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MEMORANDUM

THE WHITE HOUSE
WASHINGTON

July 26, 1975

MEMORANDUM

FOR: JIM CONNOR
FROM: DON RUMSFELD

Here are the Departmental comments on the Rockefeller
Commission Report. The President has seen this.
It came in his outbox.

You have the action .

Attachment

THE PRESIDENT HAS SEEN...

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Introduction to Summary of Responses to the Rockefeller Commission Report

In response to the President's memorandum of June 11, 1975 the Secretaries of Treasury and Defense, the Acting Secretary of State and the Attorney General and the Director of Central Intelligence have submitted their comments on the Rockefeller Commission Report and its 30 recommendations.

In general the responses are complimentary about the report and concur with most of its recommendations. None of the responses discuss the broader issues raised by the Commission Report such as structural weaknesses in the CIA and other intelligence bodies.

Mr. Colby concurs in full or in part with 29 of the 30 recommendations. The only recommendation he opposes is number 4 which says consideration should be given to making at least part of the CIA budget public. He notes that in many cases the recommendations have already been implemented. There are some recommendations that he has practical problems with, but in these cases he suggests modifications.

The Attorney General states that his comments are preliminary and emphasizes that the work required to develop guidelines recommended by the report has begun and that the questions and problems raised by the recommendations are under study. Where applicable, the Attorney General stresses that files now in the CIA's possession should not be destroyed until Justice closes its case as to possible criminal violations by CIA officials or employees and indicates that Justice will prosecute any such violations with the same vigor it would prosecute other criminal conduct. He also notes that many of the recommendations bear directly on the operations of the Department of Justice since a change in the CIA's charter would carry with it implications with respect to the responsibilities of the FBI.

State believes the Report gives a thorough review of CIA activities and supports its principle recommendations which, if implemented, would create a sound basis for the continuation of the CIA's responsibilities in the years ahead. State suggests that some of the recommendations concerning the internal organization of the CIA should be held in abeyance until more study can be given to whether changes are to be made in the ultimate organization of the CIA. If there is a structural weakness, it may be that compartmentation within the CIA permitted too many activities to proceed without adequate mechanisms for review or questioning. State opposes Recommendation 4 to release portions of the CIA budget. On Recommendation 5 to

strengthen the oversight role of PFIAB, State questions whether such a mechanism is capable of fulfilling the tasks recommended in the report. In addition, State raises the issue of whether a strengthened Board as described would end up, to some degree, as a substitute for the NSC Staff.

Secretary Schlesinger finds that most of the Commission's recommendations are thoughtful and constructive. In his opinion, if implemented, the recommendations should significantly reduce the likelihood of the CIA again becoming embroiled in controversial domestic activity. The Secretary points out the necessity for some changes in the recommendations. For example, he opposes the release of the CIA budget (Recommendation 4) because of the resulting increased pressure to release the budgets for sensitive operations under his authority and because of the "intelligence" information such release would provide. He is against full implementation of Recommendation 5 on an expanded role for PFIAB because such an increased role would place PFIAB in direct competition with the statutory members of the NSC as well as OMB and the oversight committees of Congress. In particular, he emphasizes that the NSC members are in the best position to assess the quality of the intelligence collected and produced by CIA.

Treasury urges that those recommendations of the Commission that the President decides to adopt be implemented promptly by Executive Order to the extent authorized by law. For example most of the organizational recommendations and the strengthening of the Foreign Intelligence Advisory Board should not require legislative action. Secretary Simon feels strongly that a strengthened Board composed of distinguished citizens of demonstrated leadership and integrity and with George Shultz as its chairman would help restore public confidence in the CIA. The Board must have ready access to information concerning CIA activities and should be given responsibility for an ongoing review of CIA operations and activities. Treasury believes that budgetary outlays for certain relatively open CIA activities (Recommendation 4) could probably be released without any damage to the national security.

RECOMMENDATION (1)

a. Make explicit that the CIA's activities must be related to foreign intelligence.

b. Clarify the responsibility of the CIA to protect intelligence sources and methods from unauthorized disclosure. (The Agency would be responsible for protecting against unauthorized disclosure within the CIA, and it would be responsible for providing guidance and technical assistance to other agency and department heads in protecting against unauthorized disclosures within their own agencies and departments.)

c. Confirm publicly the CIA's existing authority to collect foreign intelligence from willing sources within the United States, and, except as specified by the President in a published Executive Order, prohibit the CIA from collection efforts within the United States directed at securing foreign intelligence from unknowing American citizens.

Colby concurs that the National Security Act be amended to clarify CIA duties by insertion of the word "foreign" before the word "intelligence" at the appropriate places in the Act. Colby also concurs with the provisions clarifying the Agency's role in the collection of foreign intelligence from US citizens. However he has reservations about the proposed shift of responsibility for protecting intelligence sources and methods from unauthorized disclosure from the DCI to the CIA. He believes the DCI is better placed than the CIA to protect the Intelligence Community's interest sources and methods of foreign intelligence. He suggests the proposed amendment could be read to diminish the DCI's coordinating function in the Intelligence Community and suggests changes in the wording of the proposed subparagraph 6 of the National Security Act. He further suggests that appropriate language be included in subparagraph six to make clear that it is an exemption statute for Freedom of Information Act purposes.

The Department of State notes that the proposed amendment would strengthen and clarify the authority of the Director of the CIA to protect against the unauthorized disclosure of intelligence sources and methods but does not specifically address the problems of other agencies concerned with national security. State says these agencies now have no effective sanctions to deter the deliberate disclosure of classified information. State therefore suggests additional restrictions on and penalties against the disclosure of

classified information by personnel in agencies of the National Security Council.

Defense says that the present language in the National Security Act makes the DCI responsible for protecting intelligence sources and methods. The Commission's recommendation would revise the Act to assign the functions to CIA as an agency. The DCI rather than the CIA should continue to be assigned this responsibility.

Treasury and Justice have no specific comments on this recommendation.

RECOMMENDATION (2)

The President should by Executive Order prohibit the CIA from the collection of information about the domestic activities of United States citizens (whether by overt or covert means), the evaluation, correlation, and dissemination of analyses or reports about such activities, and the storage of such information, with exceptions for the following categories of persons or activities:

- a. Persons presently or formerly affiliated, or being considered for affiliation, with the CIA, directly or indirectly, or others who require clearance by the CIA to receive classified information;
- b. Persons or activities that pose a clear threat to CIA facilities or personnel, provided that proper coordination with the FBI is accomplished;
- c. Persons suspected of espionage or other illegal activities relating to foreign intelligence, provided that proper coordination with the FBI is accomplished.
- d. Information which is received incidental to appropriate CIA activities may be transmitted to an agency with appropriate jurisdiction, including law enforcement agencies.

Collection of information from normal library sources such as newspapers, books, magazines and other such documents is not to be affected by this order.

Information currently being maintained which is inconsistent with the order should be destroyed at the conclusion of the current congressional investigations or as soon thereafter as permitted by law.

The CIA should periodically screen its files and eliminate all material inconsistent with the order.

The order should be issued after consultation with the National Security Council, the Attorney General, and the Director of Central Intelligence. Any modifications of the order would be permitted only through published amendments.

Mr. Colby concurs in this recommendation.

Treasury notes that in foreign countries they sometimes need to call upon the CIA to help obtain information on the activities of individuals, including US citizens who are potential threats to persons under Secret Service protection. Treasury also notes that in many countries the CIA is the best or only source of information on narcotics trafficking by US citizens and others. Therefore the proposed Executive Order should not prohibit the CIA from collecting intelligence in foreign areas about the domestic activities of US citizens who are potential threats to persons under Secret Service protection, or who may be engaged in narcotics trafficking and transferring such intel-

ligence to the appropriate enforcement agency.

Justice notes that the functions of the FBI in domestic intelligence and counterintelligence investigations ought to be quite separate from the functions of the CIA. The problem is more than "proper coordination." Domestic counterintelligence is within the responsibility of the FBI. Any information being held which is inconsistent with the proposed Executive Order should not be destroyed before Justice closes its case as to possible criminal violations by CIA officials or employees.

No comments from State and Defense.

RECOMMENDATION (3)

The President should recommend to Congress the establishment of a Joint Committee on Intelligence to assume the oversight role currently played by the Armed Services Committees.

Colby concurs.

State concurs suggesting that the new committee be given the responsibility for overseeing covert actions. This responsibility is now apportioned among several committees.

Defense says the recommendation as written would give the committee oversight over the entire intelligence community. This would result in serious jurisdictional problems between committees. The recommendation should be rewritten to call for the establishment of a Joint Committee on the CIA rather than a Joint Committee on Intelligence.

Treasury concurs and assumes the proposed committee would oversee all foreign intelligence activities, not only those of the CIA. However the proposed committee should not be given jurisdiction over the purely domestic information gathering activities of such law enforcement agencies as the Customs Service, the Bureau of Alcohol, Tobacco and Firearms and the IRS. In establishing a Joint Committee, the Congress should be urged to consider the need for protecting the security of intelligence activities and the establishment of realistic maximum terms for committee membership and chairmanship.

Justice wonders whether the proposed committee would be just another oversight committee for the FBI as well, and notes that conflicts and confusion arise when there are too many committees assuming an oversight function.

RECOMMENDATION (4)

Congress should give careful consideration to the question whether the budget of the CIA should not, at least to some extent, be made public, particularly in view of the provisions of Article I, Section 9, Clause 7 of the Constitution.

Colby recommends that the Agency budget and certain classified intelligence programs of the Department of Defense remain fully classified and nonidentifiable. Mr. Colby says there is considerable historical precedent for budget secrecy and believes that present procedures are fully in accord with the Constitution. Public disclosure of Intelligence Community budget data could provide enemies with considerable insight into the nature and extent of intelligence activities. Publication of part of the budget would raise extensive congressional debate as to what matters were and were not included and would lead to a rapid erosion of the secrecy of the portions withheld.

State echoes Colby's point noting that budget publication would lead to further demands for disclosure of other expenditures on intelligence and for more detailed breakdowns. Over the years observation of the trends of spending would provide an invaluable aid to foreign intelligence services and would in some instances lead to identification of new programs and new areas of activity.

Defense takes the same line arguing that disclosure of the CIA budget would create increased pressure to make public the budgets of the other intelligence agencies such as NSA, DIA, the NRO. Publication of a lump sum for any single year for any one of the intelligence agencies might be relatively harmless but over a period of several successive years such publication would reveal changes which could point towards sensitive new projects.

Treasury suggests the CIA budget concerning relatively open activities like research and analysis could probably be made public without any damage to the national security. However budgeting for covert operations and for sensitive and technical programs such as aerial intelligence photography should not be revealed. Publication of the total budget would create a public clamor for information on the hidden expenditures and could also result in probing by unauthorized persons to find out what programs are supported by these funds and the level of funding for each program.

No comment from Justice.

RECOMMENDATION (5)

a. The functions of the President's Foreign Intelligence Advisory Board should be expanded to include oversight of the CIA. This expanded oversight board should be composed of distinguished citizens with varying backgrounds and experience. It should be headed by a full-time chairman and should have a full-time staff appropriate to its role. Its functions related to the CIA should include:

1. Assessing compliance by the CIA with its statutory authority.
2. Assessing the quality of foreign intelligence collection.
3. Assessing the quality of foreign intelligence estimates.
4. Assessing the quality of the organization of the CIA.
5. Assessing the quality of the management of the CIA.
6. Making recommendations with respect to the above subjects to the President and the Director of Central Intelligence, and, where appropriate, the Attorney General.

b. The Board should have access to all information in the CIA. It should be authorized to audit and investigate CIA expenditures and activities on its own initiative.

c. The Inspector General of the CIA should be authorized to report directly to the Board, after having notified the Director of Central Intelligence, in cases he deems appropriate.

Colby concurs with this recommendation.

State wonders whether a part-time board, even with a full-time staff, is capable of fulfilling all the recommended tasks listed in the Report. The Board would inevitably become a large bureaucracy and, to some degree, a substitute for the NSC Staff. Moreover the Report leaves unclear whether it will monitor activities currently performed by the 40 Committee of the NSCIC. In addition, there is a risk the PFIAB would become an intermediary between the CIA Director and the President. There should be a more precise definition of the Board's responsibilities and functions, lest the new function of oversight with respect to domestic activities be subsumed in a variety of other tasks.

Defense notes this recommendation would place the PFIAB in direct competition with the statutory members of the NSC, OMB and Congressional oversight committees. The members of the NSC are in the best position to assess the quality of the intelligence collected and produced by the CIA. The PFIAB should retain flexibility in its charter so that it can be used by the President for ad hoc projects and oversight functions. The President currently has sufficient authority to utilize the Board in a broader oversight fashion if he so chooses.

Treasury concurs in the recommendation noting that an Advisory Board consisting of distinguished citizens could help reassure the President, public and Congress of the integrity and quality of our intelligence operations. Secretary Simon recommends that George Shultz be appointed Chairman of the Advisory Board. Because of its additional responsibilities the Board would have to meet more frequently than it has in the past. The reporting relation between the Inspector General and the Board should be strengthened and formalized and an important working relationship should be developed between the FIAB and the CIA General Counsel. The Board would continue to draw on the views of other departments and agencies concerned with intelligence activities. The Board would also have access to reports and recommendations made by the Joint Congressional Committee. Thus it would be unnecessarily duplicative to build up a large staff to perform investigatory functions although a small permanent staff or secretariat definitely would be essential.

