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S. Dickerson

U.S. Department of Justice

Federal Bureau of Investigation

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Office of the Director

Washington, D.C. 20535

July 15, 1981

BY LIAISON

81-06062

Honorable William J. Casey
 Director of Central Intelligence
 Central Intelligence Agency
 Washington, D. C.

Dear Bill:

Re: New Executive Order on Intelligence

I have received the draft executive order to replace Executive Order 12036, which you sent to me and which was distributed to the membership of the National Foreign Intelligence Board on July 7, 1981. After reviewing the draft order, I believe that its authors have achieved a positive tone that will be accepted with appreciation in the Intelligence Community.

As you know, the Federal Bureau of Investigation (FBI) did not participate in the drafting of this proposal, although many of the provisions were designed by Intelligence Community representatives at various meetings last spring. If the sections of this draft relating to dissemination among intelligence agencies are adopted, I believe that our exchange of information will be made more efficient without any attendant detriment to the privacy interests of the individuals involved. Further, the draft's retention of existing relationships between the various agencies is important to proper functioning of the intelligence-gathering system.

Nevertheless, there are three specific areas where I believe that it is important that changes be made:

The Intelligence Community. Section 1-4 is a new section that describes the range of functions of the various agencies in the Community and vests leadership and coordination responsibilities in the Director of Central Intelligence over the activities of the Intelligence Community. This includes responsibility over the foreign counterintelligence and international terrorism activities of the FBI when they occur in the United States as well as international narcotics activities.

cc: BBR

RBB

Honorable William J. Casey
Director of Central Intelligence
Central Intelligence Agency

I am concerned that the language of Section 1-4 as presently drafted will be viewed as a new role for the Director of Central Intelligence with respect to policy development and management for these FBI activities which would severely alter the historical separation that exists between internal security and foreign intelligence. As you know, this distinction has existed since an executive order was issued in 1939 which commanded the FBI to investigate "counterespionage."

There is no doubt that this historic division of authority is in recognition of the different concerns which arise from intelligence activities within the United States and those abroad. FBI investigation of the activities of foreign powers and their agents in the United States focus largely on U. S. citizens; this is less frequently the case in intelligence activities conducted abroad.

As I recently told the Attorney General, it is my belief that the continuation of this traditional recognition of the greater sensitivity of intelligence investigations within the United States has reestablished the credibility of the agencies in the Intelligence Community and has proven them to be responsible elements of Government. Such public and congressional acceptance now permits this reexamination of the intelligence executive order in a manner that will result in a more positive authority and improve intelligence performance.

It would, in my judgment, be unwise to risk the erosion of public confidence by the presence of language suggesting a departure from the traditional National Security Council - Attorney General responsibility for counterintelligence in the United States.

To remedy this potential problem, I suggest in the alternative either dropping the section in its entirety or if the section is useful, the introductory language of that section should be modified to indicate that the Attorney General retains his traditional leadership and coordination responsibility.

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Shotton

NOT ACCORD TO

Honorable William J. Casey
Director of Central Intelligence
Central Intelligence Agency

Eliminate References to Joe

Drug Enforcement Administration Activities. There are various references to international narcotics matters and to the Drug Enforcement Administration (DEA) contained in Sections 1-4(c), 1-5(e) and (f), and 1-7(g), which I believe would be more properly addressed in a separate executive order once the current reorganization of DEA is concluded. In so recommending, I recognize that there obviously is a role for the Intelligence Community in the collection of strategic narcotics intelligence, and our Government's activities against international narcotics traffic are not without foreign policy and foreign intelligence ramifications. In view of the current examination of DEA, I would suggest that the references to DEA and international narcotics matters be removed from the draft in favor of a subsequent order that could address the international narcotics and intelligence relationship.

Intelligence Oversight Board. Once again I must express my concern about the proposal to limit reporting of illegality to those cases where there is a serious question of legality. That would impose a difficult and I believe unnecessary burden on the Inspectors General and others whose duty it is to monitor and report on intelligence activities. The requirement to distinguish between serious and nonserious crimes without further guidance will lead to varying interpretations resulting in uneven reporting to the Intelligence Oversight Board (IOB). Further, this could foster the erroneous impression that the Intelligence Community is carrying out a range of illegal activity which is acceptable.

I believe this is too high a price to pay for this unnecessary standard, and I strongly suggest that all questions of legality be reported to the IOB.

