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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

13 September 1973

The Honorable Richard Helms
American Embassy
Box 2000
APO New York 09205

Dear Dick:

I thought I would bring you up to date on the question of legislation affecting the Agency in line with your cable request of 14 August 1973. Subsequent to your discussion with both Senator Stennis and Jim Woolsey, and subsequent to Larry Houston's letter to you of 15 August, Larry has had more detailed discussions with Senator Stennis and Jim Woolsey.

It has become clear that Senator Stennis feels that some type of pre-emptive hearings and legislation is essential. Senator Stennis also plans to handle this matter personally. He has asked us for names of potential witnesses. It seems to us that Senator Stennis wishes to protect the Agency and preserve its existing authorities. We feel our best course of action, therefore, is to work with Senator Stennis and Jim Woolsey, for whom we all have a high regard.

In order that our informal efforts with Senator Stennis not go down a road which would be inconsistent with White House thinking, we have prepared a package for Dr. Kissinger which discusses the problem and contains some legislative proposals which we feel might offer an eventual solution. I think the best way to assist you is to furnish this package, which is enclosed. I should think your reading of these various aspects would amply arm you to respond to Senator Stennis.

HR70-14
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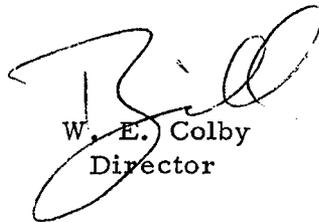
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After I have received a reaction from the White House, I will advise you further. If they agree with informal contact, I intend to make available to our committees the information in the four tabs attached to my memorandum to Dr. Kissinger.

- Today they said to go ahead.

I trust all of this is helpful to you.

Sincerely,


W. E. Colby
Director

Enclosure

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73-4935

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

28 AUG 1973

MEMORANDUM FOR: Dr. Henry A. Kissinger

PROBLEM: Congressional Pressure to Curtail or Modify CIA's
Statutory Authority to Perform Functions Directed
by the National Security Council

I. BACKGROUND

A. Congressional Hearings. A strong effort to amend the Agency's statutory charter is anticipated when Congress returns in September. The Senate and House Armed Services Committees are both committed to hearings--Stennis' announcement came in a letter to Senator Muskie opposing the Eagleton amendment which would have included CIA covert action under the War Powers bill. Nedzi announced hearings by his Special Subcommittee on Intelligence in connection with the rejection of the Reuss amendment to the Procurement Authorization bill which would have prohibited CIA obligation or expenditure of funds authorized under that bill for other than collection, evaluation, correlation and dissemination of information. Admittedly these public announcements were reactive, but Symington, Nedzi and others have independently expressed their interest in either confining the Agency to an intelligence mission or in curtailing or modifying the Agency's authority to conduct covert action.

B. Congressional History. In previous Congresses, proposals seeking to clip the Agency's wings were defeated largely because of the intercession of members of our oversight committees. New congressional assertiveness, coupled with a sincere belief that the institution of central intelligence may be seriously undermined by continued involvement in covert action, has created an entirely new congressional climate even among our supporters. For example, the staff of the Senate Armed Services Committee is drafting amendments to the CIA Act for Stennis as backfire to irresponsible proposals and as a reflection of genuine feeling that the Agency has wandered--or been led or driven by higher authority--too far off its statutory reservation.

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C. Legislative Proposals. Attached is a listing which catalogues various legislative proposals concerning CIA which have been introduced in the 93rd Congress. The principal concerns motivating these proposals are:

1. Improper Involvement in Domestic Activities. Since the inception of this Agency, a minority in the Congress has been concerned with this bugaboo. Now it has achieved political adherents among a broader spectrum of members as a result of Watergate and allegations concerning CIA involvement in police training.

2. Circumvention of the Will of Congress. This concern has been growing over the past several years, and is reflected in legislative restrictions relating to Southeast Asia which have been inserted in both military procurement authorization and foreign assistance authorization legislation. The apprehension, political or real, is that CIA's secret budgetary and appropriation process has been, or may be, used to carry out activities which Congress in its wisdom either has prohibited or has not specifically authorized; e. g., "CIA's secret war in Laos" and support for the SGU's as "local forces."

3. Instrumentality of Presidential Power. An increasing number of members contend that one means of preventing Presidential "usurpation" of the constitutional powers of the Congress is to restrict the use of CIA as an instrumentality for unilateral executive action.