No comment from Justice.

RECOMMENDATION (6)

The Department of Justice and the CIA should establish written guidelines for the handling of reports of criminal violations by employees of the Agency or relating to its affairs. These guidelines should require that the criminal investigation and the decision whether to prosecute be made by the Department of Justice, after consideration of Agency views regarding the impact of prosecution on the national security. The Agency should be permitted to conduct such investigations as it requires to determine whether its operations have been jeopardized. The Agency should scrupulously avoid exercise of the prosecutorial function.

Colby endorses the recommendation saying that it reflects the de facto situation. He says the final decision as to whether there should be prosecution is solely the responsibility of the Department of Justice after consideration of the Agency's views of the possible damage which would be done by revelation of intelligence sources and methods in such a prosecution.

The Attorney General says it is no longer Department policy, if it ever was, to defer prosecutorial decisions to CIA, or cases concerning CIA activities. This Commission recommendation is a good one, and the guidelines must make clear that the Department will prosecute criminal conduct by CIA or its employees with the same vigor it would prosecute any other criminal conduct.

No comments from State, Defense, or Treasury.

RECOMMENDATION (7)

a. Persons appointed to the position of Director of Central Intelligence should be individuals of stature, independence, and integrity. In making this appointment, consideration should be given to individuals from outside the career service of the CIA, although promotion from within should not be barred. Experience in intelligence service is not necessarily a prerequisite for the position; management and administrative skills are at least as important as the technical expertise which can always be found in an able deputy.

b. Although the Director serves at the pleasure of the President, no Director should serve in that position for more than 10 years.

Colby endorses this recommendation adding the suggestion that such individual also not be a partisan political figure.

Defense comments that it is a good idea to limit the tenure of the DCI; however, if this is to be effective it needs to be written into the National Security Act.

No other comments.

RECOMMENDATION (8)

a. The Office of Deputy Director of Central Intelligence should be reconstituted to provide for two such deputies, in addition to the four heads of the Agency's directorates. One deputy would act as the administrative officer, freeing the Director from day-to-day management duties. The other deputy should be a military officer, serving the functions of fostering relations with the military and providing the Agency with technical expertise on military intelligence requirements.

b. The advice and consent of the Senate should be required for the appointment of each Deputy Director of Central Intelligence.

Colby endorses this recommendation though he envisions its implementation in a somewhat different fashion. With the establishment of a Deputy Director charged specifically with CIA management and representation responsibilities, the other (military) Deputy could most effectively perform the functions cited in the Commission Report if he were primarily concerned with management of those Intelligence Community responsibilities given (Colby) under the President's letter of November 1971. The existing position of Deputy to the DCI for the Intelligence Community should be the basis for defining the responsibilities of the military Deputy Director. The Deputy Director principally concerned with the management of the CIA should be both a civilian and a career Agency employee.

Defense sees much merit in this recommendation. Creation of a Deputy Directorate for a military officer would be accomplished by designating the Deputy Director for the Intelligence Community as that position. Care should be taken however, in filling the other Deputy spot. One should be alert to the possibility that the CIA professionals might attempt to freeze out the DCI and keep him ignorant of what was actually happening within the Agency itself.

No other comments.

RECOMMENDATION (9)

a. The Inspector General should be upgraded to a status equivalent to that of the deputy directors in charge of the four directorates within the CIA.

b. The Office of Inspector General should be staffed by outstanding, experienced officers from both inside and outside the CIA, with ability to understand the various branches of the Agency.

c. The Inspector General's duties with respect to domestic CIA activities should include periodic reviews of all offices within the United States. He should examine each office for compliance with CIA authority and regulations as well as for the effectiveness of their programs in implementing policy objectives.

d. The Inspector General should investigate all reports from employees concerning possible violations of the CIA statute.

e. The Inspector General should be given complete access to all information in the CIA relevant to his reviews.

f. An effective Inspector General's office will require a larger staff, more frequent reviews, and highly qualified personnel.

g. Inspector General reports should be provided to the National Security Council and the recommended executive oversight body. The Inspector General should have the authority, when he deems it appropriate, after notifying the Director of Central Intelligence, to consult with the executive oversight body on any CIA activity (see Recommendation 5).

Colby concurs in this recommendation.

Defense says it is not necessary that the Inspector General be upgraded to a status equivalent to the Deputy Directors at CIA. It is more important that he be given authority to conduct thorough investigations.

With regard to subparagraph 9 (g) Justice notes that this reporting requirement is unobjectionable, but it should not be read as putting the decision whether to bring allegations of criminal conduct to the attention of the Department of Justice in the hands of persons outside the CIA. Any possible criminal violations by CIA or its employees should be reported directly and immediately to the Department of Justice by the CIA Inspector General.

No other comments.

RECOMMENDATION (10)

a. The Director should review the composition and operation of the Office of General Counsel and the degree to which this office is consulted to determine whether the Agency is receiving adequate legal assistance and representation in view of current requirements.

b. Consideration should be given to measures which would strengthen the office's professional capabilities and resources including, among other things, (1) occasionally departing from the existing practice of hiring lawyers from within the Agency to bring in seasoned lawyers from private practice as well as to hire law school graduates without prior CIA experience; (2) occasionally assigning Agency lawyers to serve a tour of duty elsewhere in the government to expand their experience; (3) encouraging lawyers to participate in outside professional activities.

Colby concurs in this recommendation and says that significant changes in the composition of the Office of General Counsel and its relationship to all the activities of the Agency are already underway.

Treasury concurs, but believes the recommendation should go further. There should be a significant restructuring of the position of the CIA General Counsel in the Agency organization and his role in the Agency operations. The General Counsel should be a presidential appointee subject to Senate confirmation. He should be given specific responsibility to review the legality of all Agency operations. He should work closely with the Inspector General and both officials should regularly report to the PFIAB or whatever other executive branch entity is given an oversight role over foreign intelligence gathering activities.

No other comments.

RECOMMENDATION (11)

To a degree consistent with the need for security, the CIA should be encouraged to provide for increased lateral movement of personnel among the directorates and to bring persons with outside experience into the Agency at all levels.

Colby concurs in this recommendation and is trying to put it into effect. He points out certain difficulties which will limit the CIA's ability to conduct such programs.

No other comments.

RECOMMENDATION (12)

a. The Agency should issue detailed guidelines for its employees further specifying those activities within the United States which are permitted and those which are prohibited by statute, Executive Orders, and NSC and DCI directives.

b. These guidelines should also set forth the standards which govern CIA activities and the general types of activities which are permitted and prohibited. They should, among other things, specify that:

- Clandestine collection of intelligence directed against United States citizens is prohibited except as specifically permitted by law or published Executive Order.
- Unlawful methods or activities are prohibited.
- Prior approval of the DCI shall be required for any activities which may raise questions of compliance with the law or with Agency regulations.

c. The guidelines should also provide that employees with information on possibly improper activities are to bring it promptly to the attention of the Director of Central Intelligence or the Inspector General.

Colby concurs. Present guidelines and regulations will be reviewed and detailed new guidelines will be promulgated. These issuances will be incorporated in a revised Handbook of Employee Conduct and Summary of Agency Authorities.^{*} This new handbook will specify, as it has since 1973, that employees are to report immediately any possibly improper activities to the DCI or the Inspector General.

Justice comments that the guidelines on CIA employee conduct are important and will not be easy to draft. The recommendation also suggests that the DCI should approve all actions raising questions of CIA authority. If any proposed activity raises the possibility of criminal violation, the Attorney General should also be consulted.

No other comments.

* Which is circulated to each employee on entrance into the Agency and annually thereafter.

RECOMMENDATION (13)

a. The President should instruct the Director of Central Intelligence that the CIA is not to engage again in domestic mail openings except with express statutory authority in time of war. (See also Recommendation 23.)

b. The President should instruct the Director of Central Intelligence that mail cover examinations are to be in compliance with postal regulations; they are to be undertaken only in furtherance of the CIA's legitimate activities and then only on a limited and selected basis clearly involving matters of national security.

Colby concurs in the intent of this recommendation, although in form it is directed to the President rather than the Agency. It is fully consistent with instructions already issued and will be reflected in internal Agency regulations.

Justice says the recommendation leaves open the question of whether the CIA ought to participate in the opening of the mail of US citizens abroad. Further, part (b) of the recommendation implies that the CIA may conduct mail cover examinations in the United States. This raises the question of whether the CIA rather than the FBI should be conducting any domestic activities of this sort.

No other comments.

RECOMMENDATION (14)

a. A capability should be developed within the FBI, or elsewhere in the Department of Justice, to evaluate, analyze, and coordinate intelligence and counterintelligence collected by the FBI concerning espionage, terrorism, and other related matters of internal security.

b. The CIA should restrict its participation in any joint intelligence committees to foreign intelligence matters.

c. The FBI should be encouraged to continue to look to the CIA for such foreign intelligence and counter-intelligence as is relevant to FBI needs.

Colby concurs in this recommendation as it affects CIA, reflecting current CIA practice. He defers to the Department of Justice and the FBI on matters affecting those agencies.

Justice says this recommendation raises serious problems. For one thing, it suggests the development of an evaluation unit to coordinate intelligence and counterintelligence information. This could be viewed as an invitation to create a new internal security organization for the purpose of keeping track of dissident domestic political groups. On the other hand, failure to create such an organization could be seen as perpetuating some of the difficulties suggested in the report. Justice is studying this recommendation to determine the proper solution to this problem.

No other comments.

RECOMMENDATION (15)

a. Presidents should refrain from directing the CIA to perform what are essentially internal security tasks.

b. The CIA should resist any efforts, whatever their origin, to involve it again in such improper activities.

c. The Agency should guard against allowing any component (like the Special Operations Group) to become so self-contained and isolated from top leadership that regular supervision and review are lost.

d. The files of CHAOS project which have no foreign intelligence value should be destroyed by the Agency at the conclusion of the current congressional investigations, or as soon thereafter as permitted by law.

Colby concurs.

Justice says that because of the need for a rather strict separation of the functions of the CIA and the FBI, the difficult question of defining an internal security matter ought to be undertaken. The recommendation also calls for the destruction of certain files of the CHAOS project. No files of the CHAOS project should be destroyed before the Department of Justice closes its case as to possible criminal violations by CIA officials or employees in connection with the CHAOS files.

No other comments.

RECOMMENDATION (16)

The CIA should not infiltrate dissident groups or other organizations of Americans in the absence of a written determination by the Director of Central Intelligence that such action is necessary to meet a clear danger to Agency facilities, operations, or personnel and that adequate coverage by law enforcement agencies is unavailable.

Colby concurs in what he understands to be the intent of this recommendation but suggests somewhat more precision in its direction. He believes recommendations 2 and 12 (b) should bar CIA from any infiltration activities for the clandestine collection of intelligence against US citizens. In the event of a clear danger to Agency facilities there should be mandatory coordination with the FBI or other appropriate law enforcement agencies and any CIA activity should be undertaken only in support of the duly authorized activity of such agency. Colby is also concerned that the recommendation could be read as prohibiting CIA utilization of persons with either bona fide or assumed status of dissidents even though the CIA activity might be directed exclusively against foreign intelligence targets. The use of such American "cover" should not be eliminated but reporting on the American activity in the process of building such "cover" should be prohibited.

Justice says that on the basis of the Commission's Report, it is not clear under what circumstances it would ever be necessary and proper for the CIA to infiltrate domestic groups. Perhaps a briefing of officials in the Department would lead to a better understanding of the implications of this policy. In any case, there should be explicit guidelines defining the Director's authority to order such infiltration.

No other comments.

RECOMMENDATION (17)

All files on individuals accumulated by the Office of Security in the program relating to dissidents should be identified, and, except where necessary for a legitimate foreign intelligence activity, be destroyed at the conclusion of the current congressional investigations, or as soon thereafter as permitted by law.

Colby concurs in this recommendation.

Justice says no files should be destroyed until the Justice Department's investigation is completed.

No other comments.

RECOMMENDATION (18)

a. The Director of Central Intelligence should issue clear guidelines setting forth the situations in which the CIA is justified in conducting its own investigation of individuals presently or formerly affiliated with it.

b. The guidelines should permit the CIA to conduct investigations of such persons only when the Director of Central Intelligence first determines that the investigation is necessary to protect intelligence sources and methods the disclosure of which might endanger the national security.

c. Such investigations must be coordinated with the FBI whenever substantial evidence suggesting espionage or violation of a federal criminal statute is discovered.

Colby concurs but suggests greater precision. The DCI should have the same administrative authority over CIA employees as any other departmental or agency chief. In cases where evidence suggests a violation of Federal or State criminal statutes, the FBI or appropriate local authorities should be informed and have the primary investigative role.* When evidence suggests a security problem but no espionage or criminal violation, the CIA should be authorized to conduct an investigation using lawful methods of surveillance, provided there is coordination with the FBI. When appropriate the DCI will consult with the Attorney General with respect to issuance of guidelines.

Justice comments that if the CIA is to avoid getting into law enforcement investigations, perhaps it should simply turn all criminal investigations over to the FBI rather than "coordinate" with the FBI or any other enforcement agency. The problem of separating law enforcement from foreign intelligence is a difficult one. Justice has the problem under study and will try to make a more definite statement later.

No other comments.