Accepted

Honorable William J. Casey
Director of Central Intelligence
Central Intelligence Agency

In conclusion, I want to assure you that my comments should not be construed in any way that would suggest that the FBI regards itself as other than a full member of our country's intelligence effort. I believe that we are all seeking to design an executive order that will permit necessary intelligence activities yet will be free from public doubt and uncertainty, and it is in this spirit that my comments are made.

Sincerely yours,



William H. Webster
Director

EXECUTIVE ORDER _____

UNITED STATES
INTELLIGENCE ACTIVITIES

Timely and accurate information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons, and their agents, is essential to the national security of the United States. In order to obtain such information, the intelligence capabilities of the United States must be strengthened through the removal of unwarranted restraints on the conduct of necessary intelligence activities. All reasonable and lawful means must be used to ensure that the United States will receive the best intelligence available. The honorable men and women of the Intelligence Community who serve the United States must understand that their efforts are vital to the national security and have the full support of the President, the Congress, and the public. For that purpose, by virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the National Security Act of 1947, as amended, and as President of the United States of America, in order to provide for the effective conduct of United States intelligence activities and the protection of constitutional rights, it is hereby ordered as follows:

SECTION 1

GOALS, DIRECTION, DUTIES AND
RESPONSIBILITIES WITH
RESPECT TO THE NATIONAL
INTELLIGENCE EFFORT

1-1. Goals. The United States intelligence effort shall provide the President and the National Security Council with the necessary information on which to base decisions concerning the conduct and development of foreign, defense and economic policy, and the protection of United States national interests from foreign security threats. All departments and agencies shall cooperate fully to fulfill this goal.

(a) Maximum emphasis should be given to fostering analytical competition among appropriate elements of the Intelligence Community.

(b) All means, consistent with applicable United States law and this Order, and with full consideration of the rights of

United States persons, shall be used to develop intelligence information for the President and the National Security Council. A balanced approach between technical collection efforts and other means should be maintained and encouraged.

(c) Special emphasis should be given to detecting and countering espionage and other threats and activities directed by foreign intelligence services against United States persons, the United States Government, or United States corporations and establishments.

(d) To the greatest extent possible consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, all agencies and departments should seek to ensure full and free exchange of information in order to derive maximum benefit from the United States intelligence effort.

1-2. The National Security Council.

(a) Purpose. The National Security Council (NSC) was established by the National Security Act of 1947 to advise the President with respect to the integration of domestic, foreign and military policies relating to the national security. The NSC shall act as the highest Executive Branch entity that provides review of, guidance for, and direction to the conduct of all national foreign intelligence, counterintelligence, and special activities, and attendant policies and programs.

(b) Committees. The NSC shall establish such committees as may be necessary to carry out its functions and responsibilities under this Order.

1-3. National Foreign Intelligence Advisory Groups.

(a) Establishment and Duties. The Director of Central Intelligence shall establish such boards, councils, or groups as required for the purpose of obtaining advice from within the Intelligence Community concerning:

(1) Production, review, and coordination of national foreign intelligence;

(2) Priorities for the National Foreign Intelligence Program budget;

(3) Interagency exchanges of foreign intelligence information;

(4) Arrangements with foreign governments on intelligence matters;

- (5) Protection of intelligence sources and methods;
- (6) Activities of common concern;
- (7) Such other matters as may be referred by the Director of Central Intelligence.

(b) Membership. Advisory groups established pursuant to this section shall be chaired by the Director of Central Intelligence or his designated representative and shall consist of senior representatives from organizations within the Intelligence Community and from departments or agencies containing such organizations, as designated by the Director of Central Intelligence. Groups for consideration of substantive intelligence matters will include representatives of organizations involved in the collection, processing, and analysis of intelligence. A senior representative of the Secretary of Commerce, the Attorney General, the Assistant to the President for National Security Affairs, and the Office of the Secretary of Defense shall be invited to participate in any group which deals with other than substantive intelligence matters.

1-4. The Intelligence Community. The agencies within the Intelligence Community shall, under the leadership and coordination of the Director of Central Intelligence and in accordance with applicable United States law and the provisions of this Order, conduct intelligence activities necessary for the conduct of foreign relations and the protection of the national security of the United States, including:

(a) Collection of information needed by the President, the National Security Council, the Secretaries of State and Defense, and other Executive Branch officials for the performance of their duties and responsibilities;

(b) Production and dissemination of intelligence;

(c) Collection of information concerning, and the conduct of activities to protect against, intelligence activities directed against the United States, international terrorist and international narcotics activities, and other hostile activities directed against the United States by foreign powers, organizations, persons, and their agents;

(d) Special activities;

(e) Administrative and support activities within the United States and abroad necessary for the performance of authorized activities; and

(f) Such other intelligence activities as the President may direct from time to time.

