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EXECUTIVE ORDER

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MESSAGE TO
CONGRESS

EMBARGOED FOR RELEASE
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February 17, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE CONGRESS OF THE UNITED STATES:

By virtue of the authority vested in me by Article II, Sections 2 and 3 of the Constitution, and other provisions of law, I have today issued an Omnibus Executive Order pertaining to the organization and control of the United States foreign intelligence community. This order establishes clear lines of accountability for the Nation's foreign intelligence agencies. It sets forth strict guidelines to control the activities of these agencies and specifies as well those activities in which they shall not engage.

In carrying out my Constitutional responsibilities to manage and conduct foreign policy and provide for the Nation's defense, I believe it essential to have the best possible information about the capabilities, intentions and activities of governments and other entities and individuals abroad. To this end, the foreign intelligence agencies of the United States play a vital role in collecting and analyzing information related to the national defense and foreign policy.

It is equally as important that the methods these agencies employ to collect such information for the legitimate needs of the government conform to the standards set out in the Constitution to preserve and respect the privacy and civil liberties of American citizens.

The Executive Order I have issued today will insure a proper balancing of these interests. It establishes a government-wide direction for the foreign intelligence agencies and places responsibility and accountability on individuals, not institutions.

I believe it will eliminate abuses and questionable activities on the part of the foreign intelligence agencies while at the same time permitting them to get on with their vital work of gathering and assessing information. It is also my hope that these steps will help to restore public confidence in these agencies and encourage our citizens to appreciate the valuable contribution they make to our national security.

Beyond the steps I have taken in the Executive Order, I also believe there is a clear need for some specific legislative actions. I am submitting herewith to the Congress of the United States [insert] measures which will go far toward bettering the protection of true intelligence secrets as well as [insert].

My first proposal deals with the protection of intelligence sources and methods. The Director of Central Intelligence is charged, under the National Security Act of 1947, as amended,

with protecting intelligence sources and methods. The Act, however, gives the Director no authorities commensurate with this responsibility.

Therefore, I am proposing legislation to impose criminal and civil sanctions on those who are authorized access to intelligence secrets and who willfully and wrongfully reveal this information. This legislation is not an "Official Secrets Act". It would affect only those who improperly disclose secrets, not those to whom secrets are disclosed. Moreover, this legislation could not be used to cover up abuses and improprieties. It would in no way prevent people from reporting questionable activities to appropriate authorities in the Executive and Legislative Branches of the government.

It is essential, however, that the irresponsible and dangerous exposure of our Nation's intelligence secrets be stopped. The American people have long accepted the principles of confidentiality and secrecy in many dealings -- such as with doctors, lawyers and the clergy. It makes absolutely no sense to deny this same protection to our intelligence secrets. Openness is a hallmark of our democratic society, but the American people have never believed that it was necessary to reveal

the secret war plans of the Department of Defense, and I do not think they wish to have true intelligence secrets revealed either.

I urge the adoption of this legislation with all possible speed.

In addition, I am supporting two proposals that would clarify and set limits on the activities of the foreign intelligence agencies.

With respect to prohibitions on assassination of foreign officials, I support the objectives of the bill proposed and discussed in the assassination report of the Senate Select Committee on Intelligence Activities. That bill would make it unlawful to assassinate or attempt or conspire to assassinate a foreign official.

[The law now permits the opening of United States mail, under proper judicial safeguards, in the conduct of criminal investigations. I will recommend legislation to extend this authority to open the mail under the same limitations and safeguards in order to obtain vitally needed foreign intelligence information. As is now the case in criminal investigations, those seeking authority to examine mail for foreign intelligence purposes will have to convince a federal judge of the necessity to do so and accept the limitations upon their authorization to examine the mail provided in the order of the court.]

I would also like to share with the Congress my views regarding appropriate Congressional oversight of the foreign intelligence agencies. It is clearly the business of each House to organize itself to deal with these matters. Certain principles, however, should be recognized by both the Executive

and Legislative Branches if this oversight is to be effective. I believe good Congressional oversight is essential so that the Congress and the American people whom you represent can be assured that the foreign intelligence agencies are adhering to the law in all of their activities.

Congress should seek to centralize the responsibility for oversight of the foreign intelligence community. The more committees and subcommittees that deal with these highly sensitive secrets, the greater the risks of disclosure. I recommend that Congress consider establishing a Joint Foreign Intelligence Oversight Committee. Consolidating Congressional oversight in one committee will facilitate the efforts of the Administration to keep the Congress fully informed of foreign intelligence activities. As a further step to integrate the oversight and other legislative responsibility, the Congress may wish to make up such Joint Committee with the leadership of the substantive standing committees, such as Armed Services, Foreign Relations and Appropriations.

