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THE PRESIDENT

The President asked that these materials be returned to Arch Marsh
see Blue Notebook in P. file.

Trudy
-
June 1968
material to go
back to Marshall.
This stops
here.

10/13

THE PRESIDENT HAS SEEN.....

THE WHITE HOUSE

WASHINGTON

October 13, 1975

MEETING WITH INTELLIGENCE COORDINATING GROUP

Monday, October 13, 1975
2:00 p.m. (1 hour)
Cabinet Room

From: Jack Marsh

I. PURPOSE

To receive a status report on the Congressional investigations of the intelligence community. This is primarily a discussion meeting.

II. BACKGROUND, PARTICIPANTS AND PRESS PLAN

A. Background. On September 19, you designated a group specifically responsible for coordinating our response to matters dealing with the intelligence community. This will be your first meeting with this group.

You will shortly be asked to make decisions on key issues, such as disagreements among the agencies on intelligence-related Executive Orders and a very sensitive problem concerning ongoing NSA activities. These issues will be presented to you in decision memoranda after normal staffing.

B. Participants. Henry Kissinger
Jim Schlesinger
Ed Levi
Jim Lynn
Bill Colby
Phil Buchen
Jack Marsh
Don Rumsfeld

Staff: Mike Duval

C. Press Plan. Meeting is not on your official schedule. No press coverage.

III. AGENDA

- See Tab A for Summary Agenda.
- See Tab B for Detailed Agenda.

TAB A

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00519

PHF

Collection/Series/Folder ID No. : 004700172
Reason for Withdrawal : NS,National security restriction
Type of Material : AGE,Agenda(s)
Description : detailed agenda for Intelligence
Coordinating Group meeting
Creation Date : 10/13/1975
Volume (pages) : 7
Date Withdrawn : 04/29/1988

REDACTED

4/24/09

DETAILED AGENDA

I. Administrative Actions (Buchen - 5 minutes)

- A) PFIAB Executive Order: The Executive Order to give oversight authority to the President's Foreign Intelligence Advisory Board has been drafted. Final agency review is underway and we expect the following drafting problems can be resolved quickly: (1) concern that the oversight function not turn into a management function; (2) difficulties in rationalizing the advisory and oversight functions; and (3) the degree of oversight for "in-house" entities, i.e., OMB and NSC.
- B) Restrictions Executive Order: The Executive Order establishing restrictions on the domestic activities of the intelligence community has also been drafted. Several substantive differences remain between the departments and agencies involved. They are: (1) rules governing warrantless wiretap and the current "watch list" which is used to protect a few U.S. officials; (2) the relationship between FBI counterintelligence files to similar files held by other agencies; and (3) gathering non-criminal information on U.S. citizens in covering special subjects, such as narcotics traffic and terrorism.

II. Status of Committee Hearings

A) Overview (Marsh - 5 minutes)

- Generally, compromise agreements have been reached with both the House and Senate Select Committees on the delivery and publication of classified materials, both in document form and via testimony.
- To the best of our knowledge, no evidence of wrongdoing or failures in the intelligence community has been intentionally withheld by the Executive branch from either Committee or the Justice Department.
- The Coordinating Group you established on September 19 meets every day and has increased the capability of the Executive departments and agencies to respond to the intelligence investigation in an orderly manner.



- Significant issues remain unresolved and, in general, the Committee hearings are becoming more partisan, and "competition" for headlines is increasing between committees and among members.

B) Key Problem Areas Between the Committees and the Departments and Agencies (20 minutes)

- CIA (Colby)

- Covert Activities: The Pike Committee is taking up current covert activities [REDACTED]. The Senate is considering past activities [REDACTED]. (Note: Six standing Committees have been briefed on current covert activities in accordance with a recently enacted law.)

In addition, both Committees are looking into very sensitive activities concerning the [REDACTED]

[REDACTED] The Senate will also take up the Katzenbach Report -- use of philanthropic institutions by the CIA.

- Cooperating American Individuals and Corporations: The Senate Committee seeks access to all files of certain individuals and corporations. [REDACTED]

[REDACTED] The exposure of cooperating companies could have the most severe consequences for the companies involved and ongoing CIA activities.

- STATE and NSC (Kissinger)

- The major issue concerns which departmental employees can be compelled to testify and the extent to which documents on the conduct of foreign affairs should be made available to the Committee.