1-5. Director of Central Intelligence. In order to discharge the duties and responsibilities prescribed by law, the Director of Central Intelligence shall be responsible directly to the President and the NSC and shall:

(a) Act as the primary adviser to the President and the NSC on national foreign intelligence and provide the President and other officials in the Executive Branch with national foreign intelligence;

(b) Develop such objectives and guidance for the Intelligence Community as will enhance capabilities for responding to expected future needs for national foreign intelligence;

(c) Promote the development and maintenance of services of common concern by designated intelligence organizations on behalf of the Intelligence Community;

(d) Ensure implementation of special activities;

(e) Formulate policies concerning foreign intelligence and counterintelligence arrangements with foreign governments, coordinate foreign intelligence and counterintelligence relationships between agencies of the Intelligence Community and the intelligence or internal security services of foreign governments, and establish procedures governing the conduct of liaison by the Drug Enforcement Administration (DEA) with such services;

(f) Participate in the development of procedures approved by the Attorney General governing the criminal narcotics activities of DEA to ensure that these activities are consistent with foreign intelligence programs;

(g) Ensure the establishment by the Intelligence Community of common security and access standards for managing and handling foreign intelligence systems, information, and products;

(h) Ensure that programs are developed which protect intelligence sources, methods, and analytical procedures;

(i) Establish uniform criteria for the determination of relative priorities for the transmission of critical national foreign intelligence, and advise the Secretary of Defense concerning the communications requirements of the Intelligence Community for the transmission of such intelligence;

(j) Establish appropriate staffs, committees, or other advisory groups to assist in the execution of the Director's responsibilities;

(k) Have full responsibility for collection, production and dissemination of national foreign intelligence, and authority to levy analytic tasks on departmental intelligence production organizations, in consultation with those organizations, ensuring that appropriate mechanisms for competitive analysis are developed so that diverse points of view are considered fully and differences of judgment within the Intelligence Community are brought to the attention of national policymakers;

(l) Ensure the timely exploitation and dissemination of data gathered by national foreign intelligence collection means, and ensure that the resulting intelligence is disseminated immediately to appropriate components and commands;

(m) Establish mechanisms which translate national foreign intelligence objectives and priorities approved by the NSC into specific guidance for the Intelligence Community, resolve conflicts in tasking priority, and provide to departments and agencies having information collection capabilities that are not part of the National Foreign Intelligence Program advisory tasking concerning collection of national foreign intelligence;

(n) Develop, with the advice of the program managers and departments and agencies concerned, the consolidated National Foreign Intelligence Program budget, and present it to the President and the Congress;

(o) Review and approve all requests for reprogramming National Foreign Intelligence Program funds, in accordance with guidelines established by the Office of Management and Budget;

(p) Monitor National Foreign Intelligence Program implementation, and, as necessary, conduct program and performance audits and evaluations; and

(q) Together with the Secretary of Defense, ensure that there is no unnecessary overlap between national foreign intelligence programs and Department of Defense intelligence programs consistent with the requirement to develop competitive analysis, and provide to and obtain from the Secretary of Defense all information necessary for this purpose.

1-6. Duties and Responsibilities of the Heads of Executive Branch Departments and Agencies.

(a) The heads of all Executive Branch departments and agencies shall, in accordance with law and relevant procedures approved by the Attorney General under this Order, give the Director of Central Intelligence access to all information relevant to the national intelligence needs of the United States,

and shall give due consideration to requests from the Director of Central Intelligence for appropriate support for Intelligence Community activities.

(b) The heads of departments and agencies involved in the National Foreign Intelligence Program shall ensure timely development and submission to the Director of Central Intelligence by the program managers and heads of component activities of proposed national programs and budgets in the format designated by the Director of Central Intelligence, and shall also ensure that the Director of Central Intelligence is provided, in a timely and responsive manner, all information necessary to perform the Director's program and budget responsibilities.

