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A Comprehensive Review of the Broad Issues Concerning the Intelligence Community

The issues to be addressed in any comprehensive review of the intelligence community are posed in the following questions:

- What is the role of intelligence in the national policy process? How should the intelligence community be organized to fulfill this role? Should there be a supra-agency Director (or Coordinator) of National Intelligence? If so, what should be his charter vis-a-vis the community in terms of resource allocation, intelligence budget development, and management of the CIA? What should be his relationship to the President?
- What are the roles of the NSC and OMB in providing guidance to and management of the intelligence community?
- What are the roles of the NSC, the PFIAB and the Congress in oversight of the intelligence community?
- What is the Administration's policy on the conduct of covert actions?
- What are the limits of CIA authority to conduct activities within the United States?

These questions could be addressed in a detailed study by a task group consisting of the Assistant to the President for National Security Affairs, the Counsel to the President, and the Director of OMB. The task group would be directed to prepare for your consideration a detailed options paper containing recommendations for dealing with the broad structural, management and oversight issues discussed above. The group might also include, on specific matters, the Secretary of Defense, the Attorney General, or the Director of Central Intelligence. These options would address:

- (i) revisions to the National Security Act, the CIA Act of 1949, other intelligence legislation, and Presidential and NSC directives on intelligence matters;

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- (2) Executive Branch oversight and control mechanisms and procedures, including the roles of the NSC, PFIAB, OMB, and the White House;
- (3) The role of the DCI and his responsibility and authority for the management of the Intelligence Community;
- (4) the basic organizational structure of the Intelligence Community;
- (5) resource management within the Intelligence Community; and
- (6) Congressional oversight of intelligence activities (including the possibility of declassifying some of the intelligence budget).

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TAB A

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Summary of Comments by the Departments and Agencies
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

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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.

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Twenty Reforms Recommended by the Rockefeller Commission

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.

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).

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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.

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.

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.

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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.

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.

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.

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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.

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.

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.

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.

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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.

Recommendation (23)

In the United States and its possessions, the CIA should not intercept wire or oral communications⁶ 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.

Recommendation (24)

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

Recommendation (27)

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

Recommendation (28)

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

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.

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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.

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TAB C

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THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR

THE ATTORNEY GENERAL
THE ASSISTANT TO THE PRESIDENT FOR
NATIONAL SECURITY AFFAIRS
THE DIRECTOR, OFFICE OF MANAGEMENT
AND BUDGET
THE DIRECTOR OF CENTRAL INTELLIGENCE

I have completed my initial review of the Report of the Commission on CIA Activities within the United States and Agency comments on its recommendations and believe that it is appropriate to proceed promptly with the implementation of the majority of the Commission recommendations. Toward this objective, I direct the following:

The Director of Central Intelligence should prepare internal CIA regulations and guidelines to carry out the purposes of Commission Recommendations numbered 6, 9-13, 14b, 15b-c, 16-18, 20, 22-25, and 27-28. To the extent practicable, and within the bounds of prudent security, these regulations should be unclassified. The DCI should also review all current CIA regulations and directives for conformity with these recommendations, make such modifications as may be necessary, and, as noted above, provide for their declassification as appropriate.

The Attorney General and the Director of Central Intelligence should prepare and coordinate as necessary the internal procedures and guidelines suggested in Commission Recommendations 6, 14, 18 and 30. These agreed guidelines should, to the extent practicable, be unclassified.

The Assistant to the President for National Security Affairs, the Director, Office of Management and Budget,

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MR 89-15 #50 NSC Ltr. 2/7/90
By KDH NADA Date 3/28/90

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and the Director of Central Intelligence should prepare a draft directive establishing an interagency committee to oversee the domestic uses of aerial intelligence photography.

The above actions should be completed by August 31. Copies of the resultant directives should be forwarded to the White House for my information.

cc: The Vice President
The Secretary of State
The Secretary of Defense
The Secretary of the Treasury
Chairman, President's Foreign
Intelligence Advisory Board
The Counsel to the President

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POLICY RECOMMENDATIONS

- o Revisions to the National Security Act which would clarify CIA's authority by explicitly limiting it to foreign intelligence matters.