*
with CIA taking a supportive role

RECOMMENDATION (19)

a. In cases involving serious or continuing security violations, as determined by the Security Committee of the United States Intelligence Board, the Committee should be authorized to recommend in writing to the Director of Central Intelligence (with a copy to the National Security Council) that the case be referred to the FBI for further investigation, under procedures to be developed by the Attorney General.

b. These procedures should include a requirement that the FBI accept such referrals without regard to whether a favorable prosecutive opinion is issued by the Justice Department. The CIA should not engage in such further investigations.

Colby endorses this recommendation but suggests several modifications. The USIB itself should be required to endorse a referral to the FBI for further investigation if the FBI thereby would be required to accept such referral without regard as to whether a favorable prosecutive opinion is issued by the Justice Department. Colby also reiterates his recommendation that a distinction be drawn between a possible violation of law wherein the FBI or local authorities have the primary investigative role and cases only of apparent security vulnerability not constituting a violation of law wherein the CIA should be authorized to undertake the primary role in coordination with the FBI. He recommends that similar authority be given to the heads of other intelligence agencies.

Defense notes that the National Security Act assigns the DCI responsibility for protecting intelligence sources and methods and the Security Committee of the USIB provides staff support to the DCI. Recommendation 19 should be written as follows:

- (a) "In cases involving serious or continuing security violations, as determined by the DCI, the DCI should refer the case to the FBI for further investigation, under procedures to be developed by the Attorney General."

Justice says this recommendation could raise serious difficulties. For example, it would have the effect of putting the FBI in the uncomfortable position of investigating a matter without reasonable expectation of prosecution. The recommendation could be read as requiring the DCI to refer all serious or continuing security violations to the Security Committee of USIB for its determination whether the case should be referred to the Department. The Director should be

able to refer these cases directly without resorting to an intermediary.

No other comments.

RECOMMENDATION (20)

The CIA and other components and agencies of the intelligence community should conduct periodic reviews of all classified material originating within those departments or agencies, with a view to declassifying as much of that material as possible. The purpose of such review would be to assure the public that it has access to all information that should properly be disclosed.

Colby concurs noting the recommendation contains the same injunction as Executive Order 11652 which provides for classification and declassification of national security information and material.

Defense makes the same point.

No other comments.

RECOMMENDATION (21)

The Commission endorses legislation, drafted with appropriate safeguards of the constitutional rights of all affected individuals, which would make it a criminal offense for employees or former employees of the CIA wilfully to divulge to any unauthorized person classified information pertaining to foreign intelligence or the collection thereof obtained during the course of their employment.

Colby concurs noting that he has submitted legislation to OMB in line with this recommendation.

Defense suggests that the proposed legislation be broadened and amended to read "Employees of any Federal Department or Agency willfully to divulge..."

Justice says this recommendation raises controversial issues similar to those raised in connection with some of the provisions in S. 1. The Department of Justice will work with the CIA in drafting any necessary legislation.

No other comments.

RECOMMENDATION (22)

The CIA should not undertake physical surveillance (defined as systematic observation) of Agency employees, contractors or related personnel within the United States without first obtaining written approval of the Director of Central Intelligence.

Colby concurs noting that the requirement for the Director's prior written approval would apply to some activities by the Agency which the Commission did not find objectionable. The intent of this recommendation can best be met by adoption of detailed internal procedures which define those situations in which DCI approval for surveillance is required and those in which authority can be delegated to the Director of Security or other subordinate levels.

Justice says this recommendation does not provide the Director with any clear guidelines as to when and under what circumstances approval should be given. It is not clear to what extent, if at all, the CIA should undertake physical surveillance operations within the US. Moreover, there is the issue of the role of the FBI in matters such as these. The issue is under study by the Department.

No other comments.

RECOMMENDATION (23)

In the United States and its possessions, the CIA should not intercept wire or oral communications or otherwise engage in activities that would require a warrant if conducted by a law enforcement agency. Responsibility for such activities belongs with the FBI.

Colby concurs in the recommendation that CIA not engage in "activities that would require a warrant if conducted by a law enforcement agency." With regard to intercepting wire or oral communications within the US, Colby concurs that such responsibility belongs with the FBI but recommends that CIA be authorized to support such FBI activity in cases involving foreign intelligence approved by the Attorney General.

Justice calls the recommendation ambiguous. It could be read to mean that all interceptions of wire or oral communications within the US would require a warrant. Read another way, it could be understood to mean the CIA could conduct "warrantless" activities in foreign intelligence matters either within the US or abroad. It has been the Administration's position that certain national security surveillances do not require a warrant. The recommendation fails to discuss procedures already agreed to by the Director of CIA regarding the interception by the CIA of wire or oral communications of American citizens abroad.

No other comments.

RECOMMENDATION (24)

The CIA should strictly adhere to established legal procedures governing access to federal income tax information.

Colby concurs noting that Agency regulations on liaison with the Internal Revenue Service will be revised to clarify the limits and procedures in dealing with the Service and for obtaining tax information.

Treasury says that the IRS is investigating the circumstances which led to unauthorized release of income tax information. The IRS will then determine whether any additional steps should be taken within the service to assure that all future CIA access to income tax information is afforded only upon strict compliance with established procedures and rules governing such disclosure.

No other comments.

RECOMMENDATION (25)

CIA investigation records should show that each investigation was duly authorized, and by whom, and should clearly set forth the factual basis for undertaking the investigation and the results of the investigation.

Colby concurs.

No other comments.

RECOMMENDATION (26)

a. A single and exclusive high-level channel should be established for transmission of all White House staff requests to the CIA. This channel should run between an officer of the National Security Council staff designated by the President and the office of the Director or his Deputy.

b. All Agency officers and employees should be instructed that any direction or request reaching them directly and out of regularly established channels should be immediately reported to the Director of Central Intelligence.

Colby understands the purposes of the recommendation to be proper and desirable but finds its language would unduly restrict a number of normal relationships involving the provision of foreign intelligence support by CIA to the White House. The concerns expressed by the Commission would be adequately protected if implementation of the recommendation provided that rules and procedures be issued governing the provision of foreign intelligence support to the White House.

Treasury supports the objective of the recommendation but does not think it necessary for the exclusive channel to be used for transmitting routine intelligence reports and analyses to the White House. The strengthened and independent General Counsel and Inspector General can provide an effective check on misuse of the normal channels of communication for such material.

No other comments.

RECOMMENDATION (27)

In accordance with its present guidelines, the CIA should not again engage in the testing of drugs on unsuspecting persons.

Colby concurs in this recommendation which reflects directives he issued on 29 August 1973.

No other comments.

RECOMMENDATION (28)

Testing of equipment for monitoring conversations should not involve unsuspecting persons living within the United States.

Colby endorses the intent of this recommendation but believes it is so simple in form as to pose serious difficulties as a guide for actual testing practice. Many of the radio receivers developed and tested by the CIA are sensitive enough to inadvertently monitor some US conversations in test situations and virtually nothing can be done to prevent this. The August 1973 CIA guidelines meet the purposes of the recommendation and serve as a more realistic guide to such activities.

Justice comments that this recommendation should also apply to unsuspecting American citizens living abroad as well.

No other comments.

RECOMMENDATION (29)

A civilian agency committee should be reestablished to oversee the civilian uses of aerial intelligence photography in order to avoid any concerns over the improper domestic use of a CIA-developed system.

Colby concurs in this recommendation and urges that it be accomplished speedily. Contrary to the statement in the Commission's report, a proposed agreement for continuing support in this area of the Environmental Protection Agency was not concluded because of that Agency's law enforcement responsibilities.

No other comments.

RECOMMENDATION (30)

The Director of Central Intelligence and the Director of the FBI should prepare and submit for approval by the National Security Council a detailed agreement setting forth the jurisdiction of each agency and providing for effective liaison with respect to all matters of mutual concern. This agreement should be consistent with the provisions of law and with other applicable recommendations of this Report.

Colby concurs and notes that a proposed NSCID which bears on this subject has been submitted to the NSC for review. The CIA will continue to review this matter to determine if other directives are appropriate to fully meet this recommendation.

Treasury believes it would be desirable to have written agreements between the CIA and all other departments and agencies from which the CIA receives or to which it provides special support. Each of the Treasury Department law enforcement units should have clearly defined relationships with the CIA. At a minimum such agreements should provide a liaison channel to insure the type of support being provided has the approval of senior officials in the agencies concerned. In some instances it may be appropriate to spell out the relationship in some detail as in the CIA - Secret Service agreement. Where possible, those relationships should be made generally known to the public.

Justice says that while it is important that there be cooperation between the CIA and the FBI, this issue ought not be left solely to an agreement between the two agencies. At the least, if there is to be an agreement, representatives of the Attorney General or his Departmental designee ought to be involved in its negotiation and preparation.

No other comments.

CIA

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

21 June 1975

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

In accordance with your request of June 11, 1975, I submit herewith my comments on the report to you by the Commission on CIA Activities Within the United States. As you will note, with a few exceptions caused by practical considerations, I concur fully in the recommendations of the Commission to clarify publicly the appropriate CIA activities within the United States and to ensure against any future unauthorized or improper activity in this country. I note with great pleasure the Commission's adoption of a number of recommendations previously made by me with this end in mind and the inclusion of a number of internal CIA directives issued in the summer of 1973 to accomplish this result. I accept fully the Commission's additional recommendations in this same spirit and only recommend minor modifications to reflect certain practical problems within the overall policy outlined by the Commission.

There are some matters included in the Commission's Report which are supplemental to the report provided you on December 24, 1974. You will recall that that report was generated by a newspaper article of 22 December 1974. My report focused on the information immediately available to me referring to the points covered by that article. You will recall that certain additional matters were covered in my oral report to you on January 3, 1975.

The Commission's Report also includes additional information ascertained during the extensive investigations conducted by the Commission and within this Agency in the more extended time

available after December 24, 1974. By arrangement with the Commission, during this period CIA did not go outside its current employees and files actively to investigate this subject so as to avoid any suggestion of possible CIA influence on the testimony or evidence which might be given by its ex-employees or by others. Thus, in a number of respects the Commission's knowledge from ex-employees, other witnesses and documents available outside CIA is better than CIA's.

There are only a few matters of detail on which the evidence available to CIA conflicts in some degree with the statements made in the Commission's report. I do not believe these sufficiently grave to bring to your attention, but I will communicate with the Vice President with respect to them separately to clarify the record.

This investigation has generated great public interest and will be followed, as you are aware, by extensive congressional investigations of our intelligence effort generally. As you know, I am deeply concerned that this extensive public discussion of our intelligence activities, and especially its sensational tone, threaten to endanger this important national resource. I much appreciate the effort you personally and others, including the Commission, have made to clarify the importance of intelligence to our country. I am also pleased that the Commission has noted that the "great majority of the CIA's domestic activities comply with its statutory authority." I fully accept, as I have testified publicly, that the CIA has, over the 28 years of its history, engaged in some activities "that should be criticized and should not be permitted to happen again." I am particularly pleased that the Commission notes that "the Agency's own recent actions, undertaken for the most part in 1973 and 1974, have gone far to terminate the activities upon which this investigation has focused."

In summary, I believe the procedures recommended by the Commission and endorsed by me (with the modifications proposed) should indeed ensure the continuation of this important service to our nation and equally ensure that it be responsive to American standards, while it continues to be by far the best intelligence service in the world.

Respectfully,


W. E. Colby
Director

Enclosure

cc: The Vice President
The Secretary of State
The Secretary of Defense
The Attorney General
The Assistant to the President for
National Security Affairs
The Chairman, The President's Foreign
Intelligence Advisory Board
The Director, Federal Bureau of Investigation
The Chairman, Joint Chiefs of Staff
Members, National Security Council
Intelligence Committee
Members, United States Intelligence
Board
Members, Intelligence Resources
Advisory Committee

Recommendation (1)

Section 403 of the National Security Act of 1947 should be amended in the form set forth in Appendix VI to this Report. (Reproduced in full on following page.) These amendments, in summary, would:

a. Make explicit that the CIA's activities must be related to foreign intelligence.

b. Clarify the responsibility of the CIA to protect intelligence sources and methods from unauthorized disclosure. (The Agency would be responsible for protecting against unauthorized disclosures within the CIA, and it would be responsible for providing guidance and technical assistance to other agency and department heads in protecting against unauthorized disclosures within their own agencies and departments.)

c. Confirm publicly the CIA's existing authority to collect foreign intelligence from willing sources within the United States, and, except as specified by the President in a published Executive Order,¹ prohibit the CIA from collection efforts within the United States directed at securing foreign intelligence from unknowing American citizens.

¹The Executive Order authorized by this statute should recognize that when the collection of foreign intelligence from persons who are not United States citizens results in the incidental acquisition of information from unknowing citizens, the Agency should be permitted to make appropriate use or disposition of such information. Such collection activities must be directed at foreign intelligence sources, and the involvement of American citizens must be incidental.

Note: Appendix VI of the Commission Report provides:

In Recommendation (1), the Commission proposes that 50 U.S.C. Section 403(d) be amended to read (Additions are italicized; deletions are marked through):

(d) For the purpose of coordinating the foreign intelligence activities of the several government departments and agencies in the interest of national security, it shall be the duty of the (Central Intelligence) Agency, under the direction of the National Security Council--

(1) to advise the National Security Council in matters concerning such foreign intelligence activities of the government departments and agencies as relate to national security;

(2) to make recommendations to the National Security Council for the coordination of such foreign intelligence activities of the departments and agencies of the government as relate to the national security;

(3) to collect, correlate and evaluate foreign intelligence relating to the national security, and provide for the appropriate dissemination of such foreign intelligence within the government using where appropriate existing agencies and facilities:

Provided, that except as specified by the President in a published Executive Order, in collecting foreign intelligence from United States citizens in the United States or its possessions, the Agency must disclose to such citizens that such intelligence is being collected by the Agency.