(c) The heads of departments and agencies involved in the National Foreign Intelligence Program may appeal to the President decisions by the Director of Central Intelligence on budget or reprogramming matters of the National Foreign Intelligence Program.

1-7. Senior Officials of the Intelligence Community. The heads of departments and agencies with organizations in the Intelligence Community or the heads of such organizations, as appropriate, shall:

(a) Report to the Attorney General possible violations of those federal criminal laws specified in procedures agreed upon by the Attorney General and the head of the department or agency concerned in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures;

(b) In any case involving serious or continuing breaches of security, recommend to the Attorney General that the case be referred to the FBI for further investigation;

(c) Furnish the Director of Central Intelligence and the NSC, in accordance with applicable law and procedures approved by the Attorney General under this Order, the information required for the performance of their respective duties;

(d) Report to the Intelligence Oversight Board, and keep the Director of Central Intelligence appropriately informed, concerning any intelligence activities of their organizations which raise questions of legality or propriety;

(e) Protect intelligence and intelligence sources and methods from unauthorized disclosure consistent with guidance from the Director of Central Intelligence;

(f) Disseminate intelligence to cooperating foreign governments under arrangements established or agreed to by the Director of Central Intelligence;

(g) Participate in the development of procedures governing DEA production and dissemination of intelligence on the foreign and domestic intelligence aspects of narcotics production and trafficking if their departments, agencies, or organizations have responsibilities in these areas;

(h) Instruct their employees to cooperate fully with the Intelligence Oversight Board; and

(i) Ensure that the Inspectors General and General Counsels for their organizations have access to any information necessary to perform their duties assigned by this Order.

1-8. The Central Intelligence Agency. All duties and responsibilities of the CIA shall be related to the intelligence functions set out below. As authorized by this Order; the National Security Act of 1947, as amended; the CIA Act of 1949, as amended; appropriate directives or other applicable law, the CIA shall:

(a) Collect, produce, and disseminate foreign intelligence and counterintelligence, including information not otherwise obtainable. The collection of foreign intelligence within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(b) Collect, produce, and disseminate intelligence on foreign aspects of narcotics production and trafficking;

(c) Conduct counterintelligence activities outside the United States and, without assuming or performing any internal security functions, conduct counterintelligence activities within the United States in coordination with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(d) Coordinate counterintelligence activities and the collection of information not otherwise obtainable when conducted outside the United States by other departments and agencies;

(e) Conduct special activities approved by the President, consistent with applicable law. No agency except the CIA (or the Armed Forces of the United States in time of war declared by Congress or during any period covered by a report from the President to the Congress under the War Powers Resolution (87 Stat. 855)) may conduct any special activity unless the President determines that another agency is more likely to achieve a particular objective;

(f) Conduct services of common concern for the Intelligence Community as directed by the NSC;

(g) Carry out or contract for research, development, and procurement of technical systems and devices relating to authorized functions;

(h) Protect the security of its installations, activities, information, property, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the CIA as are necessary; and

(i) Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) through (h) above, including procurement and essential cover and proprietary arrangements.

1-9. The Department of State. The Secretary of State shall:

(a) Overtly collect foreign intelligence relating to United States foreign policy as required for the execution of the Secretary's responsibilities, and produce and disseminate such intelligence;

(b) Disseminate, as appropriate, reports received from United States diplomatic and consular posts abroad;

(c) Transmit reporting requirements of the Intelligence Community to the Chiefs of United States Missions abroad; and

(d) Support Chiefs of Missions in discharging their statutory responsibilities for direction and coordination of mission activities.

1-10. The Department of the Treasury. The Secretary of the Treasury shall:

(a) Overtly collect foreign financial and monetary information;

(b) Participate with the Department of State in the overt collection of general foreign economic information;

(c) Produce and disseminate foreign intelligence relating to United States economic policy as required for the execution of the Secretary's responsibilities; and

(d) Conduct, through the United States Secret Service, activities to determine the existence and capability of

surveillance equipment being used against the President of the United States, the Executive Office of the President, and, as authorized by the Secretary of the Treasury or the President, other Secret Service protectees and United States officials. No information shall be acquired intentionally through such activities except to protect against such surveillance, and those activities shall be conducted pursuant to procedures agreed upon by the Secretary of the Treasury and the Attorney General.