It is essential that both the House and the Senate establish firm rules to insure that foreign intelligence secrets will not be improperly disclosed. There must be established a clear process to safeguard these secrets and effective measures to deal with unauthorized disclosures.

Any foreign intelligence information transmitted by the Executive Branch to the Oversight Committee, under an injunction of secrecy, must not be unilaterally disclosed without consultation with the Executive Branch and, if any disagreement, concurrence

by the President. Respect for the integrity of the Constitution requires adherence to the principle that no individual member, nor committee, nor single House of Congress can overrule an act of the Executive. Unilateral publication of classified information over the objection of the President, by one committee or one House of Congress, not only violates the doctrine of separation of powers, but also effectively overrules the actions of the other House of Congress, and perhaps even the majority of both Houses.

In the event that Congress wishes to declassify information provided to it by the Executive Branch under an injunction of secrecy over the objection of the President, this should only be accomplished by the Constitutional two-thirds vote of both Houses.

Finally, successful and effective Congressional oversight of the foreign intelligence agencies depends on mutual trust between the Congress and Executive. Each branch must recognize and respect the rights and prerogatives of the other if anything is to be achieved.

In this context, a general Congressional requirement to keep the oversight committees "fully" informed is more desirable and workable as a practical matter than formal requirements for notification of/ specific activities. Specifically, Section 662 of the Foreign Assistance Act should be repealed. This step was urged by the Commission on the Organization of the Government for the

Conduct of Foreign Policy. I urge the Congress to adopt this recommendation promptly.

Both the Congress and the Executive Branch recognize the importance to this Nation of a strong intelligence service. I believe it urgent that we take the steps I have outlined above to insure that America not only has the best foreign intelligence service in the world, but also the most unique -- one responsive to and controlled by the democratic principles we have all sworn to uphold and defend.

LEGISLATION

A BILL

To amend the National Security Act of 1947, as amended, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of
2 the United States of America in Congress assembled, that
3 Section 102 of the National Security Act of 1947, as amended,
4 (50 U.S.C.A. 403) is further amended by adding the following
5 new subsection (g):

6 (g) In the interests of the security of the foreign
7 intelligence activities of the United States, and in order further
8 to implement the proviso of section 102(d)(3) of the Act that the
9 Director of Central Intelligence shall be responsible for
10 protecting intelligence sources and methods from unauthorized
11 disclosure--

12 (1) Whoever, being or having been in duly
13 authorized possession or control of information relating
14 to intelligence sources and methods, or whoever, being
15 or having been an officer or employee of the United States,
16 or member of the Armed Services of the United States,
17 or a contractor of the United States Government, or an
18 employee of a contractor of the United States Government,
19 and in the course of such relationship becomes possessed

1 of such information imparts or communicates it by any
2 means to a person not authorized to receive it or to the
3 general public shall be fined not more than \$5,000 or
4 imprisoned not more than five years, or both;

5 (2) For the purposes of this subsection, the
6 term "information relating to intelligence sources and
7 methods" means any information, regardless of its origin, that
8 is classified pursuant to the provisions of a statute or Executive
9 order, or a regulation or a rule issued pursuant thereto as
10 information requiring a specific degree of protection against
11 unauthorized disclosure for reasons of national security and
12 which, in the interest of the foreign intelligence activities
13 of the United States, has been specifically designated by
14 a department or agency of the United States Government
15 which is authorized by law or by the President to engage
16 in foreign intelligence activities for the United States as
17 information concerning--

18 (A) methods of collecting foreign intelligence;

19 (B) sources of foreign intelligence, whether
20 human, technical, or other; or

21 (C) methods and techniques of analysis

1 and evaluation of foreign intelligence.

2 (3) A person who is not authorized to receive
3 information relating to intelligence sources and methods is
4 not subject to prosecution for conspiracy to commit an
5 offense under this subsection, or as an accomplice, within
6 the meaning of sections 2 and 3 of Title 18, United States
7 Code, in the commission of an offense under this
8 subsection, unless he became possessed of such information
9 in the course of a relationship with the United States Govern-
10 ment as described in paragraph (1): Provided, however, That
11 the bar created by this paragraph does not preclude the
12 indictment or conviction for conspiracy of any person who is
13 subject to prosecution under paragraph (1) of this subsection.