Provided further, that the Agency shall have no police, subpoena, law enforcement powers, or internal security functions:

Provided further, that the departments and other agencies of the government shall continue to collect, evaluate, correlate and disseminate departmental intelligence:

And provided further, that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;

(4) to perform, for the benefit of the existing intelligence agencies, such additional foreign intelligence services of common concern as the National Security Council determines can be more efficiently accomplished centrally;

(5) to perform such other functions and duties related to foreign intelligence affecting the national security as the National Security Council may from time to time direct.

(6) to be responsible for protecting sources and methods of foreign intelligence from unauthorized disclosure. Within the United States, this responsibility shall be limited (a) to lawful means used to protect against disclosure by (i) present or former employees, agents or sources of the Agency or (ii) persons, or employees of persons or organizations, presently or formerly under contract with the Agency or affiliated with it, and (b) to providing guidance and technical assistance to other government departments and agencies performing intelligence activities.

Response

I fully concur in the recommendation of the Commission that the National Security Act be amended to clarify the duties of the Agency by inserting the word "foreign" before the word "intelligence" at appropriate places in the Act. In fact, this suggestion first arose at my confirmation hearing in 1973.

I concur with the added provisions clarifying the Agency's role in the collection of foreign intelligence from US citizens.

I have reservations about the proposal of the Commission to amend the Act to shift from the Director of Central Intelligence to the Central Intelligence Agency, responsibility for protecting intelligence sources and methods from unauthorized disclosure. The DCI, as head of the Intelligence Community, is well placed to protect the Community's interest in sources and methods of foreign intelligence, but CIA is less well suited to cover these matters as they affect other agencies. The proposed amendment could be read to diminish the DCI's coordinating function in the Intelligence Community. I believe the purpose of the Commission in recommending the change can be carried out by retaining some of the limitations in the proposed subparagraph (6) but assigning the responsibility to the Director of Central Intelligence.

In addition, changing the wording from "protecting intelligence sources and methods from unauthorized disclosure" to "protecting sources and methods of foreign intelligence from unauthorized disclosure" eliminates terminology which is well recognized and for which there is judicial interpretation and precedent in several cases.

I am also concerned that subparagraph (6) may not afford sufficient authority to protect intelligence sources and methods information under the Freedom of Information Act. That Act exempts from its mandatory exposure provisions matters "specifically exempt from disclosure by statute." Appropriate language should be included in subparagraph (6) to make clear that that subparagraph is an exemption statute for Freedom of Information purposes.

Recommendation (2)

The President should by Executive Order prohibit the CIA from the collection of information about the domestic activities of United States citizens (whether by overt or covert means), the evaluation, correlation, and dissemination of analyses or reports about such activities, and the storage of such information, with exceptions for the following categories of persons or activities:

a. Persons presently or formerly affiliated, or being considered for affiliation, with the CIA, directly or indirectly, or others who require clearance by the CIA to receive classified information;

b. Persons or activities that pose a clear threat to CIA facilities or personnel, provided that proper coordination with the FBI is accomplished;

c. Persons suspected of espionage or other illegal activities relating to foreign intelligence, provided that proper coordination with the FBI is accomplished.

d. Information which is received incidental to appropriate CIA activities may be transmitted to an agency with appropriate jurisdiction, including law enforcement agencies.

Collection of information from normal library sources such as newspapers, books, magazines and other such documents is not to be affected by this order.

Information currently being maintained which is inconsistent with the order should be destroyed at the conclusion of the current congressional investigations or as soon thereafter as permitted by law.

The CIA should periodically screen its files and eliminate all material inconsistent with the order.

The order should be issued after consultation with the National Security Council, the Attorney General, and the Director of Central Intelligence. Any modification of the order would be permitted only through published amendments.

Response

I concur in this recommendation.

Recommendation (3)

The President should recommend to Congress the establishment of a Joint Committee on Intelligence to assume the oversight role currently played by the Armed Services Committees.

Response

As you know, I concur in this recommendation.

Recommendation (4)

Congress should give careful consideration to the question whether the budget of the CIA should not, at least to some extent, be made public, particularly in view of the provisions of Article I, Section 9, Clause 7 of the Constitution.¹

Response

In the past I have taken the position that this question should be resolved by the Congress but that I could not in good conscience recommend publication of all or part of the intelligence budget. I believe I must now recommend that the Agency budget and certain classified intelligence programs of the Department of Defense remain fully classified and nonidentifiable. I do this despite the recommendation of the Commission and its reference to Article 1, Section 9, Clause 7, of the Constitution.

With respect to the constitutionality of the present procedure, a recent attempt to litigate this question did not reach the substance; the litigant having been defeated on the issue of standing to sue. Richardson v. United States, 418 U.S. 166 (1974). There is, however, considerable historical precedent for budget secrecy, going back to debates in the Constitutional Convention, the use of a secret fund during the administrations of Washington and Madison, and a secret appropriations act in 1811. Congress most recently endorsed the secrecy of intelligence budgets in June 1974 when the Senate rejected an amendment to the Department of Defense Appropriations Act of 1975 which would have required that the total budget figure for intelligence purposes be made public. In addition, I believe that present procedures are fully in accord with the Constitution. Agency appropriations are an integral part of appropriations made by law and are reflected in the Treasury's Statement and Account of Receipts and Expenditures in compliance with the cited provisions of the Constitution.

¹"No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."

On the merits of the question, aside from the constitutionality, my belief that this budget should remain secret is based on the following:

a. Public disclosure of Intelligence Community budget data, or the budgets of the individual agencies which make up the Intelligence Community, could provide potential enemies with considerable insight into the nature and extent of our activities.

b. Publication of part of the budget, as suggested by the Commission, would raise, in my view, extensive congressional debate as to what matters were included and what matters were not included in the published totals, leading to a rapid erosion of the secrecy of the portions withheld.

c. The same question would immediately arise with respect to the publication of the total CIA budget, a total Community budget, or any other figure covering "intelligence." An immediate requirement would be levied to explain precisely which of our intelligence activities were covered in the published total and which were not. As you know, this is a difficult matter to determine within classified circles due to the difficulty of determining at what point intelligence expenditures stop and operational expenditures begin (the radar on a destroyer; tactical air reconnaissance on the battlefield; the reporting as differentiated from the representational and other functions of attaches, foreign service officers; etc.).

d. Publication of any single figure with respect to intelligence would, in my view, quickly initiate curiosity and investigation by the press and others as to exactly how the figure was arrived at and what its component elements were. This is suggested by the history of disclosure of AEC budget materials and related information by both the Executive Branch and the Congress.

e. Publication of any figure with respect to intelligence will result in questions and discussions of any changes or trends developed in succeeding year figures. Any change in the basis on which the figure was computed or any change in its level will generate a demand for explanation and tend to reveal the details of the figure and programs supported by it.

Thus, I must recommend that the CIA budget and certain other highly sensitive intelligence programs remain classified and nonidentifiable in the Department of Defense budget.

Recommendation (5)

a. The functions of the President's Foreign Intelligence Advisory Board should be expanded to include oversight of the CIA. This expanded oversight board should be composed of distinguished citizens with varying backgrounds and experience. It should be headed by a full-time chairman and should have a full-time staff appropriate to its role. Its functions related to the CIA should include:

1. Assessing compliance by the CIA with its statutory authority.
2. Assessing the quality of foreign intelligence collection.
3. Assessing the quality of foreign intelligence estimates.
4. Assessing the quality of the organization of the CIA.
5. Assessing the quality of the management of the CIA.
6. Making recommendations with respect to the above subjects to the President and the Director of Central Intelligence, and, where appropriate, the Attorney General.

b. The Board should have access to all information in the CIA. It should be authorized to audit and investigate CIA expenditures and activities on its own initiative.

c. The Inspector General of the CIA should be authorized to report directly to the Board, after having notified the Director of Central Intelligence, in cases he deems appropriate.

Response

I fully concur with this recommendation. I have the highest regard for the contribution the PFIAB has made to the improvement of the intelligence structure of our Government to date, and I look forward to the Board's specific supervision and independent assessment of our performance and management in the future. I also concur that the Inspector General of the CIA report directly to the Board after notifying the Director of Central Intelligence in any case which he deems appropriate. I have undertaken the commitment to the PFIAB not only to be responsive to their inquiries but also to raise with them matters of which they might not be aware of which they should be informed. The recommendation of the Commission would substantially increase the role and supervision of the Board, a step which I would welcome.

Recommendation (6)

The Department of Justice and the CIA should establish written guidelines for the handling of reports of criminal violations by employees of the Agency or relating to its affairs. These guidelines should require that the criminal investigation and the decision whether to prosecute be made by the Department of Justice, after consideration of Agency views regarding the impact of prosecution on the national security. The Agency should be permitted to conduct such investigations as it requires to determine whether its operations have been jeopardized. The Agency should scrupulously avoid exercise of the prosecutorial function.

Response

I fully endorse this recommendation. The procedure in effect since 1954, whereby the Agency determined whether there were security considerations which would prevent a successful prosecution, was abandoned in December of last year; the Commission recommendation reflects the de facto situation since then. It should be pointed out that the type of case envisioned under the former procedure was the occasional embezzlement of funds or falsification of vouchers, where to prosecute would involve the divulging of sensitive intelligence sources and methods. We appreciate that the guidelines for handling of reports of criminal violations should be most carefully developed jointly by the Agency and the Department of Justice to indicate clearly the extent to which the Agency should properly be authorized to conduct investigations in order to determine whether sufficient basis exists to submit reports to the Department of Justice. Clearly the final decision as to whether there should be a prosecution is solely the responsibility of the Department of Justice, after consideration of the Agency's views of the possible damage which would be done by revelation of intelligence sources and methods in such a prosecution.

Recommendation (7)

a. Persons appointed to the position of Director of Central Intelligence should be individuals of stature, independence, and integrity. In making this appointment, consideration should be given to individuals from outside the career service of the CIA, although promotion from within should not be barred. Experience in intelligence service is not necessarily a prerequisite for the position; management and administrative skills are at least as important as the technical expertise which can always be found in an able deputy.

b. Although the Director serves at the pleasure of the President, no Director should serve in that position for more than 10 years.

Response

I endorse this recommendation. I would add the suggestion that such individual also not be a partisan political figure.

Recommendation (8)

a. The Office of Deputy Director of Central Intelligence should be reconstituted to provide for two such deputies, in addition to the four heads of the Agency's directorates. One deputy would act as the administrative officer, freeing the Director from day-to-day management duties. The other deputy should be a military officer, serving the functions of fostering relations with military and providing the Agency with technical expertise on military intelligence requirements.

b. The advice and consent of the Senate should be required for the appointment of each Deputy Director of Central Intelligence.

Response

I endorse this recommendation though I envision its implementation in somewhat different fashion. With the establishment of a Deputy Director charged specifically with CIA management and representation responsibilities, the other (military) Deputy could most effectively perform the functions cited in the Commission Report if he were primarily concerned with management of those Intelligence Community responsibilities given to me under the President's letter of November 1971. Thus, I would propose that the existing position of Deputy to the DCI for the Intelligence Community be the basis for defining the responsibilities of the military Deputy Director. Should expected congressional consideration of the DCI's role within the Intelligence Community produce significant changes in this role, this recommendation will obviously be affected. While it might be undesirable to specify this in legislation, I believe that the Deputy Director principally concerned with management of CIA should be both a civilian and a career Agency employee. This last comment in no way reflects upon the high quality of the military Deputy Directors who have served this Agency in the past; it merely reflects the experience that such an outsider is normally less able to conduct the detailed management of the Agency contemplated by the Commission's recommendation than is a career Agency employee. This is especially true in the case in which a career Agency employee has been the Director, as in such

situations there has been a natural tendency for management decisions to be made by the Director rather than delegated to the Deputy. CIA has, however, been exceedingly well served by the high quality of a number of Deputy Directors of military background who have made a unique contribution in intelligence matters for which they were particularly fitted as well as being excellent helpers and independent advisors to the Director, himself.

Recommendation (9)

a. The Inspector General should be upgraded to a status equivalent to that of the deputy directors in charge of the four directorates within the CIA.

b. The Office of Inspector General should be staffed by outstanding, experienced officers from both inside and outside the CIA, with ability to understand the various branches of the Agency.

c. The Inspector General's duties with respect to domestic CIA activities should include periodic reviews of all offices within the United States. He should examine each office for compliance with CIA authority and regulations as well as for the effectiveness of their programs in implementing policy objectives.

d. The Inspector General should investigate all reports from employees concerning possible violations of the CIA statute.

e. The Inspector General should be given complete access to all information in the CIA relevant to his reviews.

f. An effective Inspector General's office will require a larger staff, more frequent reviews, and highly qualified personnel.

g. Inspector General reports should be provided to the National Security Council and the recommended executive oversight body. The Inspector General should have the authority, when he deems it appropriate, after notifying the Director of Central Intelligence, to consult with the executive oversight body on any CIA activity (see Recommendation 5).