The Commission's Recommendation #1 states:

"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 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, prohibit the CIA from collection efforts within the United States directed at securing foreign intelligence from unknowing American citizens."

The Commission added that: -

"The 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."

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By KBH, NARA Date 3/28/90

COMMENT: In some cases, ambiguities have been partially responsible for CIA's improprieties within the United States. Greater public awareness of the limits of the Agency's domestic authority would reassure the American people.

As a legislative proposal, this could be criticized as too timid. Indeed, all generally agree that the CIA is now limited to foreign intelligence; although those portions of the recommendation dealing with the protection of sources and methods, and clandestine collection of foreign intelligence from American citizens within the United States may change existing law.

If it is considered inadvisable to proceed with a legislative proposal, this recommendation could be implemented by Executive Order.

o An Executive Order to prohibit improper domestic activities of CIA concerning U. S. citizens.

The Commission's Recommendation #2 states:

"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

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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 though published amendments."

COMMENT: This supplements the statutory changes proposed in Recommendation #1. It would establish strict safeguards and reassure the American people that the CIA will not collect or store information about their domestic activities.

- o Legislation to strengthen CIA's internal organization and management structure, including establishing a second Deputy Director position.

"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.

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

COMMENT: The purpose of this recommendation apparently is to ensure the presence of a strong administrative officer to run the day-to-day operations of the CIA while the DCI concentrates on policy matters and his community responsibility. The Commission assumed that this deputy would generally be from the career ranks of the Agency while the DCI would be an outsider.

The second deputy position is necessary to accommodate the desires of the military to retain input and influence at the top levels of the Agency; in the past, the single DDCI has traditionally been a military officer.

If it is decided not to proceed with legislative proposals, the substance of this recommendation might be implemented by directing the DCI to reestablish a position such as Executive Director - Comptroller. This CIA official in the past exercised the administrative functions contemplated for the second deputy director.

- o Revised procedures on the handling of security violations, including penalties for violations by present or former CIA employees.

The Commission recommended:

"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." (Recommendation #19.)

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"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." (Recommendation #21.)

COMMENT: The Commission found that the CIA had in the past become involved in surveillance of reporters and other Americans because the FBI refused to pursue security leak cases. It therefore recommended that a formal procedure of the U. S. Intelligence Board be established to refer security violations to the FBI and to require that the FBI investigate such cases. The intelligence agencies disagree with this recommendation. The Department of Justice does not believe it should be required to take such cases; the other agencies doubt that the DCI should have to go through the USIB to refer a case to the FBI.

The Rockefeller Commission also felt that security violations by past or current Agency employees could be reduced by enacting a new criminal statute penalizing disclosures. The Justice Department and the CIA disagree about the proper form for such a statute. New provisions concerning unauthorized disclosure of classified information are contained in S.1, the recodification of the criminal code, now before Congress. Any proposal for tighter criminal sanctions in this area will face severe criticism in the press and from Congress. The Commission itself recognized the sensitivity by recommending such legislation only if "drafted with appropriate safeguards of the constitutional rights of all affected individuals."

- o Changed Executive Branch procedures on oversight of the intelligence community and White House contact with CIA, including a stronger role for the President's Foreign Intelligence Board.

The Commission recommended:

"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 CLA 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. (Recommendation #5.)

"d. "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." (Recommendation #26.)

COMMENT: The Commission believed that the President's Foreign Intelligence Advisory Board was best qualified to be the body that kept close

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watch on CIA activities. A number of agencies in the intelligence community, and the PFIAB itself, have some doubts as to whether this body can adequately fulfill the role foreseen for it by the Commission. A question would also remain about PFIAB's responsibilities over the other intelligence agencies.

The Commission also proposed a single high level channel between the White House and the CIA in order to prevent improper White House requests to the CIA. Although the aim of this recommendation is laudable, some question has been raised about its practicality in light of the many day-to-day communications that necessarily must occur between White House staff persons and CIA employees.