14 (4) It is a bar to prosecution under this subsection that:

15 (A) at the time of the offense there did not
16 exist a review procedure within the Government
17 agency described in paragraph (2) of this subsection
18 through which the defendant could obtain review
19 of the continuing necessity for the classification
20 and designation;

21 (B) prior to the return of the indictment or the

1 filing of the information, the Attorney General and the
2 Director of Central Intelligence did not jointly certify
3 to the court that the information was lawfully classified
4 and lawfully designated pursuant to paragraph (2)
5 at the time of the offense;

6 (C) the information has been placed in the public
7 domain by the United States Government; or

8 (D) the information was not lawfully classified
9 and lawfully designated pursuant to paragraph (2)
10 at the time of the offense.

11 (5) It is a defense to a prosecution under this
12 subsection that the information was communicated only to a
13 regularly constituted subcommittee, committee or joint
14 committee of Congress, pursuant to lawful demand.

15 (6) Any hearing by the court for the purpose of
16 making a determination whether the information was lawfully
17 classified and lawfully designated, shall be in camera;

18 (A) at the close of any in camera review, the
19 court shall enter into the record an order pursuant
20 to its findings and determinations;

21 (B) any determination by the court under this

1 paragraph shall be a question of law.

2 (7) Whenever in the judgment of the Director of
3 Central Intelligence any person is about to engage in any
4 acts or practices which will constitute a violation of this
5 subsection, the Attorney General, on behalf of the United
6 States, may make application to the appropriate court for an
7 order enjoining such acts or practices, and upon a showing
8 that such person is about to engage in any such acts or
9 practices, a permanent or temporary injunction, restraining
10 order, or other order may be granted. In the case of an
11 application for an order under this paragraph;

12 (A) the court shall not hold an in camera hearing
13 for the purpose of making a determination as to the
14 lawfulness of the classification and designation of the
15 information unless it has determined after giving due
16 consideration to all attending evidence that such
17 evidence does not indicate that the matter has been
18 lawfully classified and designated;

19 (B) the court shall not invalidate the classification
20 or designation unless it finds that the judgment of the
21 department or agency, pursuant to paragraph (2),

1 as to the lawfulness of the classification and
2 designation was arbitrary, capricious and without
3 a reasonable basis in fact.

SECTIONAL ANALYSIS AND EXPLANATION

The draft bill by adding a new subsection (g) to the National Security Act of 1947 further implements a proviso of that Act imposing a duty upon the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure. The new subsection draws upon existing concepts of law found within 18 U.S.C. 798 (relating to communication intelligence) and 42 U.S.C. 2204 et seq. (relating to atomic energy Restricted Data).

Paragraph (1) of the new subsection identifies the special and limited class of individuals having privity of access to the sensitive information defined in paragraph (2) below and proscribes their culpable communication of such information to an unauthorized recipient.

Paragraph (2) of the new subsection defines the special category of information relating to intelligence sources and methods which is subject to the new provisions. It also recognizes the authority of the Director and heads of other agencies expressly authorized by law or by the President to engage in intelligence activities for the United States, to provide for the appropriate designation of such information.

Paragraph (3) of the new subsection assures that only the special and limited class of individuals identified under paragraph (1) above will be subject to prosecution as a result of the violation of the new subsection. This is in keeping with the intent that the new provision penalizes as

unlawful only the conduct of those whose access to the designated information is dependent upon understandings arising out of a relationship involving trust and confidence. Collateral prosecution related to the violation of any other provision of law, however, is not vitiated by this paragraph.

Paragraph (4) of the new subsection provides that no prosecution may be instituted unless the Attorney General and the Director of Central Intelligence first jointly certify to the court that the information was lawfully classified and lawfully designated for limited dissemination; the information was not placed in the public domain by the Government; an agency review procedure existed whereby the defendant could have secured a review of the information in question for a determination on public releasability; and the information was lawfully classified and lawfully designated pursuant to paragraph (2) at the time of the offense.

Paragraph (5) of the new subsection provides a defense to prosecution if the information was only provided to a regularly constituted committee, joint committee or joint committee of Congress, pursuant to lawful demand.

Paragraph (6) of the new subsection provides that any hearing by the court to determine whether the information was lawfully classified and lawfully designated shall be in camera and such determination shall be a question of law.