NOTE: This raises the specific issue of the Boyatt "Dissent Channel" memorandum concerning Cyprus. To the extent this may become a potential Executive privilege issue, it will be discussed under Agenda Item III.



- Other substantive problems are: the Pike Committee's investigation of how the State Department used intelligence community work products; the foreign affairs impact of publicly disclosing the assassinations report, covert operations such as the Italian election, [REDACTED]

- DEFENSE/NSA (Schlesinger)

- Church Committee: Is the intelligence worth the cost, and do there exist proper controls by the policy makers? The Committee is focusing on assassinations, toxins, NSA monitoring and Army spying on U.S. citizens.

A key issue is whether or not to hold public hearings on NSA. The Committee voted to delay open hearings, but the following appear to favor some open hearings: Church, Huddleston, Schweiker, Mondale and perhaps Mathias and Morgan, while Goldwater, Tower and Hart want closed hearings.

While our negotiations with the Committee to keep the hearings closed are developing favorably, this could take a turn for the worse as stories in the press begin to focus on NSA. This is a real danger as Tad Sculz (pronounced "Shultz") has done a very comprehensive article on NSA in the issue of Penthouse which will be released Tuesday.

- Pike Committee: The Committee is taking a hard look at the risks involved in intelligence collection, [REDACTED]

- JUSTICE (Levi)

- Church Committee: The FBI relationship with the Committee members and staff has been good. The Committee does, however, plan to have open hearings on certain sensitive areas such as COINTELPRO and, perhaps, the bugging of Martin Luther King.
- Pike Committee: The relationship between the FBI and the Committee is not good. The Committee has, according to the Bureau, held public hearings in which they could not fully present their case



and they demanded low-level agents as witnesses. On the other hand, the Committee claims that the Bureau has been generally uncooperative.

- OMB (Lynn)

The only potential problem involves Committee requests for budget documents which raises an Executive privilege issue which is discussed below.

III. Executive Privilege (20 minutes)

A) Overview (Marsh)

- Thus far, you have not withheld any information from the Select Committees by invoking Executive privilege.

In resolving the problem of delivering classified materials to the Pike Committee, your advisors made it clear that the compromise procedure did not cover the Executive privilege issue. A draft discussion paper which we gave to the Committee staff stated: "Other matters, the complete confidentiality of which the President personally certifies is essential to the effective discharge of Presidential powers, may be withheld."

- The Executive departments and agencies have been asked by your Coordinating Group to identify those documents requested or subpoenaed by the Committees which the agency or department head may ask you to order withheld on the grounds of Executive privilege. The following is a very rough summary of the numbers of documents which may be Executive privilege candidates:

State - 350 known documents; unknown number of cables.

Defense - Hundreds of budget documents and scores of working papers.

NSC - About 400 documents.

Justice - Unknown, but possibly over 1,000.

PFIAB - Four documents plus all agendas of board meetings.

Presidential Libraries - unknown

Note: The Attorney General will discuss the issue of your power and responsibilities to invoke Executive privilege for former Presidents' papers.

CIA - Unknown, but not voluminous.

OMB - at least 30.



- We recommend the following procedure be utilized in deciding the Executive privilege question.

First, the department or agency head attempt to negotiate around this problem with the Committee. Perhaps the information can be supplied in a manner that avoids the Executive privilege issue. Perhaps general requests for large classes of documents can be narrowed.

Second, if the Executive branch official wants you to invoke the privilege, the specific documents should be reviewed by the Coordinating Group and a memorandum expressing their views will be prepared for you.

Third, the document(s) in issue will be reviewed by the Justice Department and a memorandum will be prepared stating the legal strength of invoking the privilege in that particular case.

Fourth, the matter will be presented to you for decision on a case-by-case basis.

B) Discussion of Legal Issues (Levi)

The Attorney General has prepared a discussion paper (at Tab 1) which is designed to assist you in approaching the Executive privilege issue in an orderly fashion. This will enable your decisions to be consistent, and it will provide some guidance to the agencies as to which documents they may reasonably submit for your consideration. One factor you should consider in making your decision in a specific case is the probability of sustaining the claim of privilege in the event of a challenge in the courts.