1-11. The Department of Defense. The Secretary of Defense shall:

(a) Collect national foreign intelligence and be responsive to collection tasking by the Director of Central Intelligence;

(b) Collect, produce, and disseminate military and military-related foreign intelligence and counterintelligence as required for execution of the Secretary's responsibilities;

(c) Conduct programs and missions necessary to fulfill national, departmental and tactical foreign intelligence requirements;

(d) Conduct counterintelligence activities in support of Department of Defense components outside the United States in coordination with the CIA, and within the United States in coordination with the FBI, pursuant to procedures agreed upon by the Secretary of Defense and the Attorney General;

(e) Conduct, as the executive agent of the United States Government, signals intelligence and communications security activities, except as otherwise directed by the NSC;

(f) Provide for the timely transmission of critical intelligence, as defined by the Director of Central Intelligence, within the United States Government;

(g) Carry out or contract for research, development, and procurement of technical systems and devices relating to authorized intelligence functions;

(h) Protect the security of Department of Defense installations, activities, property, information, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the Department of Defense as are necessary;

(i) Establish and maintain military intelligence relationships and military intelligence exchange programs with

selected cooperative foreign defense establishments and international organizations, and ensure that such relationships and programs are in accordance with policies formulated by the Director of Central Intelligence; and

(j) Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) through (i) above.

1-12. Intelligence Components Utilized by the Secretary of Defense. In carrying out the responsibilities assigned in section 1-11, the Secretary of Defense is authorized to utilize the following:

(a) Defense Intelligence Agency, whose responsibilities shall include:

(1) Collection, production, or, through tasking and coordination, provision of military and military-related intelligence for the Secretary of Defense, the Joint Chiefs of Staff, other Defense components, and, as appropriate, non-Defense agencies;

(2) Collection and provision of military intelligence for national foreign intelligence and counterintelligence products;

(3) Coordination of all Department of Defense intelligence collection requirements;

(4) Management of the Defense Attache system; and

(5) Provision of foreign intelligence and counterintelligence staff support as directed by the Joint Chiefs of Staff.

(b) National Security Agency, whose responsibilities shall include:

(1) Establishment and operation of an effective unified organization for signals intelligence activities, except for the delegation of operational control over certain operations that are conducted through other elements of the Intelligence Community. No other department or agency may engage in signals intelligence activities except pursuant to a delegation by the Secretary of Defense;

(2) Control of signals intelligence collection and processing activities, including assignment of resources to an appropriate agent for such periods and tasks as required for the direct support of military commanders;

(3) Collection of signals intelligence information for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;

(4) Processing of signals intelligence data for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;

(5) Dissemination of signals intelligence information for national foreign intelligence purposes to authorized elements of the Government, including the military services, in accordance with guidance from the Director of Central Intelligence;

(6) Collection, processing, and dissemination of signals intelligence information for counterintelligence purposes;

(7) Provision of signals intelligence support for the conduct of military operations in accordance with tasking, priorities, and standards of timeliness assigned by the Secretary of Defense. If provision of such support requires use of national collection systems, these systems will be tasked within existing guidance from the Director of Central Intelligence;

(8) Executing the responsibilities of the Secretary of Defense as executive agent for the communications security of the United States Government;

(9) Conduct of research and development to meet needs of the United States for signals intelligence and communications security;

(10) Protection of the security of its installations, activities, property, information, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the NSA as are necessary;

(11) Prescribing, within its field of authorized operations, security regulations covering operating practices, including the transmission, handling, and distribution of signals intelligence and communications security material within and among the elements under control of the Director of the NSA, and exercising the necessary supervisory control to ensure compliance with the regulations; and

(12) Conduct of foreign cryptologic liaison relationships, with liaison for intelligence purposes conducted in accordance with policies formulated by the Director of Central Intelligence.

(c) Offices for the collection of specialized intelligence through reconnaissance programs, whose responsibilities shall include:

(1) Carrying out consolidated reconnaissance programs for specialized intelligence;

(2) Responding to tasking for national, departmental and tactical purposes in accordance with procedures established by the Director of Central Intelligence; and

(3) Delegating authority to the various departments and agencies for research, development, procurement, and operation of designated means of collection.

