Chapter 13

Other Investigations by the Office of Security

The Office of Security is responsible, on a world-wide basis, for ensuring proper security of CIA facilities, operations and personnel.

The protection of classified material from unauthorized disclosure is prominent among the responsibilities of the Office.

The Office also administers the Agency's security clearance program and investigates breaches or suspected breaches of security by persons affiliated with the Agency. Occasionally it has investigated persons with no connection with the Agency, for various reasons related to the protection of classified material.

The Office is also responsible for providing proper security for persons who have defected to the United States from other nations.

In the course of conducting investigations, the Office has, on infrequent occasions, engaged in wiretaps, buggings, surreptitious entries and other improper conduct. Some of these activities were clearly illegal at the time they were conducted. Others might have been lawful at the time, but would be prohibited under current legal standards.

A. Security Clearance Investigations of Prospective Employees and Operatives

The Office of Security conducts security investigations of all prospective Agency employees and operatives, and of the employees of private contractors doing business with the Agency on classified projects. Employees are subject to reinvestigation at five-year intervals.

Such investigations are undertaken to ensure that persons likely to be security risks are not hired or retained by the Agency and are not used by private companies on sensitive jobs for the Agency. Proper security investigations of prospective Agency employees and operatives are essential. All such investigations begin with routine name

checks with other agencies to determine if there are any recent investigations of the subject on file. If no satisfactory recent investigation has been conducted, the Office of Security conducts its own investigation, which includes making contact with friends, neighbors and business associates of the prospective employee or operative.

Although the Commission has not attempted to review the thousands of files compiled during the course of security investigations, testimony before it has not given any reason to suspect that the Office of Security has abused its authority in this regard or made improper use of information so gathered.

Charges have been made implying that, on one occasion in 1968, the Johnson Administration improperly used the Agency to investigate a member of the Nixon campaign staff. The individual involved had received some unclassified materials from the Agency, and the Agency contemplated furnishing him with classified materials as well. A routine security investigation was begun.

When the Agency learned that this individual had been asked by Mr. Nixon to work on his campaign, it immediately curtailed its investigation, restricting further inquiry to name checks from other agencies. The Commission finds no basis for criticizing the Agency's actions in this instance.

Conclusions

The CIA has properly performed the necessary function of screening persons to whom it will make available classified information. The Office of Security's activities in this regard help fulfill the Director of Central Intelligence's statutory duty to protect sources and methods of intelligence from unauthorized disclosure.

B. Investigations of Possible Breaches of Security

Aside from routine security clearance investigations and reinvestigations, the Office of Security has conducted other investigations within the United States in response to specific allegations of jeopardy to intelligence sources and methods. Most of these allegations have been resolved through routine investigative techniques such as name checks or interviews.

In a relatively small number of cases, more intrusive methods (physical and electronic surveillance, unauthorized entry, mail covers and intercepts, and reviews of individuals' tax returns)—euphemistically known in the Office of Security as "special coverage"—were used.

While the Commission cannot be certain that it has found every

instance of "special coverage" within the United States during the last 28 years, it believes most of the significant operations have been discovered.

Two questions are involved in the analysis of these investigations:

1. Was it proper for the CIA to conduct the investigation of the particular subject by any means?

2. Were lawful investigative techniques employed?

1. Persons Investigated

a. Persons Affiliated with the CIA [1]

By far the largest category of investigations involved the Agency's own employees or former employees. We found a total of 76 investigations, involving 90 persons, in which some form of "special coverage" was used. Almost all of the persons involved were United States citizens.

Approximately one-fourth of the investigations of Agency employees and former employees resulted from information obtained from defectors to the United States that several employees of the Agency might be working for foreign intelligence services.

Almost all of the remaining investigations were the result of the discovery of suspicious activities on the part of employees with access to sensitive classified information.

For example, investigations were undertaken concerning employees associating with known or suspected foreign intelligence agents; employees spending beyond their means; and employees suspected of engaging in conduct which might subject them to blackmail or compromise.

A few investigations directed against valued employees with many years of service to the Agency were initiated as much to clear up suspicions concerning the employee as to ensure the Agency that the employee was not a security risk.[2]

All Agency employees are fully informed by the Office of Security, when they first seek employment, of the possibility that their activities might be closely scrutinized if they should be suspected of being a security risk.

The next largest category of cases involved the investigation of

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[1] If a person affiliated with the Agency who was investigated also falls into another category of subjects investigated, he has been included in the category with persons affiliated for purposes of the Commission's analysis. Significantly different issues, however, are raised by investigations falling within the various groups.