Paragraph (7) of the new subsection permits the Attorney General to petition a court to enjoin injunction any act which the Director believes will violate any provision of the new subsection. This authority is intended to provide prompt judicial action to avoid damage to the U. S. foreign intelligence effort in circumstances where punitive criminal action alone, being necessarily ex post facto, may be inadequate in achieving the underlying objective of the legislation which is to protect intelligence sources, methods and techniques from unauthorized disclosure. This paragraph also provides that in any hearing for such an order the court shall not hold an in camera hearing to determine the lawfulness of the classification and designation of the information unless it has first considered all attending evidence and determined that the evidence does not indicate that the matter has been lawfully classified and lawfully designated. The paragraph further provides that the court may invalidate a classification or designation if it finds the judgment of the department or agency head was arbitrary, capricious and without a reasonable basis in fact.

CHANGES IN EXISTING LAW

Changes in existing law made by the draft bill are shown as follows: existing law in which no change is proposed is shown in roman: new matter is underscored.

NATIONAL SECURITY ACT OF 1947
as amended
(50 U.S.C.A. 403)

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TITLE I--COORDINATION FOR NATIONAL SECURITY

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CENTRAL INTELLIGENCE AGENCY

SEC. 102

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(g) In the interests of the security of the foreign intelligence activities of the United States, and in order further to implement the proviso of section 102(d)(3) of the Act that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure--

(1) Whoever, being or having been in duly authorized possession or control of information relating to intelligence sources and methods, or whoever, being or having been an officer or employee of the United States, or member of the Armed Services of the United States, or a contractor of the United States Government, or an employee of a contractor of the United States Government, and in the course of such relationship becomes possessed of such information imparts or communicates it by any means to a person not authorized to receive it or to the general public shall be fined not more than \$5,000 or imprisoned not more than five years, or both;

(2) For the purposes of this subsection, the term "information relating to intelligence sources and methods" means any information, regardless of its origin, that is classified pursuant to the provisions of a statute or Executive order, or a regulation or a rule issued pursuant thereto as information requiring a specific degree of protection against unauthorized disclosure for reasons of national security and which, in the interest of the foreign intelligence activities of the United States, has been specifically designated by a department or agency of the United States Government which is authorized by law or by the President to engage in foreign intelligence activities for the United States as information concerning--

(A) methods of collecting foreign intelligence;

(B) sources of foreign intelligence, whether human, technical, or other; or

(C) methods and techniques of analysis and evaluation of foreign intelligence.

(3) A person who is not authorized to receive information relating to intelligence sources and methods is not subject to prosecution as an accomplice within the meaning of sections 2 and 3 of Title 18, United States Code, or to prosecution for conspiracy to commit an offense under this subsection, unless he became possessed of such information in the course of a relationship with the United States Government as described in paragraph (1): Provided, however, That the bar created by this paragraph does not preclude the indictment or conviction for conspiracy of any person who is subject to prosecution under paragraph (1) of this subsection.

(4) It is a bar to prosecution under this subsection that:

(A) at the time of the offense there did not exist a review procedure within the Government agency described in paragraph (2) of this subsection, through which the defendant could obtain review of the continuing necessity for the classification and designation;

(B) prior to the return of the indictment or the filing of the information, the Attorney General and the Director of Central Intelligence did not jointly certify to the court that the information was lawfully classified and lawfully designated pursuant to paragraph (2) at the time of the offense;

(C) the information has been placed in the public domain by the United States Government; or

(D) the information was not lawfully classified and lawfully designated pursuant to paragraph (2) at the time of the offense.

(5) It is a defense to a prosecution under this subsection that the information was communicated only to a regularly constituted subcommittee, committee or joint committee of Congress, pursuant to lawful demand.

(6) Any hearing by the court for the purpose of making a determination whether the information was lawfully classified and lawfully designated, shall be in camera;

(A) at the close of any in camera review, the court shall enter into the record an order pursuant to its findings and determinations;

(B) any determination by the court under this paragraph shall be a question of law.

(7) Whenever in the judgment of the Director of Central Intelligence any person is about to engage in any acts or practices which will constitute a violation of this subsection, the Attorney General, on behalf of the United States, may make application to the appropriate court for an order enjoining such acts or practices, and upon a showing that such person is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted. In the case of an application for an order under this paragraph;

(A) the court shall not hold an in camera hearing for the purpose of making determination as to the lawfulness of the classification and designation of the information unless it has determined after giving due consideration to all attending evidence does not indicate that the matter has been lawfully classified and designated;

(B) the court shall not invalidate the classification or designation unless it finds that the judgment of the department or agency, pursuant to paragraph (2), as to the lawfulness of the classification and designation was arbitrary, capricious and without a reasonable basis in fact.

COST ANALYSIS

This legislation does not involve any measurable costs. Any court costs to the Government would be more than offset by the savings that would result if the legislation deters the compromise of sensitive sources and methods which, if compromised, would require extensive and costly counteractions to mitigate the damage and to offset the advantages to the opposition.