(d) The foreign intelligence and counterintelligence elements of the Army, Navy, Air Force, and Marine Corps, whose responsibilities shall include:

(1) Collection, production, and dissemination of military and military-related foreign intelligence and counterintelligence, and information on the foreign aspects of narcotics production and trafficking. When collection is conducted in response to national foreign intelligence requirements, it will be conducted in accordance with guidance from the Director of Central Intelligence. Collection of national foreign intelligence, not otherwise obtainable, outside the United States shall be coordinated with the CIA, and such collection within the United States shall be coordinated with the FBI;

(2) Conduct of counterintelligence activities outside the United States in coordination with the CIA, and within the United States in coordination with the FBI; and

(3) Monitoring of the development, procurement, and management of tactical intelligence systems and equipment and conducting related research, development, and test and evaluation activities.

(e) Other offices within the Department of Defense appropriate for conduct of the intelligence missions and responsibilities assigned to the Secretary of Defense. If such other offices are used for intelligence purposes, the provisions of sections 2-1 through 2-11 of this Order shall apply to those offices when used for those purposes.

1-13. The Department of Energy. The Secretary of Energy shall:

(a) Participate with the Department of State in overtly collecting information with respect to foreign energy matters;

(b) Produce and disseminate foreign intelligence necessary for the Secretary's responsibilities;

(c) Participate in formulating intelligence collection and analysis requirements where the special expert capability of the Department can contribute; and

(d) Provide expert technical, analytical and research capability to other agencies within the Intelligence Community.

1-14. The Federal Bureau of Investigation. Under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the Director of the FBI shall:

(a) Within the United States conduct counterintelligence and coordinate counterintelligence activities of other agencies within the Intelligence Community. When a counterintelligence activity of the FBI involves military or civilian personnel of the Department of Defense, the FBI shall coordinate with the Department of Defense;

(b) Conduct counterintelligence activities outside the United States in coordination with the CIA, subject to the approval of the Director of Central Intelligence;

(c) Conduct within the United States, when requested by officials of the Intelligence Community designated by the President, lawful activities undertaken to collect foreign intelligence or support foreign intelligence collection requirements of other agencies within the Intelligence Community;

(d) Produce and disseminate foreign intelligence and counterintelligence; and

(e) Carry out or contract for research, development, and procurement of technical systems and devices relating to the functions authorized above.

SECTION 2

CONDUCT OF INTELLIGENCE ACTIVITIES

2-1. Need. Information about the capabilities, intentions, and activities of foreign powers, organizations, or persons and their agents is essential to informed decisionmaking in the areas of national defense and foreign relations. Collection of such information is a priority objective and will be pursued in an aggressive, innovative, and responsible manner that is consistent with the Constitution and applicable law and respectful of the principles upon which the United States was founded.

2-2. Purpose. This Order is intended to enhance human and technical collection techniques, especially those undertaken abroad, and to acquire significant foreign intelligence, as well as to detect and counter international terrorist activities and espionage conducted by foreign powers. The Order also sends a clear signal to the Intelligence Community and to the Nation that the Administration supports an aggressive and effective intelligence effort. Set forth below are certain general principles that, in addition to applicable laws, are intended to achieve the proper balance between the acquisition of essential information and protection of individual interests.

2-3. Collection of Information. Agencies within the Intelligence Community are authorized to collect, retain, or disseminate information concerning a United States person only with his consent or in accordance with procedures established by the head of the agency concerned and approved by the Attorney General upon a finding that they are lawful under the Constitution and statutes of the United States. Those procedures shall permit collection, retention, and dissemination of the following types of information:

(a) Information constituting foreign intelligence or counterintelligence, including information concerning corporations or other commercial organizations;

(b) Information obtained in the course of lawful foreign intelligence, counterintelligence, international narcotics or international terrorism investigation;

(c) Information relevant to the safety of any persons or organizations, including those who are targets, victims, or hostages of international terrorist organizations;

(d) Information needed to protect foreign intelligence or counterintelligence sources or methods from unauthorized disclosure;

(e) Information concerning persons who are reasonably believed to be potential sources or contacts for the purpose of determining their suitability or credibility;

(f) Information arising out of a lawful personnel, physical or communications security investigation;

(g) Information acquired by overhead reconnaissance not directed at specific United States persons;

(h) Incidentally obtained information that may indicate involvement in activities that may violate federal, state, local or foreign laws; and

(i) Information necessary for administrative purposes.

In addition, agencies within the Intelligence Community may disseminate information, other than information derived from signals intelligence, to another agency within the Intelligence Community for purposes of allowing the recipient agency to determine whether the information is relevant to its lawful responsibilities and can be retained by it.