[2] Under the National Security Act of 1947, the Director of Central Intelligence has the absolute right to discharge any employee without explanation where an employee is suspected of being a security risk. The Director would thus be justified in requesting and receiving that employee's resignation. One of the stated purposes for having undertaken an investigation of suspected employees was to permit innocent employees to continue their work with the Agency without knowing that they were suspected of having been disloyal.

49 foreign nationals living in this country. Of these, 38 were Agency operatives and 11 were defectors. In almost all of these cases, the Office of Security investigated the foreign national at the request of one of the operational arms of the Agency. The reasons varied from case to case. Examples include:

—Determining whether the subject was controlled by a foreign intelligence service;

—Verifying the subject's sources of information;

—Ascertaining the bona fides of a defector;[3]

—Determining the propriety of using the subject for operational purposes in the future.

In a few cases, special coverage was initiated in order to protect a CIA case officer if trouble arose, or to provide a record of conversations for later evaluation.

In many instances, the employee or operative under investigation was surveilled for only one or two days, or his telephone was tapped so as to overhear only one or two specific telephone conversations. In some other instances, the investigations were more extensive.

One investigation by the Office of Security spanned approximately eight years in the late 1940's and early 1950's. The employee involved was alleged to have engaged in Communist Party activities in the 1930's and was suspected of still being in contact with Communist sympathizers. A combination of physical surveillance, wiretaps and bugging were used from time to time. The apartment occupied by the subject was entered surreptitiously on two separate occasions. The Director of Central Intelligence closely followed this particular investigation. The investigation led eventually to termination of the subject's employment.

An extreme example of how far an investigation can go occurred in the late 1960's. A CIA employee who attended meetings of a group which the Agency suspected of foreign left-wing support, had been privy to extremely sensitive classified information. Physical surveillance of the employee was conducted for almost one year. A surreptitious entry was made into the employee's apartment by cutting through the walls from an adjacent apartment so that microphones could be installed. Seven microphones were placed so that conversations could be overheard in every room of the apartment. A cover was placed on the employee's mail for two months during one period and five months during another. Several of the subject's tax returns were also reviewed. This investigation yielded no evidence of disloyalty.

The investigations of Agency employees and operatives were conducted pursuant to a general understanding with the FBI. The Bureau

[3] Several American citizens working with, but not employees of, the Agency have been surveilled to determine their bona fides or the validity of their sources of information, in the same manner as foreign nationals in similar positions.

was unwilling (partly due to a lack of sufficient manpower) to undertake every investigation of a breach of security involving employees or operatives of the CIA or other intelligence departments and agencies. It expected those departments and agencies to conduct any necessary preliminary investigation and would enter the case itself only when hard evidence of espionage was discovered.

Further, each member agency of the United States intelligence community had been given primary responsibility by the National Security Council for protecting intelligence sources and methods within its own organization.

b. Newsmen

The Commission found two cases in which telephones of three newsmen were tapped in an effort to identify their sources of sensitive intelligence information. The first such instance took place in 1959. The other occurred in 1962, apparently with the knowledge and consent of Attorney General Kennedy.

Three additional investigations were found in which reporters were followed in an effort to identify their sources. These activities took place in 1967, 1971 and 1972.

Presidential concern was continually voiced, during every administration since the establishment of the CIA, that the sources of news leaks be determined and the leaks themselves stopped—by whatever means. In addition, the committee of the United States Intelligence Board charged with investigating news leaks has historically taken no definitive action to solve the problem.[4]

The attitude of the FBI during the 1960's and early 1970's also remained unwavering. The Bureau would not handle leak cases unless directed to do so by the Attorney General. The Bureau's procedure in such cases was to submit a request for investigation to the Attorney General for a prosecutive opinion and not to proceed unless the Attorney General issued a favorable opinion and a directive to investigate.

Faced with this set of circumstances, the CIA chose to conduct its own investigations of "leak" cases by physically and electronically surveilling newsmen to learn their sources of information.

c. Other Persons Not Affiliated With the CIA

On several occasions, the Office of Security placed "special coverage" on other persons with no relationship to the Agency. In 1971, six United States citizens and one alien were followed for a period of some three months as the result of a report that they intended to

[4] The Chairman of the USIB Security Committee during the early 1970's, when several surveillances were initiated against newsmen by the Office of Security, was also the CIA's Director of Security. At several Security Committee meetings he stated that surveillance of newsmen (which had been suggested at the meetings) was improper. At the same time, he carried out such surveillance at the direction of the Director of Central Intelligence.

assassinate the Director of Central Intelligence and kidnap the Vice President. This investigation was conducted in close cooperation with the FBI and the Secret Service.