4. Open Budget. There is increasing congressional pressure to disclose intelligence budget figures. One proposal would disclose the total figure for the National Intelligence Program. Another would disclose total figures of various departments and agencies, including CIA, NSA, and the armed services. I am concerned that this trend will lead to pressures for further public explanations of the programs for which the monies were appropriated and that the resulting scrutiny would be damaging to intelligence sources and methods. I have expressed this concern and my views regarding this matter in a letter to Chairman McClellan (attached).

II. COURSE OF ACTION

A. General. In examining options in connection with this upcoming legislative problem, uppermost in our minds is the desirability of quick, decisive and hopefully relatively painless action. Our concern is that the

mere opening up to amendments of our statutory charter is an invitation to a host of irresponsible proposals. The situation could get out of hand, the resulting fanfare could adversely affect our relations with other foreign services and sources, and there will be pressure to expose past Agency operations to add to the "horror stories of dirty tricks."

1. Options. The options available to us include doing nothing, hoping for the cooling of congressional ardor and a possible adjournment of Congress early in October. There is also the unlikely possibility that the oversight committees could be persuaded in hearings that no change at all is needed in the law. Also, we could hope to rely upon a Presidential veto if irresponsible legislation results. However, in view of the situation on the Hill, the most prudent course may involve providing our friends on the Hill with amendments with which we could live and to urge quick, decisive and painless action.

2. Proposal.

a. Domestic Activities. A simple amendment would go a long way to eliminating any undue concern over the Agency's possible improper involvement in domestic activity.

b. Covert Action. We can get substantially at the heart of the expressed concern that CIA has been used to circumvent the will of Congress either by writing a reporting requirement into the 1947 Act or by establishing in legislative history that our committees are given a full and complete account of our activities.

B. Discussion (Domestic Activities). While the statutory duties of CIA specified "under the direction of the National Security Council" relate solely to foreign intelligence activities, the word foreign does not appear in the law. Our proposal is simply to insert the word foreign as a modifier of the intelligence activities it shall be the duty of the Agency to perform under the direction of the National Security Council. It is believed that this simple amendment will assuage unfounded but stated apprehensions.

Hopefully, this amendment will head off a move to strike from the National Security Act a proviso in section 102(d)(3) "That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure." This proviso was cited before

various committees of Congress as a basis for legitimate CIA concern over unauthorized disclosure of intelligence sources and methodology leading to cooperation with E. Howard Hunt's efforts to locate the source of leaks and the preparation by CIA of a psychological profile on Ellsberg. Also, Ambassador Helms recently exhorted Congress in his testimony on Watergate to take a close look at the dilemma imposed by a statutory charge which the Director has no authority to enforce. I believe we should resist any change in this proviso as it has produced good case law. Instead, I propose clarifying the responsibility under the proviso.

C. Discussion (Covert Action). Section 102(d)(5) of the National Security Act specifies that the Agency shall perform "such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct."

1. Statutory Language. Reasonable men could disagree on whether this provision constitutes a legal basis for covert action programs by CIA. The organizational predecessor of the Agency, the Central Intelligence Group, which operated as an establishment of the President under similar language, was not directed to engage in such activities. Accepting a limited definition of the phrase "related to intelligence" forms a basis for arguing that the provision contemplates only information activities. This normal definition is somewhat rebutted by the Encyclopedia Britannica which recognizes that "At one time, intelligence referred largely to information on foreign powers which was used in the formulation of military plans and policies and the conduct of military operations. Both the meaning and scope of intelligence, however, have been greatly extended by national and international revolutionary movements and by the increased resort of nations to political, economic and psychological measures, in addition to the employment of armed forces, in the pursuance of foreign policy objectives."

2. Constitutional Basis. In the attached 1962 memorandum by the Department of Justice on the constitutional and legal basis for covert activities by the Agency, it was recognized that many, if not all, covert activities assigned to CIA are at least "related" to intelligence within the scope of the law in the sense that their performance may require intimate dovetailing with collection operations, use the same or similar sources and methods and yield important intelligence results. Even so, the Justice memorandum justifying

such activities leans more heavily on the exercise of constitutional power of the President not needing an expressed statutory authorization, which is subsequently ratified by the Congress in appropriations for CIA ("ratified" as a result of specific knowledge on the part of responsible committee members and the imputation of general knowledge to the Congress as a whole).