The Attorney General's paper breaks down intelligence documents into three categories and then provides a roughly prioritized list of types of documents within each category. The categories are:

- I - Defense Secrets - Information the disclosure of which would impair our national defense.
- II - Foreign Affairs Secrets - Information the disclosure of which would impair our conduct of foreign relations.



III - Confidentiality of Executive Decision-making - Information the disclosure of which (anticipated by future officials) would impair the frankness and integrity of the consultative process.

IV. Administration's Public Position (Marsh - 5 minutes)

- A) Problem - So far, you have been generally successful in establishing a position of full cooperation with the Congressional and criminal investigations while maintaining and protecting the Nation's ability to develop essential foreign intelligence.

However, this is a fragile balance, and there are very powerful and dynamic forces which threaten to seriously jeopardize our position. For example:

- (1) The competition for headlines between the Pike and Church Committees and among members (e.g., Church and Mondale) appears to be increasing.
- (2) The Committees have scheduled hearings (in some cases open) in very controversial areas. The month of November should be particularly active. Briefly, the following subjects are scheduled:

Church Committee

- NSA (open?)
- CIA mail openings (open)
- Kissinger on covert action (closed)
- [REDACTED]
- CIA use of philanthropic institutions (open)
- FBI abuses including King taps and COINTELPRO (open)

Pike Committee

- Schlesinger CIA abuses report
 - Covert operations
- [REDACTED]

- (3) Press attention on the intelligence community is increasing. Stories have broken over the weekend (New York Times - NSA "gossip" intercepts and Washington Post - domestic demonstrator taps) and major NSA stories are likely this week.

Both Committees appear to be trying to wrap up the hearings by mid-December. Once this moves into the legislation drafting phase, the risk of dangerous public disclosure of sensitive, classified information will probably decrease. The most critical period when a substantial risk that this investigation (press and Congress) can spin out of control will be from now until the end of the year. However, the impact of formal Committee reports describing intelligence operations cannot be minimized. Leaks from the Committee members and staff will be an increasing danger.

- B) Objectives - We recommend that our public activities be designed to achieve the following objectives:
- 1) Protection of America's capacity to develop essential foreign intelligence;
 - 2) Public understanding that you and your Administration are cooperating responsibly with Congressional and criminal investigations; and
 - 3) Executive branch development of administrative and legislative reforms to prevent abuses by the intelligence community and strengthen its usefulness.
- C) Strategy - An overall strategy plan is being prepared. It will include press and scheduling sections and will be submitted to you via the normal staffing process.





Office of the Attorney General
Washington, D. C. 20530

M E M O R A N D U M

Re: Privilege of the Executive Branch to
Withhold Information from
Congressional Committees

Several agencies are exploring the possibility of refusing to provide the Senate and House Select Committees access to documents that are considered highly sensitive. While an informal agreement has been reached with the House Select Committee to govern the publication or de-classification of Executive branch documents -- an agreement to which the Senate Select Committee also apparently subscribes -- no general agreement has been adopted to determine what documents or information may be withheld from the Committees. Each agency, of course, has attempted to fashion some arrangements with the Committees to protect the sensitivity of certain information, e.g., by excising especially sensitive information or by offering a briefing in lieu of furnishing the actual documents. There is no assurance, however, that the Committees will not press further. The only basis for withholding or denying access to especially sensitive documents is to assert a privilege.

The issue of privilege could also arise once the documents have been furnished since, under the agreement, if a Committee desires to make a document public and the President certifies that the interests of the government require that the document be kept in confidence, the document must be returned. The Committee could then assert their unbridled claim to the document by taking their case to the courts. The defense of the Executive branch would be that the document is covered by a privilege from disclosure. It should be pointed out that there is some slight risk the agreement to return the document under such circumstances might be treated by the courts as an effort -- perhaps unsuccessful -- to create a case or controversy. It is also possible that a committee, in spite of the agreement, might not return the document and might proceed to (1) publish it, which would leave the Executive without an effective remedy or, (2) announce that it was going to publish, which, in my view, would make a difficult case for the



Executive to succeed in getting court action.

It is important that we approach this assertion of privilege in a systematic fashion, both in order to enable your decisions to be more consistent and also in order to provide some guidance to the agencies as to which documents they may reasonably submit for your consideration. The following discussion is intended to facilitate the construction of a framework for future actions.