2-4. Collection Techniques. Agencies within the Intelligence Community shall use the least intrusive collection techniques feasible within the United States or directed against United States persons abroad. Agencies are not authorized to use such techniques as electronic surveillance, unconsented physical searches, mail surveillance, physical surveillance, or monitoring devices unless they are in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such procedures shall protect constitutional and other legal rights and limit use of such information to lawful governmental purposes. These procedures shall not authorize:

(a) The CIA to engage in electronic surveillance within the United States except for the purpose of training, testing, or conducting countermeasures to hostile electronic surveillance;

(b) Unconsented physical searches in the United States by agencies other than the FBI except for searches by CIA of personal property of non-United States persons lawfully in its possession and searches by counterintelligence elements of the military services for intelligence purposes within the United States or directed against United States military personnel abroad when authorized by a military commander empowered to approve physical searches for law enforcement purposes;

(c) Physical surveillance of a United States person in the United States by agencies within the Intelligence Community other than the FBI except for physical surveillance of a present employee or contractor of an intelligence agency or employee of such contractor, or a military person employed by a nonintelligence element of a military service.

2-5. Attorney General Approval. The Attorney General hereby is delegated the power to approve the use, for intelligence purposes, of any technique for which a warrant would be required if undertaken for law enforcement purposes, provided that such activities shall not be undertaken in the United States or against a United States person abroad without a judicial warrant, unless the Attorney General has determined that under the circumstances the activity is lawful under the Constitution and statutes of the United States.

2-6. Assistance to Law Enforcement Authorities. Agencies within the Intelligence Community are authorized to:

(a) Cooperate with appropriate law enforcement agencies for the purpose of protecting the employees, information, property, and facilities of any agency within the Intelligence Community;

(b) Unless otherwise precluded by law or this Order, participate in law enforcement activities to investigate or prevent clandestine intelligence activities by foreign powers, or international terrorist or narcotics activities; or

(c) Provide specialized equipment, technical knowledge, or assistance of expert personnel for use by any department or agency, or, when lives are endangered, to support local law enforcement agencies. Provision of assistance by expert personnel shall be approved in each case by the General Counsel of the providing agency.

2-7. Contracting. Agencies within the Intelligence Community are authorized to enter into contracts or arrangements for the provision of goods or services with private companies or institutions in the United States and need not reveal the sponsorship of such contracts or arrangements for authorized intelligence purposes. Contracts or arrangements with academic institutions may be undertaken only with the consent of appropriate officials of the institution.

2-8. Consistency with Other Laws. Nothing in this Order shall be construed to authorize any activity in violation of the Constitution or statutes of the United States.

2-9. Undisclosed Participation in Domestic Organizations. No one acting on behalf of agencies within the Intelligence Community may join or otherwise participate in any organization in the United States on behalf of any agency within the Intelligence Community without disclosing their intelligence affiliation to appropriate officials of the organization, except in accordance with procedures established by the head of the agency concerned and approved by the Attorney General upon a finding that they are lawful under the Constitution and statutes of the United States. Such participation shall be authorized only if it is essential to achieving lawful purposes as determined by the agency head or designee. No such participation may be undertaken for the purpose of influencing the activity of the organization or its members unless the Attorney General has approved the participation and determined that it will not interfere with any rights protected by the Constitution or laws of the United States.

2-10. Human Experimentation. No agency within the Intelligence Community shall sponsor, contract for, or conduct research on human subjects except in accordance with guidelines issued by the Department of Health and Human Services. The subject's informed consent shall be documented as required by those guidelines.

2-11. Prohibition on Assassination. No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

SECTION 3

OVERSIGHT OF INTELLIGENCE ACTIVITIES

3-1. Intelligence Oversight Board.

(a) Establishment and Purpose. There is hereby established an Intelligence Oversight Board, which shall function within the White House to advise the President as to the legality and propriety of activities of the Intelligence Community.

(b) Membership. The Board shall be composed of three persons. One member, drawn from among the membership of the President's Foreign Intelligence Advisory Board, shall be designated by the President as Chairman.

(c) Duties. The Intelligence Oversight Board shall:

(1) Inform the President of intelligence activities that any member of the Board believes are in violation of the Constitution or laws of the United States, Executive order, or Presidential directive, or raise serious questions of propriety;

(2) Forward to the Attorney General reports received concerning intelligence activities that the Board believes to involve serious questions of legality;

(3) Review the internal guidelines of each agency within the Intelligence Community concerning the legality or propriety of intelligence activities;

(4) Review the practices and procedures of the Inspectors General and General Counsels of the Intelligence Community for discovering and reporting intelligence activities that raise serious questions of legality and propriety.