Response

I concur in this recommendation.

a. The status of the Inspector General can be raised as recommended, although I believe the other recommendations made by the Commission with respect to the functions of the Inspector General are more fundamental.

b. The Office of the Inspector General will be staffed by officers of the types described, both from inside the Agency and from outside the Agency.

c. The Inspector General will develop a program of periodic review of all offices within the United States as proposed.

d. The Inspector General will investigate all reports from employees concerning possible violations of the CIA statute and other applicable laws.

e. The Inspector General will be given complete access by specific regulation to all information in CIA relevant to his reviews.

f. The Inspector General is now studying the recommended expansion of his office and program and will develop a specific proposal for consideration.

g. Inspector General reports will be made available to the NSC and the recommended executive oversight body, as recommended.

Recommendation (10)

a. The Director should review the composition and operation of the Office of General Counsel and the degree to which this office is consulted to determine whether the Agency is receiving adequate legal assistance and representation in view of current requirements.

b. Consideration should be given to measures which would strengthen the office's professional capabilities and resources including, among other things, (1) occasionally departing from the existing practice of hiring lawyers from within the Agency to bring in seasoned lawyers from private practice as well as to hire law school graduates without prior CIA experience; (2) occasionally assigning Agency lawyers to serve a tour of duty elsewhere in the government to expand their experience; (3) encouraging lawyers to participate in outside professional activities.

Response

I concur in this recommendation.

Significant changes in the composition of the Office of General Counsel and its relationship to all the activities of the Agency are already under way. The General Counsel is a regular participant in meetings of the Agency Management Committee and in my own management discussions with the Deputy Directors of the Agency. The General Counsel is in the process of reviewing all Agency regulations to assure that legal consultation is required in all sensitive situations and to assure that on policy decisions the General Counsel is consulted to ascertain if there are legal aspects to be considered. The Office of General Counsel has been removed from direct managerial functions undertaken in previous years and restricted to the function of independent legal advisor. The General Counsel is also taking steps toward having an outside review of his office for the purpose of developing recommendations on its size, composition, and method of operation. The Agency, within the last 18 months, has brought on board or has in process four lawyers from outside the Agency. I believe there should be a balance between bringing in lawyers from the outside and utilizing experienced officers from within the Agency who are professionally qualified as lawyers.

The General Counsel has, in the past, looked into the possibility of assigning lawyers to serve a tour of duty elsewhere in the Government to expand their experience. This was not found practicable, in part because of the reluctance of other agencies to take on an attorney for a limited period knowing that it would have to release him at about the time he was becoming productive. Nevertheless, the General Counsel and I consider this a desirable proposal, and we will again look into this possibility. We will also look into the possibility of placing Agency lawyers on sabbatical tours with private law firms.

I endorse the recommendation that Agency lawyers be encouraged to participate in outside professional activities. This has been the policy of the Office of General Counsel and will continue to be so.

Recommendation (11)

To a degree consistent with the need for security, the CIA should be encouraged to provide for increased lateral movement of personnel among the directorates and to bring persons with outside experience into the Agency at all levels.

Response

I concur in this recommendation but feel obliged to point out certain difficulties which will limit the degree to which the Agency will be able to conduct such programs. Over the past seven years, the Agency has been reducing its overall strength. This reduction has naturally limited the receptivity of employees to the arrival of lateral entrees. The Agency has made a particular point of ensuring the continued input of young people into the Agency during this period, thus creating additional pressures on the current levels. Nonetheless, in our Annual Personnel Plan specific goals are set and audited as to lateral entry into the component elements of the Agency of persons with outside experience at upper levels. This has been particularly pressed with respect to the entry of representatives of minority groups.

With respect to lateral movement of personnel among the directorates, the difficulty is raised less by security than by the complex mix of skills within the Agency. The clandestine case officer abroad, the analyst on economic or scientific subjects, the engineer developing a new technical system, and the finance, security or logistics specialists are generally not interchangeable. Despite this, the Annual Personnel Plan and the Agency's Personnel Development Plan address particular attention to a feasible level of rotation to break down parochialism and to improve the leadership potential of our personnel. During 1974, for example, 78 employees GS 14 and above and 87 employees in GS Grades 7 through 11 were transferred from one career service to another. Our goals for 1975 are higher.

Recommendation (12)

a. The Agency should issue detailed guidelines for its employees further specifying those activities within the United States which are permitted and those which are prohibited by statute, Executive Orders, and NSC and DCI directives.

b. These guidelines should also set forth the standards which govern CIA activities and the general types of activities which are permitted and prohibited. They should, among other things, specify that:

-Clandestine collection of intelligence directed against United States citizens is prohibited except as specifically permitted by law or published Executive Order.

-Unlawful methods or activities are prohibited.

-Prior approval of the DCI shall be required for any activities which may raise questions of compliance with the law or with Agency regulations.

c. The guidelines should also provide that employees with information on possibly improper activities are to bring it promptly to the attention of the Director of Central Intelligence or the Inspector General.

Response

I concur in this recommendation. Present specific guidelines and regulations will be reviewed to ensure that they fully reflect the points covered by the recommendation. CIA will promulgate as regulations detailed guidelines specifying those activities within the United States which are permitted and those which are prohibited as specified in this recommendation. These issuances will be incorporated in a revised Handbook of Employee Conduct and Summary of Agency Authorities, which is circulated to each employee on entrance into the Agency and annually thereafter.

The new Handbook on Employee Conduct and Summary of Agency Authority will include materials specified in this section of the

recommendation and will specify, as it has since 1973, that employees are to report immediately any possibly improper activities to the Director of Central Intelligence or the Inspector General.

Recommendation (13)

a. The President should instruct the Director of Central Intelligence that the CIA is not to engage again in domestic mail openings except with express statutory authority in time of war. (See also Recommendation 23.)

b. The President should instruct the Director of Central Intelligence that mail cover examinations are to be in compliance with postal regulations, they are to be undertaken only in furtherance of the CIA's legitimate activities and then only on a limited and selected basis clearly involving matters of national security.

Response

I concur in the intent of this recommendation, although in form it is directed to the President rather than the Agency. It is fully consistent with the instructions issued by me on 29 August 1973 and will be reflected in internal Agency regulations as well as instructions.

Recommendation (14)

a. A capability should be developed within the FBI, or elsewhere in the Department of Justice, to evaluate, analyze, and coordinate intelligence and counterintelligence collected by the FBI concerning espionage, terrorism, and other related matters of internal security.

b. The CIA should restrict its participation in any joint intelligence committees to foreign intelligence matters.

c. The FBI should be encouraged to continue to look to the CIA for such foreign intelligence and counterintelligence as is relevant to FBI needs.

Response

I concur in this recommendation as it affects CIA, reflecting current CIA practice. I defer to the Department of Justice and the FBI with respect to the matters affecting those agencies.

Recommendation (15)

a. Presidents should refrain from directing the CIA to perform what are essentially internal security tasks.

b. The CIA should resist any efforts, whatever their origin, to involve it again in such improper activities.

c. The Agency should guard against allowing any component (like the Special Operations Group) to become so self-contained and isolated from top leadership that regular supervision and review are lost.

d. The files of the CHAOS project which have no foreign intelligence value should be destroyed by the Agency at the conclusion of the current congressional investigations, or as soon thereafter as permitted by law.

Response

I concur in the intent of the first two subparagraphs of this recommendation and note that it reflects the commitment made by me in my confirmation hearing.

I fully concur with subparagraph (c) and note that certain revisions have been made in Agency organization in the past two years toward this goal.

I fully concur with subparagraph (d).

Recommendation (16)

The CIA should not infiltrate dissident groups or other organizations of Americans in the absence of a written determination by the Director of Central Intelligence that such action is necessary to meet a clear danger to Agency facilities, operations, or personnel and that adequate coverage by law enforcement agencies is unavailable.

Response

I concur in what I understand to be the intent of this recommendation but suggest somewhat more precision in its direction:

a. Recommendations 2 and 12(b) I believe should bar CIA from any infiltration activities for the clandestine collection of intelligence against United States citizens.

b. With respect to a concern about a clear danger to Agency facilities, operations or personnel, I believe that in addition to a determination by the Director of Central Intelligence, there should be a requirement for coordination with the FBI or other appropriate law enforcement agencies and that any CIA activity should be undertaken only in support of the duly authorized activity of such agency.

c. As written, this recommendation could be read as prohibiting CIA utilization of persons with either bona fide or assumed status as dissidents "or other organizations of Americans" even though the CIA activity might be directed exclusively against foreign intelligence targets. I do not believe that the use of American "cover" such as this should be eliminated but, rather, that reporting on the American activity in the process of building such "cover" should be prohibited.

Recommendation (17)

All files on individuals accumulated by the Office of Security in the program relating to dissidents should be identified, and, except where necessary for a legitimate foreign intelligence activity, be destroyed at the conclusion of the current congressional investigations, or as soon thereafter as permitted by law.

Response

I concur in this recommendation.

Recommendation (18)

a. The Director of Central Intelligence should issue clear guidelines setting forth the situations in which the CIA is justified in conducting its own investigation of individuals presently or formerly affiliated with it.

b. The guidelines should permit the CIA to conduct investigations of such persons only when the Director of Central Intelligence first determines that the investigation is necessary to protect intelligence sources and methods the disclosure of which might endanger the national security.

c. Such investigations must be coordinated with the FBI whenever substantial evidence suggesting espionage or violation of a federal criminal statute is discovered.

Response

I concur in this recommendation. I suggest somewhat greater precision in it, however, as follows:

a. The Director of Central Intelligence should have as a base the same administrative authority over CIA employees as any departmental or agency chief. This should give him the right to conduct administrative investigations to ascertain whether or not a substantial security or management problem may exist.

b. In cases in which evidence suggesting espionage or violation of a Federal or State criminal statute is discovered, the FBI or appropriate local authorities should be informed and the Agency should undertake a supporting rather than primary role with respect to any further investigation.

c. Where the preliminary examination indicates the possibility of a security problem not likely to involve espionage or violation of a criminal statute, but reflecting on the suitability of continued access to sensitive intelligence sources and methods or suggesting corrective action with respect to such access, the CIA should be authorized to conduct an investigation using lawful methods of surveillance, provided there is coordination with the FBI.

d. When appropriate, the DCI will consult with the Attorney General with respect to issuance of guidelines.

Recommendation (19)

a. In cases involving serious or continuing security violations, as determined by the Security Committee of the United States Intelligence Board, the Committee should be authorized to recommend in writing to the Director of Central Intelligence (with a copy to the National Security Council) that the case be referred to the FBI for further investigation, under procedures to be developed by the Attorney General.

b. These procedures should include a requirement that the FBI accept such referrals without regard to whether a favorable prosecutive opinion is issued by the Justice Department. The CIA should not engage in such further investigations.

Response

I endorse the sense of this recommendation but have several suggestions for modification:

a. While the Security Committee of the United States Intelligence Board could initiate a recommendation with respect to any level of security violation, the US Intelligence Board itself should be required to endorse a referral to the FBI for further investigation if the FBI thereby would be required to accept such referral without regard to whether a favorable prosecutive opinion is issued by the Justice Department.

b. As noted in Recommendation 18, I believe a distinction should be drawn between a possible violation of law (including the espionage law) wherein the FBI or local authorities should undertake the primary role in an investigation supported by the CIA and cases of apparent security vulnerability not constituting a violation of law wherein the CIA should be authorized to undertake the primary role in coordination with the FBI. The latter category should be restricted to CIA employees, contractors, etc., in knowing contact with the CIA. Similar authority to investigate employees of other intelligence agencies should be given to the heads of those agencies for situations of security vulnerability not amounting to possible violation of a criminal statute.

Recommendation (20)

The CIA and other components and agencies of the intelligence community should conduct periodic reviews of all classified material originating within those departments or agencies, with a view to declassifying as much of that material as possible. The purpose of such review would be to assure the public that it has access to all information that should properly be disclosed.

Response

I concur in this recommendation. This recommendation contains the same injunction as Executive Order 11652 which provides for classification and declassification of national security information and material.

Recommendation (21)

The Commission endorses legislation, drafted with appropriate safeguards of the constitutional rights of all affected individuals, which would make it a criminal offense for employees or former employees of the CIA willfully to divulge to any unauthorized person classified information pertaining to foreign intelligence or the collection thereof obtained during the course of their employment.

Response

On 23 April 1975 I submitted to the Office of Management and Budget proposed legislation in line with this recommendation. I had submitted similar legislation in January 1974, which was not introduced, and I have vigorously pursued the objectives of this proposal with the Congress, the Department of Justice, and other interested departments and agencies since that time. It has been evident to this Agency for many years that existing criminal law is inadequate and provides virtually no enforceable sanctions against disclosure of intelligence sources and methods to unauthorized persons. This is because to prosecute under existing law requires disclosure in open court of further sensitive information as well as confirmation of the information disclosed by the person being prosecuted. In very recent years, with the Government's inability to prosecute in well known cases of disclosure by former employees, the need for improved criminal legislation has become evident to many outside of the Intelligence Community. The legislation which I have proposed meets, I believe, all of the standards of this recommendation including particularly safeguards for the constitutional rights of all affected individuals. It would permit prosecution only of persons authorized to possess the information disclosed or who possessed it by virtue of an association with the Government. It specifically precludes prosecution of newsmen or other recipients of information disclosed in violation of the law.

Recommendation (22)

The CIA should not undertake physical surveillance (defined as systematic observation) of Agency employees, contractors or related personnel within the United States without first obtaining written approval of the Director of Central Intelligence.