I. Abuses - Domestic Activities - Mail

1. Have you prevented future instances of spying on Americans by intelligence agencies like CIA and NSA? What about FBI?

2. Will the CIA be allowed ever again to compile mountains of information on American citizens?

3. Don't the provisions on mail opening and access to tax returns merely restate existing law?

4. Was this provision intended to implement Recommendation 2 of the Rockefeller Commission? Why is it so much longer and complicated than that recommendation?

5. Why is the FBI totally exempt from these restrictions?

6. Why is the CIA allowed to collect information on the domestic activities of U.S. citizens if they are believed to be involved in terrorism or narcotics? Aren't those law enforcement or internal security functions?

7. Wouldn't Section IX allow the CIA to investigate any prominent citizen and justify it by claiming that they considered the subject a possible source of intelligence?

8. Section IX reads like a tax regulation - what does it mean?

9. May intelligence agencies give aid to law enforcement agencies?

10. What is the purpose of Section V? ("Nothing in this Order prohibits an agency from retaining information when retention is required by law, such as retention required to preserve evidence or other information for possible court action.")

11. When will CHAOS files be destroyed?

12. Will intelligence agencies be permitted to test drugs on human subjects?

I. Abuses - Electronic Surveillance

1. Is NSA going to be allowed to wiretap Americans?

2. Why are foreign intelligence agencies (other than CIA) allowed to conduct electronic surveillance of U.S. citizens as long as they are operating under procedures approved by the Attorney General? Shouldn't such surveillance be prohibited entirely?

3. How is electronic surveillance to be regulated? May NSA listen to calls of U.S. citizens?

4. What is the AG's role? What are the "procedures" he will approve?

I. Abuses - Assassination

1. Are assassinations clearly prohibited? Would criminal penalties be imposed? What about in wartime? Undeclared war?

2. How does this prevent DoD and CIA from being "conspirators"?

I. Abuses - Cover Organizations

1. Is CIA permitted to use journalists as agents? To collect intelligence only? To plant false stories?

2. Is CIA permitted to use Peace Corps members as agents? Fullbright scholars?

3. Why doesn't the Executive Order prohibit the CIA from using missionaries?

4. May CIA recruit foreigners in this country to spy abroad? May it use college professors to assist it in this recruitment?

II. National Interest - Purpose of Intelligence Agencies

1. What is the purpose of the general Presidential Statement of policy? Are they mere window-dressing?

2. What do you mean "by increasing the accountability of the intelligence community"?

3. Doesn't Section IV (imposing restrictions on sharing information among agencies) unduly limit the government's ability to fight terrorism, narcotics, and other forms of international crime.

4. What right does the U.S. have to affect covertly politics in other countries?

II. National Interest - Charters

1. Do the charters set forth in the new Executive Order represent a departure from the status quo, or are they merely restatements in public form?

2. Will functions of intelligence agencies be realigned at all?

3. Will there really be any significant reorganization of intelligence community?

4. What activities will CIA be allowed to conduct within the U.S.?

5. Can CIA operate proprietary companies in U.S.? Will they compete with legitimate businesses?

6. What is NRO? What exactly does it do? Why had its very existence been concealed?

7. Are there any classified supplements to these charters? Why?

8. What is the legal authority for the creation of NSA? DIA? NRO?

9. Will new arrangements improve chances to prevent international terrorist acts?

II. National Interest - Prediction Ability

1. What is being done to make sure that the intelligence agencies do a better job of predicting the next international crisis?

II. National Interest - Protection of Secrecy

1. Are there any intelligence organizations whose existence is still classified and are omitted from this executive order?

2. Will the Oversight Group make public reports? If not, how can the public be sure it is doing anything? Why not require it to publish periodically a list of activities it has halted for reasons of impropriety?

3. How much does the U.S. spend on intelligence? Why do you keep the figures secret?

4. How will the President insure CIA agents and operations are not jeopardized?

II. National Interest - Covert Action

1. May CIA meddle in the internal affairs of other countries? May it overthrow governments? Conduct large-scale paramilitary operations?

2. May CIA spy in countries which are our allies?

III. Organization and Management - DCI/Executive Office/FIC

1. How can one man, the DCI, be both head of the whole intelligence community and one part of it, the CIA?

2. Isn't the creation of the FIC just, at most, a reorganization of an NSC committee, representing no real change in the organization or management of the intelligence community?

