

D R A F T

AMBIGUITIES AND THE LAW

CIA, NSA, DIA, FBI and, to some extent, several other Federal Agencies, collect information and produce intelligence, but of different kinds and for different purposes. This is recognized in practice but is not as clearly established in the law. Given some lack of clarity in the law and some uncertainty regarding limits placed on intelligence activities, misunderstanding and fear of abuse of power easily thrive. In reality, however, in the implementation of mission and charters and in direction and control, there are not as many unresolved ambiguities as the uninformed may suppose.

The experience following the National Security Act of 1947 is such that it is now possible to eliminate some of the vagueness of the language of the Act. The certainty and public confidence that should result from clarifications in the law should far outweigh any disadvantages. A number of possible amendments or additions to current laws have already been mentioned, and proposed legislation has already been submitted for some. These ideas and others are suggested, below.

-2-

1) Clarify CIA's mission and charter by amending the National Security Act of 1947 to reflect:

--that included in the proper functions of the Agency are (a) collection of foreign intelligence information; (b) conduct of activities to carry out CIA's counter-intelligence responsibilities overseas; and (c) conduct of covert action operations overseas when authorized by the President;

--that CIA's responsibility to produce intelligence relates only to foreign intelligence;

--that it is a duty of the Agency to develop advanced technical equipment to improve the collection and processing of foreign intelligence information; and

-3-

--that the conduct of any counterintelligence operation or other activity overseas directed specifically at U. S. citizens (other than CIA employees) will be undertaken in coordination with the FBI or as requested by the FBI or by other USG agencies in coordination with the FBI.

2) Establish the authority for those agencies engaged in the collection and production of foreign intelligence to carry on certain specified activities within the United States, such as:

- protection of classified information and their own installations against penetration and compromise;
- investigation of employees, applicants, and those persons who could assist the U. S. foreign intelligence effort;

-4-

--investigation of employees and other individuals to be granted access to sensitive information;

--collection of foreign intelligence information from foreign nationals and from cooperating U. S. citizens;

--establishment of mechanisms in support of foreign intelligence activities; and

--cooperation with the FBI in investigations relating to the unauthorized disclosure of foreign intelligence.

3) Remove uncertainty regarding responsibility for internal security matters by modifying appropriate laws to establish clearly:

--that the collection of counterintelligence information in the United States and the collection of information related to internal security are functions of the FBI;

-5-

--that the responsibility for the production of intelligence related to internal security rests with the FBI; and

--that with due regard to assessed reliability of the information and responsibilities for protecting sources and methods, those agencies engaged in foreign intelligence activities will make available to the FBI and other Federal agencies, as appropriate, the security and counterintelligence information relating to foreign nationals in the United States and to U.S. citizens which is derived as a by-product of foreign intelligence activities.

4) Recognize international terrorism and international illegal drug activities as threats to U.S. national security and proper targets for U.S. foreign intelligence efforts, as well as for internal security operations.

-6-

5) Provide protection against the unauthorized disclosure of intelligence sources and methods by:

--providing for the protection of intelligence sources and methods on a statutory basis independent of Executive Order 11652;

--clarifying that the Director of Central Intelligence is responsible for protecting intelligence sources and methods related to foreign intelligence and foreign counterintelligence;

--assigning to the Director of the Federal Bureau of Investigation the duty of protecting intelligence sources and methods related to internal security and to counterintelligence within the United States;

--imposing specific burdens, upon officers and employees of all branches of the government and others granted official access, not to disclose such information without authorization,

-7-

and providing criminal sanctions for unauthorized disclosures;

--establishing effective injunctive recourse, through the Attorney General, for protection of all intelligence sources and methods;

--providing for in camera judicial review of material revealing intelligence sources and methods when relevant and necessary to criminal and civil proceedings;

--delineating authorities and responsibilities for investigating suspected or discovered unauthorized disclosures by (a) U.S. citizens overseas and (b) all persons within the United States.

6) Delineate areas of interagency assistance that facilitate performance of authorized missions, promote economy of resources, and as a matter of policy are desirable, for example:

-8-

--cooperation in research and development of technical collection and information processing equipment, methods and techniques;

--loan or supply of equipment, methods and techniques;

--provision of training in special skills and techniques;

--passage of information derived as a by-product of foreign intelligence activities to those agencies responsible for the matters involved.

A few changes in the procedures for reviewing intelligence activities might add considerable understanding and confidence. Of paramount importance is a form of congressional oversight that permits the provision to Congress of the necessary information in a timely, efficient and controlled manner. It is recognized that a number of Committees in both the Senate and House must be informed of substantive intelligence, operational matters and fiscal details in varying degrees. Just as in the executive branch, the test of access should be

-9-

"need-to-know." To apply this test and to control and protect sensitive information provided to Congress, a focal point within Congress would be extremely helpful. Whether a joint committee or not, such a focal point would also be valuable in facilitating changes in laws affecting intelligence activities. Congress might find that a more uniform approach to budget presentation and review would provide better insight and understanding.

The foregoing suggestions are by no means definitive. They do, however, present areas that in the experience of the intelligence community deserve careful attention.

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