Executive privilege has traditionally been asserted with respect to four general categories of information: defense secrets, foreign affairs secrets, materials relating to criminal investigations, and internal advice-giving within the Executive branch. The third category, criminal investigative materials, is not generally involved in the present inquiry. We have attempted in the table that follows this memorandum to establish for the other three categories what seems to us an appropriate scale of importance, on the basis of representative documents provided by various agencies. Documents falling into some of the categories are furnished as examples.

Several caveats are in order:

(1) You should be aware that your decision as to the level at which executive privilege will be asserted at this time with respect to this particular Congressional inquiry does not commit you or the Executive branch to a determination that the privilege may be asserted in the future only at that level of importance. Obviously, in any situation the validity of invoking the privilege depends not merely upon the information to be protected but also upon the need and justification for the request. The present Congressional inquiry is of an extraordinary sort, which cannot feasibly be conducted without a large amount of confidential information, and it is undoubtedly appropriate in this case to go far beyond what would normally be presented to other committees of the Congress.

(2) A distinctive feature of the present situation is the fact that your failure to assert privilege at the initial stage will not necessarily result in public disclosure of the information in question. As noted above, all documents are being provided on the agreed-upon condition that they will not be disclosed beyond the Committees if we object. Thus, initially the decision is merely whether to make it available to the Committees; not whether the information should be furnished to the public or even the rest of the Congress. Certain types of information which would be withheld from a Congressional com-



mittee that made no such non-disclosure commitment -- for example, material in category I (4) of the table covering present evaluations of U.S. and foreign military strength -- might well be provided in the present case. On the other hand, there may still be items which you would wish to withhold despite the non-disclosure commitment -- either because such commitment does not provide adequate assurance against leaks (for example, with respect to certain information in category I (2) covering highly secret weapons systems) or because disclosure to the Committee itself, even without further dissemination, would compromise the interest in question (for example, certain material in category II (5) covering information provided in confidence by a foreign government.

(3) The categories in the following table necessarily overlap, since two of them (defense information and foreign affairs information) are directed at the protection of content, while the third (advice-giving within the Executive branch) is directed at protection of a process. Thus, the third category is established without regard to any such differentiation of content. For example, a particular communication between a President and a foreign head of state (the highest level of privilege under category III) may involve highly sensitive military or foreign affairs secrets, or may be the most innocuous expression of social sentiment. You may wish to decide that all confidential communications between presidents and foreign heads of state must be kept confidential in order that the process of such exchanges may in the future remain uninhibited by any possibility of disclosure to the Congress. Or you may decide that such communications should be withheld in the present circumstances only if they also involve material which is sensitive for military or foreign affairs reasons (though the level of sensitivity may be lower than that required to warrant withholding the same information contained in a document from a low level of the Executive branch.)

(4) The levels in category III -- Confidentiality of Executive decision-making -- are established without regard to whether the particular communication in question compromises the integrity of the Executive branch decision-making process. The matter could be treated differently. That is to say, instead of protecting, for example, all advice-giving from Presidential advisers to the President (category III (2)) you might decide to protect only those communications that would positively embarrass particular individuals. This approach would significantly reduce the scope of privilege claimed under category III -- especially if names are deleted. One difficulty with a selective application of category III is that each isolated



withholding may appear to be an admission of something to hide. This concern can be obviated in large part by providing an explanation to the Committee as to the reason why the information is excised. (Indeed, whenever excisions are made, the nature of the information should be described to justify the excisions and thereby overcome any suspicions.) While it is also true that it may not suffice to preserve the frankness of NSC discussions merely to assure the participants that future Presidents will consider carefully what releases of information might embarrass them, participants cannot always be certain that other participants who are Executive officials will forever preserve the confidentiality of the discussions.

(5) Although it is believed that the categories listed under each of these topics in the following table are generally in descending order of importance with respect to the assertion of Executive privilege, it is undoubtedly true that most categories cover such a wide range of material that the less significant matters in a higher category may well be less important than the most significant in a lower. For example, the items which consist of present evaluations of U.S. and foreign military strength (category I (4)) may range all the way from an assessment of Russian missile capacity to an evaluation of the Indian navy.