3. Why is the extent of the FIC's resource control over the community? Does it review budgets before they go to OMB? Before they go to the President? Will the FIC control community funds after they are appropriated? If so, to what extent and how? What portions of the DoD budget will be subject to control by the FIC? Will this disrupt the current OSD/OMB budget process?

4. Does the FIC have "line" control over the community? Is it merely an advisory body to the NSC or the President?

5. Does the FIC exercise its powers by majority vote or by unanimous vote? May a single dissenting member always appeal to the President? If unanimity is required, won't the members "horse trade"? (e. g., DCI might tell DepSecDef: "Don't question CIA programs and I won't question DoD programs.")

6. Doesn't the creation of the FIC diffuse the authority and responsibility assigned to the DCI by the 1947 Act? Doesn't this decrease accountability and make abuses more likely?

7. Is the FIC part of the NSC? What will the relationship be between the NSC staff and the new "Community Staff"?

III. Organization and Management - CIA

1. Does the inclusion of the counter-terrorism issue in this intelligence package imply that the CIA should play a large role in counter-terrorism? Wouldn't this constitute a violation of the statutory prohibition against police powers or internal security functions?

2. Since the CIA and other elements of the community already report to the NSC, isn't the FIC just an extra, unnecessary bureaucratic layer?

III. Organization and Management - DoD

1. Are new procedures implemented to give DCI control of Defense intelligence resources?

2. If the FIC does have resource authority but not "line" authority, isn't this an anomalous management arrangement? How can line managers effectively operate their programs without authority to allocate (or at least reallocate) resources within their organizations?

III. Organization and Management - State and Other Departments

1. If the FIC has any real authority, doesn't the new arrangement give the State Department excessive influence over the intelligence community, especially in view of its very small departmental intelligence program?

2. Why shouldn't counterterrorism be left to the FBI and state and local police forces? Why do we need a new bureaucracy?

III. Organization and Management - Oversight (A.G. Role)

1. Will any non-government people be involved in this process?

2. How can outside overseers be sure intelligence agencies aren't hiding improprieties from it?

3. Is there a procedure for an individual employee to use if he feels his agency is doing something wrong?

4. Can oversight procedure detect Presidential attempts to use intelligence agencies for improper purposes?

5. Why aren't you setting up a Community Inspector General?

6. Will anyone outside intelligence community conduct oversight for legality and propriety?

7. What is the Board supposed to do if it disagrees with the Attorney General (or even the President) on the propriety of a certain activity? May it disclose the activity publicly?

8. In what circumstances would it be appropriate for the DCI to "utilize" the Board, as provided in Section 1(d) of the Executive Order? Doesn't this represent merely an attempt to evade the requirements of the Advisory Committees Act?

9. How can the PFIAB learn of improper activities which an intelligence agency tries to conceal from it?

10. Why does the PFIAB E.O. allow detailees from intelligence agencies to the Board's staff? Doesn't this present an unavoidable conflict of interest?

11. Can employees of intelligence agencies approach PFIAB directly and confidentially to report on questionable activities?

12. Will the new "Oversight Group" have its own independent staff? Or will each member rely on his own departmental resources?

13. Are its members given the authority to report to the Chairman without first informing their agency heads? If not, how can the group be effective?

14. What happens if this group determines that an activity is improper? What if the head of the agency concerned disagrees?

15. Doesn't this section of the President's package, as well as others, overemphasize the role of the Attorney General and Deputy Attorney General? (Past holders of these offices have not always been above reproach.)

16. Isn't an oversight role for PFIAB inconsistent with its responsibility for evaluating the performance of the intelligence community? In fact, hasn't PFIAB encouraged the CIA to engage in programs of questionable propriety?

17. Isn't it true that the current Executive Secretary of PFIAB is a covert CIA employee on detail? Is his true identity known to the Board?

18. Aren't most PFIAB members from the "military-industrial complex"? Aren't many directors of corporations which have large defense and intelligence contracts?

IV. Congress/Executive - Oversight (Intel. Covert, Budgets, etc.)

1. Are more stringent controls placed on intelligence budgets and funds?

2. Will CIA budget be made public? Those of other intelligence agencies?

3. Shouldn't Congress have a role in the oversight mechanism being set up for the intelligence community?

4. Why isn't the President willing to consult with Congress before starting covert actions?

5. Does this set of orders require greater consultation with Congress?

6. Do new procedures require greater availability of information to Congress about intelligence agencies?

IV. Congress/Executive - Statutory Basis

1. Is there any change in the power of the President to transfer any government funds covertly to the CIA under the 1949 CIA Act?

If not, why not?