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FROM DONALD RUMSFELD
TO: DICK CHENEY

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THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR THE PRESIDENT

FROM: Henry A. Kissinger
Philip W. Buchen
James T. Lynn

SUBJECT: Implementation of Recommendations of the
Commission on CIA Activities Within the
United States

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E.O. 12356, Sec. 3.4.

MR 88-15 #47 NSC Ltr. 2/1/90
By KBH NARA, Date 3/28/90

We have reviewed the report and recommendations of the Rockefeller Commission on CIA Activities Within the United States and the views of the departments and agencies which you asked to comment on the report. These views are summarized at Tab A.

The purpose of this memorandum is to recommend an approach to implement the Commission's recommendations.

BACKGROUND

The Rockefeller Commission was charged with investigating and making recommendations with respect to allegations that the CIA engaged in illegal spying on American citizens.

Its report on this subject was well received publicly, and almost all of its recommendations have met with complete approval in the intelligence community.

The recommendations of the Rockefeller Commission fall into two separate categories. * The first consists of a series of twenty reforms which, although significant and deserving of your consideration and approval, will as a practical matter be implemented at the agency level.

* Two Commission recommendations are not discussed because they deal with matters primarily within the province of the Congress (a Joint Oversight Committee) or involve personnel (the qualifications of future DCI's). A third Commission recommendation, that Congress carefully consider partial disclosure of the CIA budget, is dealt with elsewhere in this memorandum, as a decision which we recommend should be deferred.

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They are listed at Tab B. These recommendations are generally supported by all interested agencies and we recommend that you approve their immediate implementation by signing the memorandum at Tab C.

APPROVE _____ DISAPPROVE _____

The second group of recommendations go to the question of the structure, function and direct Presidential command and control of the CIA. The seven recommendations in this category are listed at Tab D. As a package, they represent a responsible and effective initiative to establish better Executive control over, and prevent improper domestic activities by, the CIA. The Commission's recommendations in this category (hereafter referred to as "the policy recommendations") propose:

- o revisions to the National Security Act which would clarify CIA's authority by explicitly limiting it to foreign intelligence matters (this could also be accomplished by Executive Order);
- o an Executive Order to prohibit improper domestic activities of CIA concerning U.S. citizens;
- o legislation to strengthen CIA's internal organization and management structure, including establishing a second Deputy Director position;
- o revised procedures on the handling of security violations, including new responsibilities for USIB in this area and stronger penalties for violations by present or former CIA employees (a version of this proposal is in S.1, the new criminal code bill, which provides penalties for the unauthorized disclosure of classified information);
- o changed Executive Branch procedures on oversight of the intelligence community and White House contact with CIA and a stronger role for the President's Foreign Intelligence Advisory Board.

It is to this group of policy recommendations that the remainder of this memorandum is addressed.

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DISCUSSION

Since establishment of the Rockefeller Commission last January, the range of allegations against the CIA and the rest of the intelligence community has broadened considerably. Select Committees of both Houses of Congress are now engaged in inquiries under mandates which permit them to investigate and propose legislation on the most fundamental questions of intelligence -- such as the role of intelligence, the organization of the community, oversight arrangements, the legitimacy and utility of covert action, and the degree of openness of the intelligence budget. In view of the scope of the Rockefeller Commission's mandate, however, its recommendations do not address these issues.

Under these circumstances, you must decide whether to proceed with the prompt implementation of the Commission's policy recommendations now, or await developments in the Congressional Committees over the coming months and include the policy recommendations in a broader package which responds to the more far-reaching initiatives that are likely to emerge later from the Congressional reviews.

In view of the limited scope of the Commission's policy recommendations, action to implement them now might be criticized as being too timid, in light of the broad range of issues raised by the Select Committee investigations. Although such criticism is likely, we believe that the Commission's policy recommendations are fully responsive to what is in fact the primary concern of the American people -- that the CIA engages in "domestic spying" and is, in the words of Senator Church, "a rogue elephant out of control." Implementation of the Commission's policy recommendations -- which can be fully accomplished by Presidential action -- will deal with the fundamental problem now, and enable you to handle separately, at a later time and in different fashion, the broader issues such as covert action, the classified budget, and other community-wide structure or management questions.

