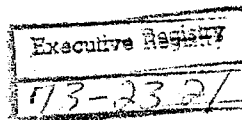


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Remarks: <i>DCI read before going to the Hill - looks like a most helpful memo to me - Thanks.</i> <div style="border: 1px solid black; width: 100px; height: 30px; margin-left: 300px;"></div>			
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General Counsel			5/9/73
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9 May 1973

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Prohibition of Police Powers and Internal-
Security Functions

1. This memorandum provides for your information a legal opinion pertaining to the Agency's relationship with Howard Hunt in 1971.

2. In 1944 General Donovan presented the President with a plan for a permanent peacetime foreign intelligence organization. This proposal was leaked to the Chicago Tribune, which promptly raised the cry "Gestapo." This thought then was large in the minds of the members of Congress when considering the provisions of the National Security Act of 1947, which pertained to the establishment of the Central Intelligence Agency.

3. While emphasizing the foreign intelligence function, the congressional hearings and debate recognized that the Agency could not operate in a vacuum, that it would have to be domestically based, that it would acquire foreign intelligence from domestic sources, that it would have a foreign counterintelligence responsibility to protect our national security, and that the Director would be responsible for protection of intelligence sources and methods. Derived from this last responsibility was the recognition that the Agency would also have a responsibility for the physical security of its establishment and the integrity of its personnel, including, by agreement with the FBI, the normal security investigation of our employees and persons who need access to our classified material.

W-5)

4. After substantial debate of the above concepts, Congress enacted the first proviso of section 102(d)(3) of the National Security Act "That the Agency shall have no police, subpoena, law-enforcement powers, or internal-security functions:" There have been no court decisions interpreting this proviso. Internally, we have felt that in most cases the prohibited area is clear. Thus, while planning and monitoring the physical security of our installations, if any action is to be taken to protect them, we call on the FBI or the local police. Similarly, in connection with the integrity of our employees, if any information is derived which appears to have a criminal aspect or danger to the national security, we again report to the FBI or the police. Our effort has been to assure that none of the personnel of the Agency engages or participates in any of the prohibited activities. Thus, when we are called on to assist the Secret Service in the protection of the President or visiting dignitaries, our employees selected for this purpose are detailed to the Secret Service and are placed under the direct administration and control of the Secret Service. This is by formal interdepartmental agreement pursuant to statute, and no objection has been raised to such an arrangement. From time to time information acquired by the Agency incident to its foreign intelligence collection has become germane to a domestic criminal prosecution, and this has not been construed as an exercise of the law-enforcement powers or internal-security functions.

5. In connection with Howard Hunt and his activities, there are three areas of concern:

a. The first is the provision of alias identification documentation and disguise materials for the purpose, according to Hunt, of interviewing an unidentified individual in alias. The purpose of the interview was not specified by Hunt. Later, at Hunt's request, similar material was given to a then unidentified associate now known to be Gordon Liddy. In addition, Hunt requested and was given a recorder and a concealed camera with film. Again, the use of these items was not spelled out by Hunt. In and of themselves, these actions by Agency employees certainly are not the exercise of subpoena powers, nor do they appear to be the exercise of police or law-enforcement powers. Also, the provision

of this equipment does not appear to be a violation of the prohibition on the Agency against internal-security functions. In retrospect, it appears to be assistance to Hunt without knowledge that he was engaging in an activity which appears to have been directed at Ellsberg in connection with release of the Pentagon Papers. The break in of the office of Dr. Fielding by Hunt was clearly an illegal entry, but no Agency officer had any knowledge that such an act was contemplated or reason to believe that the provision of the material would be related in any way to such an act.

b. The second area is the development at Hunt's request of the film from the concealed camera. The Agency employee who developed the film appears to have had no knowledge of the subject matter of the film or why it was taken. Again, at most this appears to be unwitting participation in Hunt's activities, which may have had some relationship to internal security.

c. The third area is the provision to the White House, at the request of NSC officials, of a psychiatric assessment of Ellsberg made from newspaper stories, magazine articles, and Department of State and FBI reports. This again appears to be assistance to an effort to analyze what lay behind the leak of the Pentagon Papers by Ellsberg and others in order to prohibit such leaks in the future. It does not appear to be the exercise of an internal-security function as such.

6. In sum, I am of the opinion that the Agency did not violate the statutory prohibitions in the National Security Act of 1947, as amended, by the provision of the above-mentioned equipment, services, and reports. I can find no law which specifically authorizes their provision, nor can I find a law that specifically forbids it. Certainly I do not think it was a move by the Agency in the direction of becoming a Gestapo, which is what Congress intended to prevent.

7. The question of judgment in approving such actions, and of possible naivete in not ascertaining what was then specifically contemplated, is a matter for evaluation of the relationship between the White House requesters and those Agency officials with a natural desire to cooperate with the White House.



LAWRENCE R. HOUSTON
General Counsel

cc: DDCI
ES/CIA MC
EA/DCI
Asst to DCI-Mr. Thuermer
OLC