On two occasions, investigations were directed against employees of other government agencies with access to sensitive intelligence material.[5] Significant breaches of security were suspected in both cases.

On at least one occasion, physical surveillance was placed on a citizen who had approached an Agency employee under circumstances suggesting that he might be attempting to penetrate the Agency. Several investigations of Americans have been initiated for other reasons directly associated with suspected security violations at the CIA.

In addition, on approximately eleven occasions, investigations of employees or former employees of the CIA have resulted in some type of coverage of other United States citizens with whom those employees had contacts.

The Commission discovered no evidence suggesting that any of these investigations were directed at any congressman, judge, or other public official.

Conclusions

Investigations of allegations against Agency employees and operatives are a reasonable exercise of the Director's statutory duty to protect intelligence sources and methods from unauthorized disclosure, provided they are lawfully conducted. Such investigations also assist the Director in the exercise of his unreviewable authority to terminate the employment of any Agency employee.

Although such investigations may take on aspects of domestic counterintelligence or enforcement of domestic laws, they are proper unless their principal purpose becomes law-enforcement or the maintenance of internal security. Whenever an investigation develops substantial evidence of espionage or other criminal activity, it should be coordinated with the FBI.

Investigation of the bona fides of alleged defectors is an important function, lawfully assigned to the CIA by the National Security Council.

The Director's responsibility to protect intelligence sources and methods, however, cannot be read so broadly as to permit investiga-

[5] Two additional cases involved investigations of military officers temporarily assigned to the Agency. These have been included in the figures for investigations of persons affiliated with the Agency.

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tions of persons having no relationship whatever with the Agency. The CIA has no authority to investigate newsmen simply because they have published leaked classified information. Investigations by the CIA should be limited to persons presently or formerly affiliated with the Agency, directly or indirectly.

Where an employee or other person under investigation has suspicious contacts with an unknown individual, sufficient investigation may be conducted to identify that person. Further investigation of the contacts of persons properly under investigation should be left to the FBI or other appropriate law enforcement agencies.

The investigation directed against several persons allegedly threatening to assassinate the Director of Central Intelligence and kidnap the Vice President was probably an exception to the general rule restricting CIA investigations to persons with some relationship to the Agency. The circumstances were obviously extreme, the threats involved the Agency's director, and the investigation was undertaken with the full knowledge and consent of both the FBI and the Secret Service.

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 (19)

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

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

Recommendation (20)

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

Recommendation (21)

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

2. *Investigative Techniques Used*

Direction of some investigations at proper subjects does not mean that all the investigative techniques used were proper.

A great many of the cases (directed at 96 persons) involved physical surveillance—that is, observation of the public comings and goings of an individual. Some of the cases were trivial. In one case, an Agency employee was suspected of working at his private business establishment when he should have been working for the Agency. Employees of the Office of Security went to his place of private business and established that he was in fact there when he should have been at the CIA.

Other cases of physical surveillance were more extensive, involving dawn-to-dusk coverage for a period of months. The last case of physical surveillance by the Agency was in 1973. Current directives prohibit surveillance off Agency property.

Our investigation also disclosed thirty-two wiretaps, thirty-two instances of bugging,[6] and twelve unauthorized entries. The last wiretap used by the CIA was in 1965; the last bug in 1968; and the last unauthorized entry was in 1971.

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[6] These figures do not include cases in which the eavesdropping was done with the consent of one or both parties. Such instances were done for convenience in making a record of a conversation, such as the debriefing of a defector or a recruitment interview. Approximately thirty-four such instances were discovered. In addition, a technical log (for recording Office of Security wiretaps and buggings) for the period from December 1961 until March 1967, showing eleven telephone taps and sixty-five "mike and wire" operations conducted during that period, suggests that there may actually have been more "mike and wire" operations than the Commission has otherwise been able to document. Witnesses before the Commission testified that most of those installations were used where one or both parties were aware that their conversation was being recorded. In all cases where doubt existed as to whether the CIA had subjected an individual to any questionable investigation, the benefit of that doubt was *not* given to the Agency, and the investigation has been included in the above figures.

None of these activities was conducted pursuant to a search warrant, and only in connection with the 1965 wiretap did the Agency obtain the prior written approval of the Attorney General.

In at least fourteen instances, involving sixteen people, the CIA obtained access to information on individual Federal income tax returns. The Agency was apparently seeking information which would indicate possible connections between the subject and foreign groups.

Ninety-one mail covers were used in 63 investigations. Only 12 occasions, mail was actually opened and photographs were taken of the contents.