(d) Responsibilities of Heads of Departments and Agencies. The heads of departments and agencies of the Intelligence Community shall provide the Board with information necessary to carry out its responsibilities.

3-2. Inspectors General and General Counsels. Inspectors General and General Counsels of the Intelligence Community shall report to the Board concerning intelligence activities that raise serious questions of legality or propriety.

3-3. Attorney General. The Attorney General shall report to the President any intelligence activities that violate the Constitution or laws of the United States, Executive order, or Presidential directive.

3-4. Congressional Oversight. The duties and responsibilities of the Director of Central Intelligence and the heads of other departments, agencies, and entities engaged in intelligence activities to cooperate with the Congress in the conduct of its responsibilities for oversight of intelligence activities shall be as provided in title 50, United States Code, section 413.

SECTION 4

GENERAL PROVISIONS

4-1. This Order supersedes Executive Order 12036, "United States Intelligence Activities," dated January 24, 1978.

4-2. The NSC, the Secretary of Defense, the Attorney General, and the Director of Central Intelligence shall issue such appropriate directives and procedures as are necessary to implement this Order. Heads of agencies within the Intelligence Community shall issue appropriate supplementary directives and procedures consistent with this Order. The Attorney General shall provide a statement of reasons for not approving any procedures established by the head of an agency in the Intelligence Community other than the FBI. The National Security Council may establish procedures in instances where the agency head and the Attorney General are unable to reach agreement on other than constitutional or other legal grounds.

4-3. Until the procedures required by this Order have been established, the activities authorized and regulated herein shall be conducted in accordance with existing procedures established by heads of agencies within the Intelligence Community. Procedures required by this Order shall be established as expeditiously as possible.

4-4. Definitions. For the purposes of this Order, the following terms shall have these meanings:

(a) Counterintelligence means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document, or communications security programs.

(b) Electronic surveillance means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction finding equipment solely to determine the location of a transmitter.

(c) Foreign intelligence means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

(d) Intelligence activities means all activities that agencies within the Intelligence Community are authorized to conduct pursuant to this Order.

(e) Intelligence Community and agencies within the Intelligence Community refer to the following agencies or organizations:

- (1) The Central Intelligence Agency (CIA);
- (2) The National Security Agency (NSA);
- (3) The Defense Intelligence Agency (DIA);
- (4) The Offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;
- (5) The Bureau of Intelligence and Research of the Department of State;
- (6) The intelligence elements of the Army, Navy, Air Force, and Marine Corps, the Federal Bureau of Investigation (FBI), the Department of the Treasury, and the Department of Energy; and
- (7) The staff elements of the Director of Central Intelligence.

(f) The National Foreign Intelligence Program includes the programs listed below, but its composition shall be subject to review by the National Security Council and modification by the President:

- (1) The programs of the CIA;
- (2) The Consolidated Cryptologic Program, the General Defense Intelligence Program, and the programs of the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance, except such elements as the Director of Central Intelligence and the Secretary of Defense agree should be excluded;
- (3) Other programs of agencies within the Intelligence Community designated jointly by the Director of Central Intelligence and the head of the department or by the President as national foreign intelligence or counterintelligence activities;

(4) Activities of the staff elements of the Director of Central Intelligence;

(5) Activities to acquire the intelligence required for the planning and conduct of tactical operations by the United States military forces are not included in the National Foreign Intelligence Program.

(g) Special activities means activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but which are not intended to influence United States public opinion or policies and do not include diplomatic activities or the collection and production of intelligence or related support functions.

(h) United States person means:

(1) For purposes of collection of information by any technique for which a warrant would be required if undertaken for law enforcement purposes, and the dissemination and retention of such information, a citizen of the United States, an alien lawfully admitted for permanent residence, an unincorporated association organized in the United States or substantially composed of United States citizens or aliens lawfully admitted for permanent residence, or a corporation incorporated in the United States, except a corporation openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments; or

(2) For all other purposes, a United States citizen, an alien physically present in the United States who is known by the intelligence agency concerned to be a permanent resident alien, an unincorporated association substantially composed of United States citizens, or a corporation incorporated in the United States, unless such corporation is controlled by one or more foreign powers, persons, or organizations.