1978, a copy of which has been sent to [redacted] OLC. STAT

We also suggest that the words "for activities" be deleted from line 24 or the sentence otherwise revised to preclude having the word "activities" appear to be antecedent to the phrase "authorized by legislation enacted...." The funds, not the activities, should be the subject of this limitation. We also continue to believe that the reference in this subsection to prior-year authorizations may lead to the use of multiple-year appropriations, and emphasize again that conducting CIA activities under a single annual appropriation is cost effective.

25. Section 425(b), page 197 (Issue 32)

We suggest omission of the requirement for direct reporting on expenditures certified by the DNI under the authority of this subsection. Data on expenditures so certified will be reflected in the Agency's Annual Financial Report.

26. Section 425(c)(1)(a), page 197 (Issue 33)

The concern expressed in the OLC issue is unnecessary. OMB has always been made privy to the reasons for withdrawing funds from the reserve.

27. Section 425(c)(3), page 199

We do not understand the purpose of this subsection and believe the requirement introduces an unnecessary and undesirable constraint. We suggest that it be deleted.

28. Section 426(a), page 200 (Issue 35)

We share your concern that the appointment of the General Counsel with the advice and consent of the Senate could politicize the position.

29. Section 426(a)(1), page 200 (Issue 36)

The concern expressed in the OLC issue may be satisfied by the provision in subsection 412(g)(5) on page 183 which directs the CIA to provide legal services to the O/DNI.

30. Section 431(c)(1), page 203 (Issue 39)

We support the alternative language proposed by OLC to include, in the section on unauthorized disclosure, words which make it clear that not only safety but usefulness to the Agency can be jeopardized by unauthorized disclosure.

31. Part E, page 204

In the interest of consistency, we suggest that the title here be expanded to read "Travel and Related Expenses and Allowances; Retirement System."

32. Section 441(a), page 204 (Issue 41)

The definition of the term "employee" in this subsection is inadequate for Agency needs. Contract employee status should be dealt with more clearly and explicitly. We also believe that the limit on employee benefits when the individual is resident at a foreign post is too restrictive and requires modification. The Agency has, in the past, provided return travel to the United States upon completion of a normal tour for full-time career employees resident at foreign posts at the time of employment. Quarters and other allowances have also been paid in some instances. If the intent is to limit the payment to "legal residents" of the foreign area where the employment takes place, then perhaps this term should be introduced as part of the definition.

33. Section 441(a)(3), page 205

The definition of "United States" should be revised to make it consistent with other definitions and standards used in 5 and 22 U.S.C. as well as the Federal Travel Regulations and the Foreign Affairs Manual. We suggest "The term United States means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, the territories and possessions of the United States and the Canal Zone." The Office of Finance has provided a series of observations about the inconsistencies in the present definition; these are attached as Tab A.

34. Section 441(b)(1)&(2), page 205 (Issue 42)

The language of the change proposed by OLC reflects the views of the SSA/DDA. In addition, the Office of Finance suggests that the reference to allowances in line 2 on page 206 be expanded to read "travel, transportation and subsistence expenses and other allowances and benefits." They also suggest that in this subsection, to be consistent with the Foreign Service Act, the term "employees of the Foreign Service" should be changed to "officers and employees of the Foreign Service."

35. Section 441(c)(1), page 206

If the intent of this provision is to obtain benefits such as educational travel provided by amendment to the Appropriations Act for the Foreign Service, we concur that Executive Order is probably the best way to obtain the benefits for CIA personnel. Either by this means or by explicit authorization in the charter legislation, such educational travel entitlements should be obtained for CIA personnel.

36. Section 441(d)(1), page 207 (Issue 44)

STAT The following language has been previously suggested for this subsection: "Notwithstanding the provisions of subsection (b) and (c) of this section and under regulations approved by the Director, the Agency may pay benefits in lieu of those specifically authorized or may grant special quarters, cost of living and representation allowances and travel expenses when it is determined that such are necessary for reasons of operational necessity or security." For additional comment on this point, see [redacted] memorandum previously referred to. What we are seeking in this change is reestablishment of the authority currently available to us under paragraph 8b of the Act of 1949.

37. Section 442, page 208 (Issue 45)

We agree that details about the designation of participants in CIARDS should be not be included in the charter legislation. It should be sufficient simply to refer to the statute which established CIARDS.



Attachment: a/s

STAT cc: OLC [redacted]

(b) Germane to the above are the following observations about observed inconsistencies in the present definition of the United States.

1. The Virgin Islands and Guam are both Unincorporated Territories and are virtually identical as to their legal, political and physical status - and similar as to economy, population, climate, geographic location, etc. The case for treating one as being in the United States and other in a "foreign area" is not clear.

2. The Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands (established 9 Jan 1978) are similar, though not identical, as to legal, political and physical status. Here again the differentiation of one as within "the United States" and the other as a "foreign area" is not clear.

3. Although the Pacific Island possessions of the United States, over which the U.S. exercises sovereignty, would be "foreign areas" for travel entitlements, the Canal Zone which does not fall under U.S. sovereignty (only acting "as if" if exercised sovereignty per the current treaty) and which is to be progressively geographically contracted until it disappears in 1999 is considered within "the United States."

4. This definition will create inherent inconsistencies between this legislation and the existing legislation (5 USC and 22 USC) which it references because of the substantive differences in their geographical definitions and applications. In addition, it creates the possibility of serious inequities in the entitlements and benefits applicable to employees who are American citizens and natives of or residents of U.S. Caribbean territories and possessions as opposed to U.S. Pacific territories and possessions. For example, employees with family ties in the Virgin Islands or Puerto Rico would potentially be entitled to home leave travel to those places, while employees with family ties in Guam or American Samoa would not be entitled to such home leave travel. Home leave could be taken in the V.I. or P.R., but not in Guam, Samoa, etc.