Conclusions

Physical surveillance, while not itself unlawful, may become so if it reaches the point of harassment. The possible invasions of privacy by physical surveillance and the proximity of that activity to proscribed law enforcement functions indicate that it should be undertaken only after high level authorization within the Agency. Such authorization would include a finding that the proposed surveillance is necessary to protect intelligence sources and methods. When a legitimate CIA investigation reaches the point that a search or some form of electronic eavesdropping is appropriate, the case should be turned over to the FBI or other law enforcement agencies.

The unauthorized entries into the homes and offices of American citizens were illegal when they were conducted and would be illegal if done today.

Because the law as to electronic eavesdropping has been evolving, the Commission has not attempted to delineate specifically which of the CIA's investigations over the years utilizing eavesdropping were unconstitutional under then-announced standards. Some of those investigations within the United States were proper under the constitutional standards of the time, but many others were not. Under constitutional standards applied today, it is doubtful whether any of those investigations would have been proper, with the possible exception of the one wiretap installed in 1965 where prior written approval of the Attorney General was sought and obtained.

Today, eavesdropping would at a minimum require the prior written approval of the Attorney General, based on a showing that the national security was involved and that the circumstances included a significant connection with a foreign power. The Supreme Court has left open the question whether such approval would be sufficient or whether a judicial search warrant would be required.

The execution of a search warrant involves the exercise of a law-enforcement power of a type expressly forbidden to the CIA. If the approval of the Attorney General is an adequate substitute for a warrant in some cases, similar problems may arise in conducting searches or eavesdropping under that authority.

Under the provisions of the Internal Revenue Code, no person has access, without special authorization, to any information supplied by a taxpayer pursuant to a requirement of the tax law relating to income and other taxes.[7]

Formal procedures for obtaining the necessary authorization have been in effect for some time. They require the applicant (here the Director of Central Intelligence) to make written application to the Commissioner of Internal Revenue for each tax return desired, setting forth the reason why the return is needed.[8]

The Commission has found no evidence that this procedure was ever followed by CIA personnel.

Mail covers are not unlawful if they are conducted in compliance with postal regulations and do not reasonably delay the mail. The opening of mail, however, violated specific statutes prohibiting such conduct and was unlawful (see chapter 9).

In many instances the Agency's files do not clearly indicate the nature of an investigation, the specific evidence suggesting that the person investigated was a security risk and thus a proper subject of investigation, the authority giving approval for special coverage, the reasons underlying the decision to investigate, or the results of the investigation.

Several past Directors of Central Intelligence testified that they believe they authorized all investigations in which wiretaps, bugs or unauthorized entries were utilized. Yet, in over half of the investigative records, a clear showing of the authorizing official is missing.

Investigative files should contain documentation showing the basis and authority for undertaking each investigation. This will assure that such investigations are authorized and have a lawful basis.

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 communications[9] 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.

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[7] 25 U.S.C. sec. 610 (a) and (b).

[8] 26 C.F.R. sec. 301.6103(a).

[9] As defined in the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. secs. 2510–20.

Recommendation (24)

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

Recommendation (25)

CIA investigative records should show that the 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.

C. Handling of Defectors

Investigation of defectors is the responsibility of the CIA under a National Security Council Intelligence Directive, assigning this duty to the Agency as a "service of common concern" to the intelligence community as a whole.

Within the CIA, the Office of Security is charged with providing proper security for the handling of persons who have defected to the United States from other nations. A careful procedure has been developed for such handling.

Generally a defector can be processed in a few months' time. In one instance, however, a defector was involuntarily confined to a CIA installation for approximately three years. For much of this time, the defector was held in solitary confinement under extremely spartan living conditions. The defector was apparently not physically abused.

The justification given by the CIA for the lengthy confinement arose out of a substantial concern regarding the defector's bona fides. When the issue was finally resolved, the defector was given total freedom and became a United States citizen.

The confinement of the defector was approved by the Director of Central Intelligence on the written advice of the General Counsel. The FBI, the Attorney General, the United States Intelligence Board, and selected Members of Congress were all aware to some extent of the continued confinement.

In one other case, a defector was physically abused, although not seriously injured. The Director of Central Intelligence discharged the employee involved.

Conclusions

Such treatment of individuals by an agency of the United States is unlawful. The Director of Central Intelligence and the Inspector General must be alert to prevent repetitions.

D. Other Activities of the Office of Security

The Commission has examined other domestic activities of the Office of Security, including its cover operations, its use of the polygraph as an aid in security investigations, its use of informants among employees or contractor employees to assist in preventing sabotage of its premises or penetrations of its organization, its use of recording systems in certain CIA offices, and its efforts to test the physical security systems of certain private corporations under contract to the Agency.

No violations of the CIA's charter have been found in connection with such activities.