(6) It is not necessary, or even desirable, to make a decision as to the assertion of Executive privilege on a document-wide basis. That is to say, in most cases, portions of a document can be released with deletions that will protect the sensitive information. This principle has its least force with respect to category III (although deletion of names of participants in meetings or authors of policy papers may be adequate), since it is there that the entire process, rather than individual items of information, must be protected.

It should be evident from the foregoing discussion that the present exercise cannot provide definitive answers with respect to the production or non-production of any particular documents. This decision can obviously be made only on a case-by-case basis, applying judgments relative to all of the categories set forth below.



CATEGORIES

I. Defense Secrets -- Information the disclosure of which would impair our national defense

- (1) Present contingency military planning for war
- (2) Highly secret weapons systems
- (3) Highly sensitive intelligence sources and methods for collection of defense-type information
- (4) Present evaluation of U.S. and foreign military strength
- (5) Military action taken or planned in past international crises
- (6) Past contingency military planning for war
- (7) Past evaluations of U.S. and foreign military strength

II. Foreign Affairs Secrets -- Information the disclosure of which will impair our conduct of foreign relations

- (1) Present secret military or intelligence arrangements with foreign nations
- (2) Present interventions in domestic affairs of foreign nations
- (3) Cooperation of present foreign political figures with U.S.
- (4) Highly sensitive intelligence sources and methods for collection of foreign affairs-type information
- (5) U.S. activity (whether known or unknown to the foreign nation) whose public disclosure would require retaliatory response
- (6) Information of any sort provided in confidence by a foreign government
- (7) Evaluation of present foreign leaders
- (8) Assessment of present foreign intentions



- (9) Past intervention in domestic affairs of foreign nations
- (10) Past military or intelligence arrangements with foreign nations
- (11) Cooperation of former foreign political figures with U.S.

III. Confidentiality of Executive Decision-Making --
Information the disclosure of which (anticipated by future officials) would impair the frankness and integrity of the consultative process

- (1) Confidential communications between the President and foreign heads of state
- (2) Intimate, spontaneous discussions between a President and his top advisers
- (3) Written views of a President on policy matters
- (4) Written advice by individual advisers to the President
- (5) Institutional policy recommendations to the President
- (6) Agenda items for meetings with the President
- (7) Policy discussions among individual advisers to the President in preparation of their recommendations to him
- (8) Policy views of lower-level officials presented to Presidential advisers in preparation for the latter's recommendations to the President
- (9) Policy views of lower-level officials on issues not destined for Presidential decision
- (10) Agenda items for meetings below Presidential level
- (11) Background documents interpreting Presidential decisions
- (12) Unsigned policy discussions



ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 00520

Collection/Series/Folder ID No. : 004700172
Reason for Withdrawal : NS,National security restriction
Type of Material : MEM,Memo(s)
Creator's Name : Edward Levi
Description : re privilege of the Executive Bra
nch to withhold information from congressional committees
Creation Date : 10/1975?
Volume (pages) : 2
Date Withdrawn : 04/29/1988



III. Confidentiality of Executive Decision-Making -- information the disclosure of which (anticipated by future officials) would impair the frankness and integrity of the consultative process

- (1) Confidential communications between the President and foreign heads of state (list of Presidential letters beginning in 1950)
- (2) Intimate, spontaneous discussions between a President and his top advisers (minutes of NSC meeting April 20, 1963)
- (3) Written views of a President on policy matters
- (4) Written advice by individual advisers to the President (Roger Hilsman memorandum to President, dated 30 May 1962)
- (5) Institutional policy recommendations to the President (OMB memorandum to President on 1976 budget decisions)
- (6) Agenda items for meetings with the President (PFIAB Agenda items from 1961-1975)
- (7) Policy discussions among individual advisers to the President in preparation of their recommendations to him (no example)
- (8) Policy views of lower-level officials presented to Presidential advisers in preparation for the latter's recommendations to the President (Memo for the DCI, 21 Feb. '64, subject: Responsibilities in the paramilitary field)
- (9) Policy views of lower-level officials on issues not destined for Presidential decisions (no example)
- (10) Agenda items for meetings below Presidential level (PFIAB meeting of 3 October 1974)
- (11) Background documents interpreting Presidential decisions (Minutes of meeting of 40 Committee, 8 June 1971)
- (12) Unsigned policy discussions (NSC Staff Memo for 303 Committee, 5 April 1965)



FBI Relationships with the Senate and House Select Committees

Senate Select Committee

FBI relationships with the Senate Select Committee generally have been harmonious with responses to the Committee requests delivered promptly. When difficulties have occurred they have been overcome by negotiation and tolerance on both sides. Future difficulties that may be confronted and require similar resolution include the scope of any public hearing regarding electronic surveillance of foreign nationals or their agents and establishments.