Response

I concur in this recommendation, but note that the requirement for the Director's prior written approval would apply to some activities by the Agency which the Commission did not find objectionable. These include surveillance of Agency employees in operational situations for their protection or to detect countersurveillance, surveillance of individuals who may be carrying substantial sums of money, or surveillance during the routine investigations mentioned in the response to Recommendation 18. Thus, I believe that the intent of this recommendation can best be met by adoption of detailed internal procedures which define those situations in which DCI approval for surveillance is required and those in which authority can be delegated to the Director of Security or other subordinate levels.

Recommendation (23)

In the United States and its possessions, the CIA should not intercept wire or oral communications¹ or otherwise engage in activities that would require a warrant if conducted by a law enforcement agency. Responsibility for such activities belongs with the FBI.

Response

This recommendation suggests the prohibition within the US and its possessions of two kinds of activity which raise different considerations. The first is the interception of wire or oral communications, and the second is "activities that would require a warrant if conducted by a law enforcement agency." The latter is understood to mean unauthorized entries onto premises and all conduct other than the interception of wire or oral communications which would amount to a search or seizure.

I concur in the recommendation that CIA not engage in "activities that would require a warrant if conducted by a law enforcement agency." Since the Agency has no law enforcement functions, its use within the US of unauthorized entry or other methods which amount to a search or seizure is beyond its legal authority. Cases where the Agency's legitimate interests may call for such activities are infrequent and should be handled by the FBI upon CIA's request (see Recommendation 19).

In regard to the recommendation that CIA be prohibited from intercepting wire or oral communications within the US, I concur that responsibility for such activities belongs with the FBI. I recommend, however, that CIA be authorized to support such FBI activity in cases involving foreign intelligence approved by the Attorney General.

¹As defined in the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. Secs. 2510-20.

In regard to possible intercept of communications in the course of equipment testing or the training of operators, see response to Recommendation 28.

Recommendation (24)

The CIA should strictly adhere to established legal procedures governing access to federal income tax information.

Response

I concur in this recommendation. Agency regulations on liaison with the Internal Revenue Service will be revised to clarify the limits and procedures in dealing with the Service and for obtaining income tax information.

Recommendation (25)

CIA investigation records should show that each investigation was duly authorized, and by whom, and should clearly set forth the factual basis for undertaking the investigation and the results of the investigation.

Response

I concur in this recommendation.

Recommendation (26)

a. A single and exclusive high-level channel should be established for transmission of all White House staff requests to the CIA. This channel should run between an officer of the National Security Council staff designated by the President and the office of the Director or his Deputy.

b. All Agency officers and employees should be instructed that any direction or request reaching them directly and out of regularly established channels should be immediately reported to the Director of Central Intelligence.

Response

Given the concerns expressed in the chapter of which this recommendation is a part, I understand the purposes of the recommendation as being proper and desirable. The language of the recommendation however would appear to restrict unduly a number of normal relationships involving the provision of foreign intelligence support by CIA to the White House. I believe that the concerns expressed by the Commission would be adequately protected if implementation of the recommendation provided that rules and procedures be issued governing the provision of foreign intelligence support to the White House. These should cover, for example, such subjects as the normal exchange between the White House Situation Room and the CIA Operations Center; NSC Staff requests to the Directorates of Intelligence and Operations for comments on or contributions to NSC studies; requests that CIA provide communications for senior officials on foreign travels; requests by the Secret Service for assistance in protecting senior officials travelling abroad; and the normal interchange between CIA and the NSC on agreements regarding employees, professional and clerical, detailed to the NSC.

CIA officers involved in the provision of foreign intelligence support as outlined above would be under direct instruction to report to the DCI or the Inspector General any White House request which does not fall within the agreed list of activities as specified above.

Recommendation (27)

In accordance with its present guidelines, the CIA should not again engage in the testing of drugs on unsuspecting persons.

Response

I concur in this recommendation, which reflects directives issued by me on 29 August 1973.

Recommendation (28)

Testing of equipment for monitoring conversations should not involve unsuspecting persons living within the United States.

Response

While I endorse the intent of the Commission in making this recommendation, I believe it is so simple in form as to pose serious difficulties as a guide for actual testing practice. Many types of radio receivers for the collection of foreign intelligence are developed and tested by the CIA, and our personnel are trained in their operation. By their very nature, these receivers are sensitive enough to monitor inadvertently some US conversations in test situations and virtually nothing can be done to prevent this. Adequate acceptance and suitability testing of these systems requires that they be tested in realistic circumstances, and inevitably some conversations will be monitored, though no identification is made of the participants. The building of large scale simulated communications systems for test purposes would be expensive and impractical.

In my view, the guidelines for testing of equipment in the US established by us in August 1973 meet the purposes of the Commission's recommendation and serve as a more realistic guide to such activities. These provide that testing of intelligence equipment may be undertaken in the United States provided that no use of the information collected shall in any way abrogate the rights of US citizens as guaranteed under the Constitution of the United States. If it is essential to test equipment on an American communications system or other establishment, this may be done provided that no recordings of the material are retained or examined by any element other than the original test engineers. In this context the original test engineers constitute the engineers under contract to perform the tests and the Agency technical officers supervising the activity. Knowledge derived from the tests that relates to equipment performance but maintains anonymity of the data source may be exchanged with other elements of the Agency.

Recommendation (29)

A civilian agency committee should be reestablished to oversee the civilian uses of aerial intelligence photography in order to avoid any concerns over the improper domestic use of a CIA-developed system.

Response

I concur in this recommendation and urge that it be accomplished speedily. I should note here that--contrary to the statement in the Commission's Report--a proposed agreement for continuing support in this area of the Environmental Protection Agency was not concluded because of that Agency's law enforcement responsibilities.

Recommendation (30)

The Director of Central Intelligence and the Director of the FBI should prepare and submit for approval by the National Security Council a detailed agreement setting forth the jurisdiction of each agency and providing for effective liaison with respect to all matters of mutual concern. This agreement should be consistent with the provisions of law and with other applicable recommendations of this Report.

Response

I concur in this recommendation. A proposed National Security Council Intelligence Directive which bears on this subject has been submitted to the NSC for review. We will continue to review this matter to determine if other directives are appropriate to meet fully this recommendation.

Defense

THE SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

25 June 1975

MEMORANDUM FOR The President

FROM: Secretary Schlesinger

SUBJECT: Comments on the Rockefeller Panel Recommendations

Most of the recommendations in the Report are thoughtful and constructive. If implemented, they should significantly reduce the likelihood of the CIA again becoming embroiled in controversial domestic activity. Several of the recommendations, however, could benefit by some additions or deletions. The following comments are addressed to those specific recommendations:

Recommendation (1)

"Section 403 of the National Security Act of 1947 should be amended in the form set forth in Appendix VI to this Report. These amendments in summary would:

(a) Make explicit the CIA's activity must be related to foreign intelligence.

(b) Clarify the responsibility of the CIA to protect intelligence sources and methods from unauthorized disclosure..."

COMMENT:

Present language in the National Security Act makes the DCI responsible for protecting intelligence sources and methods. The Commission's recommendation would revise the Act to assign the functions to CIA as an agency. The DCI rather than the CIA should continue to be assigned this responsibility.

Recommendation (3)

"The President should recommend to Congress the establishment of a joint committee on intelligence to assume the oversight role currently played by the Armed Services Committees."

COMMENT:

As written, this Recommendation suggests that such a joint committee would have jurisdiction over the entire intelligence community not just the Central Intelligence Agency. If so, its creation would result in serious jurisdictional problems between committees. For example, Defense agencies such as DIA and NSA would come under the purview of the joint committee, both Armed Services Committees and both Appropriations Committees. If any recommendation is made on this point, I urge that Recommendation (3) be rewritten to call for the establishment of a Joint Committee on the Central Intelligence Agency rather than a Joint Committee on Intelligence.

Recommendation (4)

"Congress should give careful consideration to the question of whether the budget of the CIA should not, at least to some extent, be made public, particularly in view of the provisions of Article I, Section 9, clause 7 of the Constitution."

COMMENT:

Once CIA's budget is made public there will certainly be increased pressure to make public the budgets for each of the other intelligence agencies such as NSA, DIA, the NRO, etc. Publication of a lump sum for any single year for any one of the intelligence agencies might be relatively harmless but over a period of several successive years such publication will reveal changes which could point towards sensitive new projects.

Recommendation (5)

"(a) The functions of the President's Foreign Intelligence Advisory Board should be expanded to include oversight of the CIA. This expanded oversight board should be composed of distinguished citizens with varying backgrounds and experience. It should be headed by a full-time Chairman and should have a full-time staff appropriate to its role. Its functions related to the CIA should include:

(1) Assessing compliance by the CIA with a statutory authority.

(2) Assessing the quality of foreign intelligence collection.

(3) Assessing the quality of foreign intelligence estimates.

(4) Assessing the quality of the organization of the CIA.

(5) Assessing the quality of the management of the CIA.

(6) Making recommendations with respect to the above subjects to the President and the Director of Central Intelligence, and, where appropriate, the Attorney General.

(b) The Board should have access to all information in the CIA. It should be authorized to audit and investigate CIA expenditures and activities on its own initiative.

(c) The Inspector General of the CIA should be authorized to report directly to the Board, after having notified the Director of Intelligence, in cases he deems appropriate."

COMMENT:

This Recommendation, if fully implemented, would place the PFIAB in direct competition, not only with the statutory members of the National Security Council but also with OMB and Congressional oversight committees. The members of the National Security Council are in the best position to assess the quality of the intelligence collected and produced by CIA. Moreover, the PFIAB ought to retain a certain flexibility in its charter so that it can be used effectively by the President for ad hoc projects and oversight functions. The President currently has sufficient authority to utilize the Board in a broader oversight fashion, if he so chooses.

Recommendation (7)

"(a) Persons appointed to the position of Director of Central Intelligence should be individuals of stature, independence and integrity. In making this appointment, considerations should be given to individuals outside the career service of the CIA, although promotion from within should not be barred. Experience in intelligence service is not necessarily a prerequisite for the position; management and administrative skills are at least as important as the technical expertise which can always be found in an able deputy.

(b) Although the Director serves at the pleasure of the President, no Director should serve in that position for more than 10 years."

COMMENT:

It is a good idea to limit the tenure of the DCI; however, if this is to be effective, it needs to be written into the National Security Act.

Recommendation (8)

"(a) The Office of Deputy Director of Central Intelligence should be reconstituted to provide for two such deputies, in addition to the four heads of the agency's directorate. One deputy would act as the administrative officer, freeing the Director from day-to-day management duties. The other deputy should be a military officer, servicing the functions of fostering relations with the military and providing the Agency with technical expertise on military intelligence requirements."

(b) The advise and consent of the Senate should be required for the appointment of each deputy director of Central Intelligence."

COMMENT:

There is much merit to this Recommendation. Creation of a Deputy Directorate for a military officer would be accomplished by designating the Deputy Director for the Intelligence Community as that position. Care should be taken however, in filling the other Deputy spot. One should be alert to the possibility that the CIA professionals might attempt to freeze out the DCI and keep him ignorant of what was actually happening within the Agency itself.

Recommendation (9)

"(a) The Inspector General should be upgraded to a status equivalent to that of the Deputy Directors in charge of the four Directorates within the CIA..."

COMMENT:

It is not necessary that the Inspector General be upgraded to a status equivalent to the Deputy Directors at CIA. It is more important that he be given authority to conduct thorough investigations.

Recommendation (19)

"(a) In cases involving serious or continuing security violations as determined by the Security Committee of the U.S. Intelligence Board, the Committee should be authorized to recommend in writing to the Director of Central Intelligence (with a copy to the NSC) that the case be referred to the FBI for further investigation, under procedures to be developed by the Attorney General..."

COMMENT:

The National Security Act assigns to the DCI responsibility for protecting intelligence sources and methods. The Security Committee of USIB provides staff support to the DCI. Recommendation (19) should be rewritten as follows:

(a) "In cases involving serious or continuing security violations, as determined by the DCI, the DCI should refer the case to the FBI for further investigation, under procedures to be developed by the Attorney General."

Recommendation (20)

"The CIA and other components and agencies of the intelligence community should conduct periodic reviews of all classified material originating within that Department or Agency, with a view to declassifying as much of that material as possible. The purpose of such information that should properly be disclosed."

COMMENT:

Automatic downgrading of classified materials and periodic review are provide for in existing directives. In particular, Executive Order 11652.

Recommendation (21)

"The Committee endorses legislation, drafted with appropriate safeguards of the constitutional rights of all affected and to individuals, which would make it a criminal offense for employees or former employees of the CIA willfully to divulge to any unauthorized person classified information pertaining to foreign intelligence or the collection thereof obtained during the course of their employment."

COMMENT:

Because of the serious and growing problem of protecting highly sensitive information affecting the national security from unauthorized disclosures, it is recommended that the language of the fourth line of Recommendation (21) be amended to read: "Employees of any Federal Department or Agency willfully to divulge..."

State

DEPARTMENT OF STATE
WASHINGTON

July 1, 1975

MEMORANDUM FOR: THE PRESIDENT

From: Robert S. Ingersoll, Acting Secretary *RSI*Subject: Report of the Commission on Central
Intelligence Activities Within the
United States

In response to your memorandum of June 11, 1975, the Department of State has reviewed the Commission's findings and recommendations. We believe that the Report is a thorough review of CIA activities, and we support the principal recommendations. If implemented, the Commission's recommendations will create a sound basis for the continuation of the CIA's responsibilities to meet the requirements of a strong foreign intelligence effort in the years ahead.