2. Why isn't the President proposing statutory charters?

IV. Congress/Executive - Secrecy and Sources Methods Protection

1. Why is the bill on Secrecy submitted by the President restricted to "sources and methods" only? Isn't the release of other types of classified information potentially just as damaging?

2. Why should legislation be used to effectuate a classification system whose basis is merely an executive order?

3. Isn't this bill an unconstitutional infringement of freedom of the press?

4. The bill states that the issue of whether the information was properly classified and designated as "sources and methods" shall be deemed a question of law (rather than one of fact) and be decided by the judge (and not the jury) in secret ("in camera"). Isn't this a violation of the Sixth Amendment right to a jury trial in serious criminal cases?

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I. Abuses - Electronic Surveillance

1. Is NSA going to be allowed to wiretap Americans?

2. Why are foreign intelligence agencies (other than CIA) allowed to conduct electronic surveillance of U.S. citizens as long as they are operating under procedures approved by the Attorney General? Shouldn't such surveillance be prohibited entirely?

3. How is electronic surveillance to be regulated? May NSA listen to calls of U.S. citizens?

4. What is the AG's role? What are the "procedures" he will approve?

I. Abuses - Assassination

1. Are assassinations clearly prohibited? Would criminal penalties be imposed? What about in wartime? Undeclared war?

2. How does this prevent DoD and CIA from being "conspirators"?

I. Abuses - Cover Organizations

1. Is CIA permitted to use journalists as agents? To collect intelligence only? To plant false stories?

2. Is CIA permitted to use Peace Corps members as agents? Fullbright scholars?

3. Why doesn't the Executive Order prohibit the CIA from using missionaries?

4. May CIA recruit foreigners in this country to spy abroad? May it use college professors to assist it in this recruitment?

II. National Interest - Purpose of Intelligence Agencies

1. What is the purpose of the general Presidential Statement of policy? Are they mere window-dressing?

2. What do you mean "by increasing the accountability of the intelligence community"?

3. Doesn't Section IV (imposing restrictions on sharing information among agencies) unduly limit the government's ability to fight terrorism, narcotics, and other forms of international crime.

4. What right does the U.S. have to affect covertly politics in other countries?

II. National Interest - Charters

1. Do the charters set forth in the new Executive Order represent a departure from the status quo, or are they merely restatements in public form?

2. Will functions of intelligence agencies be realigned at all?

3. Will there really be any significant reorganization of intelligence community?

4. What activities will CIA be allowed to conduct within the U.S.?

5. Can CIA operate proprietary companies in U.S.? Will they compete with legitimate businesses?

6. What is NRO? What exactly does it do? Why had its very existence been concealed?

7. Are there any classified supplements to these charters? Why?

8. What is the legal authority for the creation of NSA? DIA?

NRO?

9. Will new arrangements improve chances to prevent international terrorist acts?

II. National Interest - Prediction Ability

1. What is being done to make sure that the intelligence agencies do a better job of predicting the next international crisis?

II. National Interest - Protection of Secrecy

1. Are there any intelligence organizations whose existence is still classified and are omitted from this executive order?

2. Will the Oversight Group make public reports? If not, how can the public be sure it is doing anything? Why not require it to publish periodically a list of activities it has halted for reasons of impropriety?

3. How much does the U.S. spend on intelligence? Why do you keep the figures secret?

4. How will the President insure CIA agents and operations are not jeopardized?

II. National Interest - Covert Action

1. May CIA meddle in the internal affairs of other countries? May it overthrow governments? Conduct large-scale paramilitary operations?

2. May CIA spy in countries which are our allies?

III. Organization and Management - DCI/Executive Office/FIC

1. How can one man, the DCI, be both head of the whole intelligence community and one part of it, the CIA?

2. Isn't the creation of the FIC just, at most, a reorganization of an NSC committee, representing no real change in the organization or management of the intelligence community?

3. Why is the extent of the FIC's resource control over the community? Does it review budgets before they go to OMB? Before they go to the President? Will the FIC control community funds after they are appropriated? If so, to what extent and how? What portions of the DoD budget will be subject to control by the FIC? Will this disrupt the current OSD/OMB budget process?

4. Does the FIC have "line" control over the community? Is it merely an advisory body to the NSC or the President?

5. Does the FIC exercise its powers by majority vote or by unanimous vote? May a single dissenting member always appeal to the President? If unanimity is required, won't the members "horse trade"? (e.g., DCI might tell DepSecDef: "Don't question CIA programs and I won't question DoD programs.")

6. Doesn't the creation of the FIC diffuse the authority and responsibility assigned to the DCI by the 1947 Act? Doesn't this decrease accountability and make abuses more likely?