In addition, Congressional action on domestic improprieties is imminent. There are currently a number of Committees other than the Select Committees addressing various aspects of the reported improprieties; legislation in these areas is likely to be piecemeal and unacceptable, but it will come soon. On the other hand, issues such as covert action, the classified budget and major overhaul of the intelligence structure are moving on a different timetable and are being considered only by the two

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Select Committees. It is unlikely that legislative proposals will emerge in these areas until the Select Committees conclude their activities next Spring. Thus, not only is the "improprieties" area more urgent, but there is also a significant likelihood that Presidential action on these matters could effectively be foreclosed if put off and considered only as part of a broader -- and, by definition, later -- package of reforms.

For the foregoing reasons, we recommend that you order the development by August 25 of optional steps to act on the group of Commission policy recommendations as described above.

If you approve this action, we will continue to develop options for your consideration at an appropriate time on other matters being raised in the course of the Select Committee investigations.

If you disagree with our recommended action, you should direct a detailed study to develop broader proposals responsive to issues beyond the scope of the Rockefeller Commission's inquiry. A list of the possible issues and a mechanism for dealing with them is set forth in Tab E. This approach would permit you to act on the broadest front and would negate criticism that you are not confronting these issues. However, there are drawbacks. A further and broader study would be very time consuming; we estimate that such a study would take at least several months. More importantly, this delay could cause us to lose the initiative entirely. We do not recommend this alternative approach for these reasons and because we find the arguments in favor of immediate implementation more persuasive.

RECOMMENDATION

That you approve action on the Commission's policy recommendations to correct improper domestic activities and establish better Executive Branch control of the CIA. (If you approve this recommended action, an appropriate set of options to act on the Commission's policy recommendations will be developed and submitted to you by August 25. The plan will provide for your action by early September.) (Recommended by all your advisers.)

APPROVE _____ DISAPPROVE _____

OTHER _____

SECRET

Received 8/9/78
S-15

THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR THE PRESIDENT

FROM: Henry A. Kissinger
Philip W. Buchen
James T. Lynn

SUBJECT: Implementation of Recommendations of the
Commission on CIA Activities Within the
United States

DECLASSIFIED

E.O. 12356, Sec. 3.4.

MR 88-15, #47 NSC Ltr. 2/7/90
By bph, NARA, Date 3/28/90

We have reviewed the report and recommendations of the Rockefeller Commission on CIA Activities Within the United States and the views of the departments and agencies which you asked to comment on the report. These views are summarized at Tab A.

The purpose of this memorandum is to recommend an approach to implement the Commission's recommendations.

BACKGROUND

The Rockefeller Commission was charged with investigating and making recommendations with respect to allegations that the CIA engaged in illegal spying on American citizens.

Its report on this subject was well received publicly, and almost all of its recommendations have met with complete approval in the intelligence community.

The recommendations of the Rockefeller Commission fall into two separate categories. * The first consists of a series of twenty reforms which, although significant and deserving of your consideration and approval, will as a practical matter be implemented at the agency level.

* Two Commission recommendations are not discussed because they deal with matters primarily within the province of the Congress (a Joint Oversight Committee) or involve personnel (the qualifications of future DCI's). A third Commission recommendation, that Congress carefully consider partial disclosure of the CIA budget, is dealt with elsewhere in this memorandum, as a decision which we recommend should be deferred.

They are listed at Tab B. These recommendations are generally supported by all interested agencies and we recommend that you approve their immediate implementation by signing the memorandum at Tab C.

APPROVE _____ DISAPPROVE _____

The second group of recommendations go to the question of the structure, function and direct Presidential command and control of the CIA. The seven recommendations in this category are listed at Tab D. As a package, they represent a responsible and effective initiative to establish better Executive control over, and prevent improper domestic activities by, the CIA. The Commission's recommendations in this category (hereafter referred to as "the policy recommendations") propose:

- o revisions to the National Security Act which would clarify CIA's authority by explicitly limiting it to foreign intelligence matters (this could also be accomplished by Executive Order);
- o an Executive Order to prohibit improper domestic activities of CIA concerning U.S. citizens;
- o legislation to strengthen CIA's internal organization and management structure, including establishing a second Deputy Director position;
- o revised procedures on the handling of security violations, including new responsibilities for USIB in this area and stronger penalties for violations by present or former CIA employees (a version of this proposal is in S.1, the new criminal code bill, which provides penalties for the unauthorized disclosure of classified information);
- o changed Executive Branch procedures on oversight of the intelligence community and White House contact with CIA and a stronger role for the President's Foreign Intelligence Advisory Board.