As for the specific recommendations, the following are the Department of State comments on possible modifications.

Recommendation (1) -- Amending the National Security Act:

While the proposed amendment would strengthen and clarify the authority of the Director, CIA, to protect intelligence sources and methods from unauthorized disclosure, it would not specifically address the problem of other agencies concerned with national security. In effect, these agencies, including the Department of State, have no effective sanctions to deter deliberate disclosure of classified information.

Thus, if the NSC Act is to be amended, consideration should be given to the provision of additional restrictions on and penalties against disclosure of classified information by personnel in agencies of the National Security Council.

Recommendation (3) -- Establishment of a Joint Committee on Intelligence:

This is a particularly useful and necessary step to centralize the oversight functions of the Congress. In this connection, consideration should be given to providing this new committee with the functions of oversight of covert actions, which in current legislation is apportioned among several committees.

Recommendation (4) -- Publishing the Budget of CIA:

Leaving aside the constitutionality of whether the CIA budget can be concealed, there are strong arguments against publicizing the Agency's budget: it would almost certainly lead to further demands for disclosure of the entire expenditures on intelligence and for more detailed breakdowns, probably including identification of sums spent for covert activities. While even this degree of disclosure might be manageable, over the years the trends in spending would provide an invaluable aid to foreign intelligence services, and would in some instances lead to identification of new programs and new areas of activity.

Recommendation (5) -- Strengthening the Oversight Role of the President's Foreign Intelligence Advisory Board:

There is some question whether a part-time board, even with a full-time staff, is capable of fulfilling all the recommended tasks listed in the Report. To the extent that the Board and Staff attempt to assess virtually every aspect of the CIA's performance, it will inevitably become a large bureaucracy and, to some degree, a substitute for the NSC Staff. Moreover, the Report leaves unclear whether it will monitor activities currently performed by the 40 Committee

and the NSCIC. Moreover, there is a risk that the PFIAB will increasingly become an intermediary between the Director, CIA, and the President. Consideration should be given to a more precise definition of the Board's responsibilities and functions, lest the new function of oversight with respect to domestic activities be subsumed in a variety of other tasks.

You refer in your memorandum to the possible structural weaknesses in the CIA.

The Report does not address questions of a major restructuring of CIA and the Intelligence Community, but some of the specific recommendations concerning CIA internal organization do raise such questions. There will no doubt be other issues arising from the current Senate and House investigations.

Thus, before implementing some of the recommendations concerning, for example, a new position of Deputy Director for CIA and the tenure of the DCI, etc., more study should be given to the ultimate organization of the CIA, and whether it is to remain essentially unchanged. The Commission's Report does not suggest that the problems of the CIA arise from a basic structural defect. Rather the abuses arose from a variety of essentially unrelated causes.

If a structural weakness is apparent, it may be that compartmentation within CIA permitted too many activities to proceed without adequate mechanisms for review or questioning. Thus, in some cases only the Director of CIA was aware of activities which, if they had been reviewed by others in CIA or the Intelligence Community, would have no doubt raised serious questions. The Commission's recommendations concerning executive oversight and internal CIA review should adequately meet these problems in the future.

Justice



Office of the Attorney General

Washington, D. C. 20530

July 1, 1975

The President
The White House

Dear Mr. President:

In your memorandum of June 11th you requested our comments on the recommendations of the Commission on CIA activities within the United States (The Rockefeller Commission). Many of the recommendations bear directly on the operations of this Department, since a change in the charter of the Central Intelligence Agency will often carry with it implications with respect to the responsibilities of the Federal Bureau of Investigation.

I am enclosing a memorandum which consists of preliminary observations on the recommendations. The basic purpose of the memorandum is to point out those recommendations which may require some modification before they are implemented.

The observations are preliminary in nature because the development of guidelines in this area requires a considerable amount of work and a great deal of consultation with other agencies of the government as well as with the Federal Bureau of Investigation. We have already begun this process and are moving as quickly as possible.

I will, of course, keep you informed on the progress of the Department in developing guidelines with respect to the relationship of the Department, including the FBI to the CIA.

Sincerely,

Edward H. Levi

Edward H. Levi
Attorney General

Enclosure

MEMORANDUM

COMMENTS ON RECOMMENDATIONS OF THE COMMISSION ON CIA ACTIVITIES WITHIN THE UNITED STATES

The comments of the Department of Justice on the recommendations of the Commission are as follows:

Recommendation 2, suggests an Executive Order spelling out the CIA's jurisdiction for collecting information about the domestic activities of U.S. citizens. The functions of the FBI in domestic intelligence investigations and counterintelligence investigations within the United States ought to be kept quite separate from the functions of the CIA. The problem is more than "proper coordination with the FBI" as the recommendation seems to suggest. Domestic counterintelligence is within the responsibility of the FBI. As to that part of the recommendation urging the destruction of information, it should be noted that some of this information may have found its way into FBI files where it may or may not be legitimately retained. Further, the recommendation suggests that information inconsistent with the Executive Order be destroyed at the conclusion of pending congressional investigations or as soon thereafter as permitted by law. In this respect, it should be made clear that no files should be destroyed before the Department of Justice closes its case as to possible criminal violations by CIA officials or employees.

Recommendation 3, that Congress establish a Joint Committee on Intelligence, raises the question whether this committee would be yet another oversight committee for the FBI as well. As the report recognizes, when there are too many committees assuming an oversight function conflicts and confusion inevitably arise.

Recommendation 6 concerns the establishment of guidelines governing CIA's relationship with the Department of Justice with respect to allegations of criminal conduct by CIA or its employees. It is no longer Department policy, if it ever was, to defer prosecutorial decisions to CIA, or cases concerning CIA activities. This Commission recommendation is a good one, and the guidelines must make clear that the Department will prosecute criminal conduct by CIA or its employees with the same vigor it would prosecute any other criminal conduct.

Recommendation 9(g) suggests that the CIA's Inspector General Reports -- some of which may involve allegations of criminal activity -- should be provided to the National Security Council and the Executive Oversight body for the CIA whose establishment is recommended elsewhere in the report. Such a reporting requirement is unobjectionable, but it should not be read as putting the decision whether to bring allegations of criminal conduct to the attention of the Department of Justice in the hands of persons outside CIA. Any possible criminal violations by CIA or its employees should be reported directly and immediately to the Department of Justice by the CIA Inspector General.

Recommendation 12 calls for guidelines on CIA employees' conduct. These guidelines are important and will not, we suspect, be easy to draft. The recommendation also suggests that the Director of Central Intelligence should approve all actions raising questions of CIA authority. If any proposed activity raises the possibility of criminal violation, the Attorney General should also be consulted.

Recommendation 13 suggests that the CIA should be prohibited from engaging in domestic mail openings, but it leaves open the question whether the CIA ought to participate in the opening of the mail of U.S. citizens abroad. Further, part (b) of the recommendation implies that the CIA may conduct mail cover examinations in the United States. This raises the question whether the CIA rather than the FBI should be conducting any domestic activities of this sort.

Recommendation 14 raises serious problems. For one thing, it suggests the development of an evaluation unit within the Department of Justice or the FBI to coordinate intelligence and counterintelligence information. This could be viewed as an invitation to create a new internal security organization for the purpose of keeping track of dissident domestic political groups. On the other hand, failure to create such an organization could be seen as perpetuating some of the difficulties suggested in the report. The Department of Justice is studying this recom-

mentation to determine the proper solution to this problem.

Recommendation 15 suggests that the President refrain from directing the CIA to perform what are essentially internal security tasks. Because of the need for a rather strict separation of the functions of the CIA and the FBI, the difficult question of defining an internal security matter probably ought to be undertaken. The recommendation also calls for destruction of certain files of the CHAOS project. No files of the CHAOS project should be destroyed before the Department of Justice closes its case as to possible criminal violations by CIA officials or employees in connection with the CHAOS files.

Recommendation 16 calls for a written determination by the Director of Central Intelligence that CIA infiltration of domestic groups is necessary "to meet a clear danger to agency facilities, operations, or personnel, and that adequate coverage by law enforcement agencies is unavailable." On the basis of the Commission report, it is not clear under what circumstances it would ever be necessary and proper for the CIA to infiltrate domestic groups. Perhaps a briefing of officials in the Department would lead to a better understanding of the implications of this policy. In any case, there should be explicit guidelines defining the Director's authority to order such infiltration.

Recommendation 17 calls for the destruction of some CIA files, upon the conclusion of the current congressional investigations or as soon thereafter as possible. As indicated earlier, no files should be destroyed until the Justice Department's investigation is completed.

Recommendation 18 states that the CIA may investigate individuals affiliated with it, but that such investigations "must be coordinated with the FBI" when there is evidence of espionage or violation of law involved. If the CIA is to avoid getting into law enforcement investigations, perhaps it should simply turn all criminal investigations over to the Bureau rather than "coordinate" with the FBI or any other enforcement agency. This problem of separating law enforcement from foreign intelligence is a difficult problem. The Department of Justice has the problem under study and will try to make a more definite statement about it later.

Recommendation 19 would compel the FBI to accept cases involving allegations of security violations "without

regard to whether a favorable prosecutive opinion is issued by the Justice Department." This could raise serious difficulties. For example, it would have the effect of putting the FBI in the uncomfortable position of investigating a matter without reasonable expectation of prosecution. Recommendation 19(a) could be read as requiring the Director of Central Intelligence to refer all serious or continuing security violations to the Security Committee of USIB for its determination whether the case should be referred to the Department. The Director should be able to refer these cases directly without resort to an intermediary.

Recommendation 21 supports legislation making it a criminal offense for CIA employees to leak classified information. In general, the recommendation raises controversial issues similar to those raised in connection with some of the provisions in S.1. The Department, of course, will work with the Central Intelligence Agency in drafting any necessary legislation.

Recommendation 22 suggests that the Director of Central Intelligence should approve in writing certain physical surveillance operations, but again it does not provide the Director with any clear guidelines as to when and under what circumstances approval should be given. It is not clear to what extent, if at all, the CIA should undertake physical surveillance operations within the United States. Moreover, there is the issue of the role of the FBI in matters such as these. The issue is under study by the Department.

Recommendation 23 is ambiguous in that it could be read as meaning that all interceptions of wire or oral communications within the United States would require a warrant. Read another way, the recommendation could be understood to mean that the CIA could conduct warrantless activities in foreign intelligence matters either within the U.S. or abroad. It has been the Administration's position that certain national security surveillances do not require a warrant. Also, the recommendation fails to discuss procedures already agreed to by the Director of the Central Intelligence Agency regarding the interception by the CIA of wire or oral communications of American citizens abroad.

Recommendation 28 suggests that equipment for monitoring conversations should not be tested on unsuspecting persons

living within the United States. Perhaps this recommendation should also apply to unsuspecting American citizens living abroad as well.

Recommendation 30 suggests that the Director of Central Intelligence and the Director of the FBI should draft a detailed agreement setting forth each agency's jurisdiction and devising procedures for effective liaison between them. While it is important that there be cooperation between the CIA and the FBI, this issue ought not be left solely to an agreement between the two agencies. At the least, if there is to be an agreement, representatives of the Attorney General or his Departmental designee ought to be involved in its negotiation and preparation.

Treasury

JUL 1 1975

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Report of the Commission on Central Intelligence
Agency Activities Within the United States

In response to your memorandum of June 11, I respectfully offer my comments on the recommendations in the Report of the Commission on CIA activities within the United States.

General

I strongly support the concept that the CIA and other units of the intelligence community are vital to the survival of this country. It is essential, however, that the constitutional rights of all Americans must be observed and protected. Moreover, we cannot allow even the appearance that the CIA or any other intelligence agency of the United States could become an instrument of domestic suppression. Within these principles the United States must maintain the intelligence capability necessary to protect our national interests.

I urge that those recommendations of the Commission that you decide to adopt be implemented promptly by Executive Order to the extent authorized by law. For example, I would think that most of the organizational recommendations could be implemented initially without enabling legislation. Most importantly, the strengthening of the Foreign Intelligence Advisory Board should not require legislative action.

Summary of Recommendations

My comments on those of the Commission's recommendations on which I have specific thoughts are attached. I have made comments on a number of the Commission's recommendations. Some of these comments are designed to clarify or point out the need for clarification of some of the Commission's recommendations. Others expand upon the Commission's recommendations and offer specific suggestions for their implementation.

One of the most important results of the Commission's investigation can be the strengthening of the President's Foreign Intelligence Advisory Board. I am recommending that the Board be composed of

distinguished citizens from a broad and representative base. The members should be persons of demonstrated leadership and integrity who have the trust and confidence of the President and the public. A man who best exemplifies the qualities I would like to see in a Chairman is George Shultz, who is already a member of the Board. I recommend that you appoint him Chairman of the Advisory Board.

I urge that the Board be given responsibility for an on-going review of CIA operations and activities. The Board should report its findings to the public as well as the President. To be effective, the Board must have ready access to information concerning CIA activities. I believe that this can best be assured through my recommendation that the Inspector General and General Counsel of the CIA have direct access to the Board. In order to assure the President of the effectiveness of the Board's oversight activities, it is important that the Board also have direct access, through its Chairman, to the President.