7. Is the FIC part of the NSC? What will the relationship be between the NSC staff and the new "Community Staff"?

III. Organization and Management - CIA

1. Does the inclusion of the counter-terrorism issue in this intelligence package imply that the CIA should play a large role in counter-terrorism? Wouldn't this constitute a violation of the statutory prohibition against police powers or internal security functions?

2. Since the CIA and other elements of the community already report to the NSC, isn't the FIC just an extra, unnecessary bureaucratic layer?

III. Organization and Management - DoD

1. Are new procedures implemented to give DCI control of Defense intelligence resources?

2. If the FIC does have resource authority but not "line" authority, isn't this an anomalous management arrangement? How can line managers effectively operate their programs without authority to allocate (or at least reallocate) resources within their organizations?

III. Organization and Management - State and Other Departments

1. If the FIC has any real authority, doesn't the new arrangement give the State Department excessive influence over the intelligence community, especially in view of its very small departmental intelligence program?

2. Why shouldn't counterterrorism be left to the FBI and state and local police forces? Why do we need a new bureaucracy?

III. Organization and Management - Oversight (A.G. Role)

1. Will any non-government people be involved in this process?

2. How can outside overseers be sure intelligence agencies aren't hiding improprieties from it?

3. Is there a procedure for an individual employee to use if he feels his agency is doing something wrong?

4. Can oversight procedure detect Presidential attempts to use intelligence agencies for improper purposes?

5. Why aren't you setting up a Community Inspector General?

6. Will anyone outside intelligence community conduct oversight for legality and propriety?

7. What is the Board supposed to do if it disagrees with the Attorney General (or even the President) on the propriety of a certain activity? May it disclose the activity publicly?

8. In what circumstances would it be appropriate for the DCI to "utilize" the Board, as provided in Section 1(d) of the Executive Order? Doesn't this represent merely an attempt to evade the requirements of the Advisory Committees Act?

9. How can the PFIAB learn of improper activities which an intelligence agency tries to conceal from it?

10. Why does the PFIAB E.O. allow detailees from intelligence agencies to the Board's staff? Doesn't this present an unavoidable conflict of interest?

11. Can employees of intelligence agencies approach PFIAB directly and confidentially to report on questionable activities?

12. Will the new "Oversight Group" have its own independent staff? Or will each member rely on his own departmental resources?

13. Are its members given the authority to report to the Chairman without first informing their agency heads? If not, how can the group be effective?

14. What happens if this group determines that an activity is improper? What if the head of the agency concerned disagrees?

15. Doesn't this section of the President's package, as well as others, overemphasize the role of the Attorney General and Deputy Attorney General? (Past holders of these offices have not always been above reproach.)

16. Isn't an oversight role for PFIAB inconsistent with its responsibility for evaluating the performance of the intelligence community? In fact, hasn't PFIAB encouraged the CIA to engage in programs of questionable propriety?

17. Isn't it true that the current Executive Secretary of PFIAB is a covert CIA employee on detail? Is his true identity known to the Board?

18. Aren't most PFIAB members from the "military-industrial complex"? Aren't many directors of corporations which have large defense and intelligence contracts?

IV. Congress/Executive - Oversight (Intel. Covert, Budgets, etc.)

1. Are more stringent controls placed on intelligence budgets and funds?

2. Will CIA budget be made public? Those of other intelligence agencies?

3. Shouldn't Congress have a role in the oversight mechanism being set up for the intelligence community?

4. Why isn't the President willing to consult with Congress before starting covert actions?

5. Does this set of orders require greater consultation with Congress?

6. Do new procedures require greater availability of information to Congress about intelligence agencies?

IV. Congress/Executive - Statutory Basis

1. Is there any change in the power of the President to transfer any government funds covertly to the CIA under the 1949 CIA Act?

If not, why not?

2. Why isn't the President proposing statutory charters?

IV. Congress/Executive - Secrecy and Sources Methods Protection

1. Why is the bill on Secrecy submitted by the President restricted to "sources and methods" only? Isn't the release of other types of classified information potentially just as damaging?

2. Why should legislation be used to effectuate a classification system whose basis is merely an executive order?

3. Isn't this bill an unconstitutional infringement of freedom of the press?

4. The bill states that the issue of whether the information was properly classified and designated as "sources and methods" shall be deemed a question of law (rather than one of fact) and be decided by the judge (and not the jury) in secret ("in camera"). Isn't this a violation of the Sixth Amendment right to a jury trial in serious criminal cases?