It is to this group of policy recommendations that the remainder of this memorandum is addressed.

DISCUSSION

Since establishment of the Rockefeller Commission last January, the range of allegations against the CIA and the rest of the intelligence community has broadened considerably. Select Committees of both Houses of Congress are now engaged in inquiries under mandates which permit them to investigate and propose legislation on the most fundamental questions of intelligence -- such as the role of intelligence, the organization of the community, oversight arrangements, the legitimacy and utility of covert action, and the degree of openness of the intelligence budget. In view of the scope of the Rockefeller Commission's mandate, however, its recommendations do not address these issues.

Under these circumstances, you must decide whether to proceed with the prompt implementation of the Commission's policy recommendations now, or await developments in the Congressional Committees over the coming months and include the policy recommendations in a broader package which responds to the more far-reaching initiatives that are likely to emerge later from the Congressional reviews.

In view of the limited scope of the Commission's policy recommendations, action to implement them now might be criticized as being too timid, in light of the broad range of issues raised by the Select Committee investigations. Although such criticism is likely, we believe that the Commission's policy recommendations are fully responsive to what is in fact the primary concern of the American people -- that the CIA engages in "domestic spying" and is, in the words of Senator Church, "a rogue elephant out of control." Implementation of the Commission's policy recommendations -- which can be fully accomplished by Presidential action -- will deal with the fundamental problem now, and enable you to handle separately, at a later time and in different fashion, the broader issues such as covert action, the classified budget, and other community-wide structure or management questions.

In addition, Congressional action on domestic improprieties is imminent. There are currently a number of Committees other than the Select Committees addressing various aspects of the reported improprieties; legislation in these areas is likely to be piecemeal and unacceptable, but it will come soon. On the other hand, issues such as covert action, the classified budget and major overhaul of the intelligence structure are moving on a different timetable and are being considered only by the two

Select Committees. It is unlikely that legislative proposals will emerge in these areas until the Select Committees conclude their activities next Spring. Thus, not only is the "improprieties" area more urgent, but there is also a significant likelihood that Presidential action on these matters could effectively be foreclosed if put off and considered only as part of a broader -- and, by definition, later -- package of reforms.

For the foregoing reasons, we recommend that you order the development by August 25 of optional steps to act on the group of Commission policy recommendations as described above.

If you approve this action, we will continue to develop options for your consideration at an appropriate time on other matters being raised in the course of the Select Committee investigations.

If you disagree with our recommended action, you should direct a detailed study to develop broader proposals responsive to issues beyond the scope of the Rockefeller Commission's inquiry. A list of the possible issues and a mechanism for dealing with them is set forth in Tab E. This approach would permit you to act on the broadest front and would negate criticism that you are not confronting these issues. However, there are drawbacks. A further and broader study would be very time consuming; we estimate that such a study would take at least several months. More importantly, this delay could cause us to lose the initiative entirely. We do not recommend this alternative approach for these reasons and because we find the arguments in favor of immediate implementation more persuasive.

RECOMMENDATION

That you approve action on the Commission's policy recommendations to correct improper domestic activities and establish better Executive Branch control of the CIA. (If you approve this recommended action, an appropriate set of options to act on the Commission's policy recommendations will be developed and submitted to you by August 25. The plan will provide for your action by early September.) (Recommended by all your advisers.)

APPROVE _____

DISAPPROVE _____

OTHER _____



T A B A

Summary of Comments by the Departments and Agencies
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

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E.O. 12356, Sec. 3.4.

MR 88-15 #48 NSC Br. 2/7/90
By KBH, NARA Date 3/28/90

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.

FAB

B

Twenty Reforms Recommended by the Rockefeller Commission

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.