I have also recommended a strengthening of the Inspector General's office and of the office of General Counsel at the CIA. The objective of the strengthened General Counsel's office recommended by the Commission can best be accomplished by the establishment of a General Counsel appointed by the President and confirmed by the Senate, similar to that of many other agencies. This selection process should bring to the office an attorney with a broad perspective and sensitivity for over-all public policy concerns. A General Counsel whose tenure in office is not determined by the officials whom he advises would benefit both the CIA and the public.

My staff and I stand ready to assist in any appropriate way in the implementation of the recommendations.

(Signed) William E. Simon

William E. Simon

Attachments

Recommendation (2)

The President should by Executive Order prohibit the CIA from the collection of information about the domestic activities of United States citizens (whether by overt or covert means), the evaluation, correlation, and dissemination of analyses or reports about such activities, and the storage of such information, with exceptions for the following categories of persons or activities:

a. Persons presently or formerly affiliated, or being considered for affiliation, with the CIA, directly or indirectly, or others who require clearance by the CIA to receive classified information:

b. Persons or activities that pose a clear threat to CIA facilities or personnel, provided that proper coordination with the FBI is accomplished;

c. Persons suspected of espionage or other illegal activities relating to foreign intelligence, provided that proper coordination with the FBI is accomplished.

d. Information which is received incidental to appropriate CIA activities may be transmitted to an agency with appropriate jurisdiction, including law enforcement agencies.

Collection of information from normal library sources such as newspapers, books, magazines and other such documents is not to be affected by this order.

Information currently being maintained which is inconsistent with the order should be destroyed at the conclusion of the current congressional investigations or as soon thereafter as permitted by law.

The CIA should periodically screen its files and eliminate all material inconsistent with the order.

The order should be issued after consultation with the National Security Council, the Attorney General, and the Director of Central Intelligence. Any modification of the order would be permitted only through published amendments.

TREASURY COMMENTS ON
RECOMMENDATION (2)

I hope this recommendation is not read as proposing to prohibit the CIA from collecting information in foreign areas about domestic activities of U.S. citizens. Within the United States we can rely on other agencies to provide intelligence on threats to the President or to other Secret Service protectees and on other illegal activities such as narcotics traffic to the appropriate enforcement agency. In foreign countries, however, we do need to call upon the CIA from time to time for active support in obtaining intelligence on the activities of individuals, including U.S. citizens, who are potential threats to persons under Secret Service protection. Similarly, in many countries the CIA is the best or only source of information on narcotics trafficking by U.S. citizens and others.

The proposed Executive Order should not prohibit the CIA from collecting intelligence in foreign areas about the domestic activities of United States citizens who are potential threats to persons under Secret Service protection or who may be engaged in narcotics trafficking and transferring such intelligence to the appropriate enforcement agency.

Recommendation (3)

The President should recommend to Congress the establishment of a Joint Committee on Intelligence to assume the oversight role currently played by the Armed Services Committees.

TREASURY COMMENTS ON
RECOMMENDATION (3)

I concur in this recommendation and assume the proposed Joint Committee on Intelligence would have oversight over all foreign intelligence activities, not only those of the CIA. I would suggest, however, that it should not be given jurisdiction over the purely domestic information-gathering activities of such law enforcement agencies as the Customs Service, the Bureau of Alcohol, Tobacco and Firearms, and the Internal Revenue Service which are already well covered by other committees of the Congress. The Joint Committee should recruit a highly competent professional staff of the quality displayed by the professional staffs of the Joint Committee on Internal Revenue Taxation and the Joint Economic Committee. This would obviate any need for participation by an inept outside agency like the GAO in the audit, management and direction of sensitive intelligence activities.

In establishing such a Joint Committee, the Congress should be urged to consider the need for protecting the security of intelligence activities as well as its concern for effective oversight. Fixing realistic maximum terms for membership on the committee and for service as committee chairman, should be considered as one means of achieving the necessary balance.

Recommendation (4)

Congress should give careful consideration to the question whether the budget of the CIA should not, at least to some extent, be made public, particularly in view of the provisions of Article I, Section 9, Clause 7 of the Constitution.

A number of CIA's activities are relatively open and the budgetary outlays for certain of these programs could probably be made public without any damage to the national security (e.g., programs of economic research or perhaps more broadly, all research and analysis). Budgeting for sensitive programs (e.g., aerial intelligence photography) should not be revealed, however, nor should expenditures for certain sensitive categories of activities such as covert operations and programs for collection of information through technical means.

Care should also be taken to avoid releasing information which would enable unauthorized persons to derive sensitive information by indirection or information which would enable such persons to "home in" on sensitive areas. Since the total intelligence budget is quite large and much of it is in support of collection programs involving technologically advanced equipment, publication of the total budget--particularly if accompanied by the release of figures on the more open programs--would create a public clamor for information as to where all of the hidden expenditures are going. It could also result in intensive probing by unauthorized persons--foreign and domestic--to find out what programs are supported by these funds and the level of funding for each program.

Recommendation (5)

a. The functions of the President's Foreign Intelligence Advisory Board should be expanded to include oversight of the CIA. This expanded oversight board should be composed of distinguished citizens with varying backgrounds and experience. It should be headed by a full-time chairman and should have a full-time staff appropriate to its role. Its functions related to the CIA should include:

1. Assessing compliance, by the CIA with its statutory authority.
2. Assessing the quality of foreign intelligence collection.
3. Assessing the quality of foreign intelligence estimates.
4. Assessing the quality of the organization of the CIA.
5. Assessing the quality of the management of the CIA.
6. Making recommendations with respect to the above subjects to the President and the Director of Central Intelligence, and, where appropriate, the Attorney General.

b. The Board should have access to all information in the CIA. It should be authorized to audit and investigate CIA expenditures and activities on its own initiative.

c. The Inspector General of the CIA should be authorized to report directly to the Board, after having notified the Director of Central Intelligence, in cases he deems appropriate.

More importantly, I believe that it is essential that the Board's oversight responsibilities be perceived by the public as an ongoing and regular review process. This can best be accomplished, in my view, by going a step further than is proposed in the Commission's recommendation. Section "C" proposes that the Inspector General of the CIA be authorized to report directly to the FIAB after notifying the Director of Central Intelligence in cases he deems appropriate. I suggest that the reporting relation between the Inspector General and the Board be strengthened and formalized. I also believe that an important working relationship should be developed between the FIAB and the CIA General Counsel, as the latter position is proposed to be restructured (see Recommendation 10).

The General Counsel and Inspector General would each appear personally, outside of the presence of other CIA officials, before the FIAB to report on the sufficiency of the agency's compliance efforts any CIA activities that either official viewed as beyond the agency's charter. Of course, the Board would conduct such other inquiries as it deemed appropriate to satisfy itself of the propriety and effectiveness of CIA operations.

If, after its review, the Board had no reason to believe that the agency had violated its statutory authority, the Board would make public a written finding to that effect. Any shortcomings would be reported promptly to the President and the officials responsible for remedial

TREASURY COMMENTS ON RECOMMENDATION (5)

I think that it is very important that the President's Foreign Intelligence Advisory Board be strengthened by increasing its responsibilities and assuring that its membership has a broad base of public representation. An Advisory Board consisting of citizens of great distinction and leaders of demonstrated integrity can be very effective in assuring the President, the Congress, and the public of the integrity, as well as the quality, of our intelligence operations.

It is important that all of the members of the Advisory Board have the personal trust and confidence of the President. The Chairman of the Board should be a person of publicly demonstrated leadership and integrity who should have free and direct access to the President to discuss the Board's work. A man who best exemplifies the qualities I would like to see in a Chairman is George Shultz, who is already a member of the Board. I recommend that you appoint him Chairman of the Advisory Board.

The Board is already carrying out certain of the responsibilities noted in the Commission report (e.g., assessing the quality of foreign intelligence estimates). In view of the additional responsibilities proposed, particularly with respect to FIAB's role in "assessing compliance by the CIA with statutory authority", we would suggest that it would be appropriate for the Board to meet more frequently than it has in the past.

action. The Board should also establish procedures for effective follow-up on the implementation of its recommendations.

A procedure such as that outlined above would serve to assure the public that adequate independent oversight of CIA activities was taking place, while limiting the risk that the agency's mission would be compromised through release of information about sensitive operations. Having the two senior CIA officials responsible for monitoring the agency's activities report to the FIAB would provide a useful external check on Agency conduct that is not now available. The fact that CIA operations would be subject to review by distinguished citizens who would be giving their public assurance that they were satisfied as to the propriety of CIA activities would provide a significant degree of accountability that is now absent.

In addition to providing an assurance to the American people that the CIA was operating within the bounds of its authority, the Board would maintain its important role in reporting to the President how effectively the CIA was carrying out its mission to render an assessment of the quality of the CIA's performance.

As well as working through the Inspector General and General Counsel at CIA, the Board will have the resources of other CIA components available to it and will continue to draw on the views of other departments and agencies concerned with intelligence activities. The Board will also have the benefit of reports and recommendations made by the

Joint Congressional Committee. Thus, it would be unnecessarily duplicative to build up a large staff to perform investigatory functions, although a small permanent staff or secretariat definitely would be essential.

Recommendation (10)

a. The Director should review the composition and operation of the Office of General Counsel and the degree to which this office is consulted to determine whether the Agency is receiving adequate legal assistance and representation in view of current requirements.

b. Consideration should be given to measures which would strengthen the office's professional capabilities and resources including, among other things, (1) occasionally departing from the existing practice of hiring lawyers from within the Agency to bring in seasoned lawyers from private practice as well as to hire law school graduates without prior CIA experience; (2) occasionally assigning Agency lawyers to serve a tour of duty elsewhere in the government to expand their experience; (3) encouraging lawyers to participate in outside professional activities.

TREASURY COMMENTS ON
RECOMMENDATION (10)

I concur in this recommendation. In addition to the internal review and staffing changes proposed, I believe there should be a significant restructuring of the position of the CIA General Counsel in the agency organization and his role in the agency operations. The position of General Counsel should be filled by Presidential appointment, with Senate confirmation, and he should be given specific responsibility to review the legality of all agency operations.

If the position were a Presidential appointment with Senate confirmation, it should attract lawyers of high ability and stature from both inside and outside the Government. An open appointment process should bring to the office an attorney with a broader perspective and sensitivity for over-all public policy concerns. Attracting an individual who can provide an independent over-view is important, for occasionally the interests of national security may conflict with public policy norms. A Presidentially appointed General Counsel whose tenure in office is not determined by the officials whom he advises would benefit both the CIA and the public interest. Such a General Counsel would be able to render unpopular legal opinions with the maximum detachment and independence attainable within a Government organization.

The General Counsel should be responsible for making a thorough and continuing review of the legality of all CIA procedures and activities to be certain that the agency lives within its charter. No secrecy rules should preclude presenting a proposed project for review by the General Counsel. His "need to know" should be grounded on the need to

square the agency's activities with the constitutional and statutory principles of a free society.

Recommendation (9) proposes that the Office of Inspector General be upgraded and that the Inspector General be given responsibility to conduct periodic reviews of all CIA offices within the United States. The General Counsel should work closely with the Inspector General. The exchange of information between the two officials, one of whom would be concerned with reviewing individual operations, and the other examining what organizational components were doing on a periodic basis, would provide a useful cross-check of over-all agency activities. In addition, both officials should report on a regular basis to the President's Foreign Intelligence Advisory Board, or whatever other executive branch entity is to be given an oversight role over foreign intelligence gathering activities, and should have direct access to that entity when the occasion demands it.

Recommendation (24)

The CIA should strictly adhere to established legal procedures governing access to federal income tax information.

TREASURY COMMENTS ON
RECOMMENDATION (24)

The Internal Revenue Service is investigating the circumstances which led to unauthorized release of income tax information and this recommendation. The Internal Revenue Service will then determine whether any additional steps should be taken within the Service to assure that all future Central Intelligence Agency access to income tax information is afforded only upon strict compliance with established procedures and rules governing such disclosure.

Recommendation (26)

a. A single and exclusive high-level channel should be established for transmission of all White House staff requests to the CIA. This channel should run between an officer of the National Security Council staff designated by the President and the office of the Director or his Deputy.

b. All Agency officers and employees should be instructed that any direction or request reaching them directly and out of regularly established channels should be immediately reported to the Director of Central Intelligence.

I support the objective of this recommendation. It should not be required, however, that this exclusive channel be used also for transmitting routine intelligence reports and analyses required in support of foreign policy formulation, negotiations, or other non-sensitive White House matter. The strengthened and independent General Counsel and Inspector General can provide an effective check on misuse of the normal channels of communication for such material.

Recommendation (30)

The Director of Central Intelligence and the Director of the FBI should prepare and submit for approval by the National Security Council a detailed agreement setting forth the jurisdiction of each agency and providing for effective liaison with respect to all matters of mutual concern. This agreement should be consistent with the provisions of law and with other applicable recommendations of this Report.

TREASURY COMMENTS ON
RECOMMENDATION (30)

I believe it would be desirable to have written agreements between the CIA and all other Departments and agencies from which the CIA receives or to which it provides special support. Since law enforcement units of the Treasury Department constitute a large proportion of the Federal law enforcement community, I believe each of them should have clearly defined relationships with the CIA. As a minimum, such agreements should provide a liaison channel to insure that the type of support being provided has the approval of senior officials in the agencies concerned. In some instances, it may be appropriate to spell out the relationship in some detail as in the CIA-Secret Service agreement. Where possible, those relationships should be made generally known to the public.