House Select Committee

In the past the FBI has experienced the following difficulties with the House Select Committee:

- (1) It has held public hearings which were orchestrated to present adverse views without an opportunity for prepared rebuttal, such as occurred on October 9, 1975, regarding electronic surveillance matters;
- (2) It has demanded delivery of documents on unreasonably short notice considering the time necessary to locate and prepare for deliver the enormous quantity of documents called for;
- (3) It has interviewed employees, former employees and confidential sources of the FBI without first advising the FBI of the proposed interview and has demanded the appearance of agents below the policy-making level.

A large number of documents dealing with electronic surveillance conducted without a warrant between 1970 and July 30, 1975, were furnished to the Committee on Friday, October 10, 1975. Certain excisions in these documents were made and it remains to be seen whether the Committee will accept the determinations made as to what types of information, e.g., identities of subjects who were monitored, should have been excised.

The overriding concern for the future is the need to establish an understanding on both sides of the policies to be followed by each in responding to the Committee's mandate. General agreement to specified operating procedures would alleviate the suspicion on the part of the Committee and the fear of Committee reresponsibility on the part of the FBI.

BACKGROUND INFORMATION

- 1) In recent days the intelligence question -- particularly interception techniques of NSA -- are receiving much press. This centers on abuses and is reminiscent of Watergate. There is a chance that this aspect may emerge even more.
- 2) In the present intelligence investigation, with only very few exceptions, we are concerned with matters all of which pre-date your Presidency.
- 3) Notwithstanding the representations as to how forthcoming the Administration has been with information to the committees, there is a hard core resistance and some information has to almost be pulled from certain agencies. All too often that which is not forthcoming relates to matters which, while not illegal or improper, nevertheless is somewhat embarrassing in that it reflects on oversights, errors in judgement, etc.
- 4) CIA, which has borne the brunt of much of the investigation, has through negotiation, cooperation and constant liaison, been able to avoid confrontation with the committees. It is strongly recommended that you urge a similar approach by other agencies in order

to avert a collision based on executive privilege.

- 5) Although there are some very difficult days ahead by way of hearings within the next two months, there are some clear signs of the committee making a determined effort to wind up their investigations. This is a strong argument for cooperation.
- 6) Your emphasis and request to cooperate to the maximum extent in providing materials would be helpful.
- 7) In regard to the above preceding point it must be remembered that the two select committees are not jurisdictional committees and have been given a unique one-time role by the Congress. Their charter to investigate the intelligence community does raise the question of exceptions insofar as the furnishing of certain materials is concerned that otherwise might not be given to a jurisdictional committee.
- 8) It's useful to point out that insofar as the handling of classified materials the House and Senate have different roles. The roles of the House Committee are far more favorable because of your certification procedures than those of the Senate, where there is no final recourse to the President.

- 9) Finally, Ed Levi has done a tremendous amount of work on executive privilege. His efforts plus the efforts of the intelligence community in developing the position we took with the Pike Committee have helped to bring about some of the most precise definitions of the scope of executive privilege. Levi has prepared a memo accompanying your talking papers, which sets out these definitions.

SUMMARY AGENDA

- I. Status of Administrative Actions (Buchen - 5 minutes)
 - A) PFIAB Executive Order
 - B) Restrictions Executive Order

- II. Status of Committee Hearings (20 minutes)
 - A) Overview (Marsh)
 - B) Key Problem Areas
 - CIA (Colby)
 - NSC and State (Kissinger)
 - Defense (NSA) (Schlesinger)
 - Justice (Levi)
 - OMB (Lynn)

- III. Executive Privilege (20 minutes)
 - A) Overview and Procedure (Marsh)
 - B) Legal Issues (Levi)

- IV. Administration's Public Position (Marsh - 5 minutes)
 - A) Problem
 - B) Objectives
 - C) Strategy

TAB B