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).

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E.O. 12356, Sec. 3.4.

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By KBH NARA Date 3/28/90

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Recommendation (23)

In the United States and its possessions, the CIA should not intercept wire or oral communications⁶ 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.

Recommendation (24)

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

Recommendation (27)

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

Recommendation (28)

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

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.

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.

T A B C

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR

THE ATTORNEY GENERAL
THE ASSISTANT TO THE PRESIDENT FOR
NATIONAL SECURITY AFFAIRS
THE DIRECTOR, OFFICE OF MANAGEMENT
AND BUDGET
THE DIRECTOR OF CENTRAL INTELLIGENCE

I have completed my initial review of the Report of the Commission on CIA Activities within the United States and Agency comments on its recommendations and believe that it is appropriate to proceed promptly with the implementation of the majority of the Commission recommendations. Toward this objective, I direct the following:

The Director of Central Intelligence should prepare internal CIA regulations and guidelines to carry out the purposes of Commission Recommendations numbered 6, 9-13, 14b, 15b-c, 16-18, 20, 22-25, and 27-28. To the extent practicable, and within the bounds of prudent security, these regulations should be unclassified. The DCI should also review all current CIA regulations and directives for conformity with these recommendations, make such modifications as may be necessary, and, as noted above, provide for their declassification as appropriate.

The Attorney General and the Director of Central Intelligence should prepare and coordinate as necessary the internal procedures and guidelines suggested in Commission Recommendations 6, 14, 18 and 30. These agreed guidelines should, to the extent practicable, be unclassified.

The Assistant to the President for National Security Affairs, the Director, Office of Management and Budget,

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E.O. 12356, Sec. 3.4.

ME 88-15, #50 NSC At 2/7/90
By KBH NASA Date 3/28/90

and the Director of Central Intelligence should prepare a draft directive establishing an interagency committee to oversee the domestic uses of aerial intelligence photography.

The above actions should be completed by August 31. Copies of the resultant directives should be forwarded to the White House for my information.

cc: The Vice President
The Secretary of State
The Secretary of Defense
The Secretary of the Treasury
Chairman, President's Foreign
Intelligence Advisory Board
The Counsel to the President

T A B D

POLICY RECOMMENDATIONS

- o Revisions to the National Security Act which would clarify CIA's authority by explicitly limiting it to foreign intelligence matters.

The Commission's Recommendation #1 states:

"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 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, prohibit the CIA from collection efforts within the United States directed at securing foreign intelligence from unknowing American citizens."

The Commission added that:

"The 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."

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E.O. 13526, Sec. 3.4.

ME 88-15 #51 NSC Ltr. 2/7/90

By KOBH NARA Date 3/28/90

COMMENT: In some cases, ambiguities have been partially responsible for CIA's improprieties within the United States. Greater public awareness of the limits of the Agency's domestic authority would reassure the American people.

As a legislative proposal, this could be criticized as too timid. Indeed, all generally agree that the CIA is now limited to foreign intelligence; although those portions of the recommendation dealing with the protection of sources and methods, and clandestine collection of foreign intelligence from American citizens within the United States may change existing law.

If it is considered inadvisable to proceed with a legislative proposal, this recommendation could be implemented by Executive Order.

- o An Executive Order to prohibit improper domestic activities of CIA concerning U. S. citizens.

The Commission's Recommendation #2 states:

"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 though published amendments."

COMMENT: This supplements the statutory changes proposed in Recommendation #1. It would establish strict safeguards and reassure the American people that the CIA will not collect or store information about their domestic activities.

- o Legislation to strengthen CIA's internal organization and management structure, including establishing a second Deputy Director position.

"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."

COMMENT: The purpose of this recommendation apparently is to ensure the presence of a strong administrative officer to run the day-to-day operations of the CIA while the DCI concentrates on policy matters and his community responsibility. The Commission assumed that this deputy would generally be from the career ranks of the Agency while the DCI would be an outsider.

The second deputy position is necessary to accommodate the desires of the military to retain input and influence at the top levels of the Agency; in the past, the single DDCI has traditionally been a military officer.

If it is decided not to proceed with legislative proposals, the substance of this recommendation might be implemented by directing the DCI to reestablish a position such as Executive Director - Comptroller. This CIA official in the past exercised the administrative functions contemplated for the second deputy director.

- o Revised procedures on the handling of security violations, including penalties for violations by present or former CIA employees.

The Commission recommended:

"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." (Recommendation #19.)

"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." (Recommendation #21.)

COMMENT: The Commission found that the CIA had in the past become involved in surveillance of reporters and other Americans because the FBI refused to pursue security leak cases. It therefore recommended that a formal procedure of the U.S. Intelligence Board be established to refer security violations to the FBI and to require that the FBI investigate such cases. The intelligence agencies disagree with this recommendation. The Department of Justice does not believe it should be required to take such cases; the other agencies doubt that the DCI should have to go through the USIB to refer a case to the FBI.

The Rockefeller Commission also felt that security violations by past or current Agency employees could be reduced by enacting a new criminal statute penalizing disclosures. The Justice Department and the CIA disagree about the proper form for such a statute. New provisions concerning unauthorized disclosure of classified information are contained in S.1, the recodification of the criminal code, now before Congress. Any proposal for tighter criminal sanctions in this area will face severe criticism in the press and from Congress. The Commission itself recognized the sensitivity by recommending such legislation only if "drafted with appropriate safeguards of the constitutional rights of all affected individuals."

- o Changed Executive Branch procedures on oversight of the intelligence community and White House contact with CIA, including a stronger role for the President's Foreign Intelligence Board.

The Commission recommended:

"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. (Recommendation #5.)

"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." (Recommendation #26.)

COMMENT: The Commission believed that the President's Foreign Intelligence Advisory Board was best qualified to be the body that kept close

watch on CIA activities. A number of agencies in the intelligence community, and the PFIAB itself, have some doubts as to whether this body can adequately fulfill the role foreseen for it by the Commission. A question would also remain about PFIAB's responsibilities over the other intelligence agencies.

The Commission also proposed a single high level channel between the White House and the CIA in order to prevent improper White House requests to the CIA. Although the aim of this recommendation is laudable, some question has been raised about its practicality in light of the many day-to-day communications that necessarily must occur between White House staff persons and CIA employees.

T A B E

**A Comprehensive Review of the Broad Issues
Concerning the Intelligence Community**

The issues to be addressed in any comprehensive review of the intelligence community are posed in the following questions:

- What is the role of intelligence in the national policy process? How should the intelligence community be organized to fulfill this role? Should there be a supra-agency Director (or Coordinator) of National Intelligence? If so, what should be his charter vis-a-vis the community in terms of resource allocation, intelligence budget development, and management of the CIA? What should be his relationship to the President?
- What are the roles of the NSC and OMB in providing guidance to and management of the intelligence community?
- What are the roles of the NSC, the PFIAB and the Congress in oversight of the intelligence community?
- What is the Administration's policy on the conduct of covert actions?
- What are the limits of CIA authority to conduct activities within the United States?

These questions could be addressed in a detailed study by a task group consisting of the Assistant to the President for National Security Affairs, the Counsel to the President, and the Director of OMB. The task group would be directed to prepare for your consideration a detailed options paper containing recommendations for dealing with the broad structural, management and oversight issues discussed above. The group might also include, on specific matters, the Secretary of Defense, the Attorney General, or the Director of Central Intelligence. These options would address:

- (1) revisions to the National Security Act, the CIA Act of 1949, other intelligence legislation, and Presidential and NSC directives on intelligence matters;

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E.O. 12356, Sec. 3.4.

MR 88-15 #52 NSC ltr. 2/7/90

By KBH NARA Date 3/28/90

- (2) Executive Branch oversight and control mechanisms and procedures, including the roles of the NSC, PFIAB, OMB, and the White House;
- (3) The role of the DCI and his responsibility and authority for the management of the Intelligence Community;
- (4) the basic organizational structure of the Intelligence Community;
- (5) resource management within the Intelligence Community; and
- (6) Congressional oversight of intelligence activities (including the possibility of declassifying some of the intelligence budget).