3. Congressional Role. Any participation of Congress in covert actions raises a constitutional question, particularly when conducted under the inherent power of the President. Clearly, the President in carrying out such initiatives should not be concerned with or distracted by possible congressional reaction to the action contemplated, particularly where dispatch, efficiency, and secrecy are indispensable to success.

4. Practical Considerations. As a practical matter, our oversight committees presently review our budget in detail, including funds programmed for covert action. [REDACTED]

[REDACTED]

[REDACTED] To our knowledge there has never been a breach of security resulting from our committees' knowledge of our covert action programs. We are unaware of whether the Chairmen of our committees have ever used this information as a basis for contacting any Administration on the issues involved.

Most of the proposals designed to clip the Agency's covert action wings consist of a flat-out prohibition. Other proposals would impose reporting requirements to our committees on the basis that otherwise no one in Congress is aware of what is going on. Statements by the Chairmen of our committees that they do know what is going on have sometimes been deterred by political considerations and in other instances seem to have little effect on stemming the tide of dissatisfaction.

5. Proposal. In view of the way the system works and our experience to date, it is believed that a statutory amendment requiring that all activities not related to intelligence and directed by the National Security Council be appropriately reported to the Congress would not be an undue burden. Such an amendment first, would provide a statutory basis for covert action; second, would meet substantially the concern that Congress does not know what is going on; third, would formalize in statute the procedures presently followed.

III. RECOMMENDATION

Attached are suggested amendments to the National Security Act of 1947 incorporating the thoughts expressed above. If the amendments meet with approval, it is recommended that:

A. The Senate and House Armed Services Committees be provided the amendments informally by the Agency as suggestions with which we could live.

Approved: _____ Disapproved: _____

B. The amendments be submitted formally to the Congress as an Agency proposal subject to Office of Management and Budget clearance prior to transmittal to the Congress.

Approved: _____ Disapproved: _____

C. Other action you may suggest:

15/ Bill
W. E. Colby

Atts

Legislative Proposals

Bill and Sponsor

Effect on CIA

Status

S. Con. Res. 23
Senator Hathaway

Establishes a joint committee on information and intelligence to oversee CIA, USIA and all information and intelligence agencies.

Before Armed Services.
Agency comments requested.

S. 1547
Senator Humphrey

(H. R. 8785 -
Zablocki)

Establishes a joint committee on national security to oversee the recommendations and activities of the National Security Council with emphasis on reviewing the goals, strategies and alternatives of foreign policy.

Before Armed Services.
Agency comments requested.

S. Res. 159
Senator Proxmire

Establishes a standing committee of the Senate to oversee all activities of the CIA except for appropriation matters which would be referred to the Appropriations Committee.

Before Committee on
Rules and Administration

S. 1935
Senator Proxmire

(H. R. 8592 - 9688
Harrington)

Amends the National Security Act to preclude CIA from carrying out, directly or indirectly in the U. S. , any police, law enforcement or internal security operation; or to engage in any illegal activity in the U. S. ; or to engage in any covert activity abroad without written approval of CIA oversight committees.

Before Senate Armed
Services. Agency comm
requested.

<u>Bill and Sponsor</u>	<u>Effect on CIA</u>	<u>Status</u>
S. 2321 Senator Cranston	Amends National Security Act to limit to 8 years the time any person can serve as DCI.	Before Armed Services. Agency comments requested.
H. R. 7596 Rep. Findley	Amends National Security Act to require that CIA must keep the Congress informed by providing it with intelligence and analyses upon request.	Before Armed Services. Agency comments requested.
H. R. 8432 Rep. Koch	Amends National Security Act to preclude CIA from providing any training or other form of assistance, directly or indirectly, in support of any local or state law enforcement activity.	Before Armed Services. Agency comments requested.
S. 440 Sen. Javits	War Powers Bill. Amendment by Sen. Eagleton would bring under the act any person employed by or under contract with U. S. Government who is actively engaged in hostilities abroad or is an adviser to regular or irregular forces engaged in hostilities. The purpose of the amendment was to exercise greater control by Congress over paramilitary activities of CIA.	Amendment was defeated by Senate on 20 July.

<u>Bill Sponsor</u>	<u>Effect on CIA</u>	<u>Status</u>
H. R. 8152 Rep. Holtzman Amend. to Omnibus Crime Control and Safe Streets Act	The Law Enforcement Assistance Administration is authorized to use the services and equipment and personnel of all agencies and departments <u>not including the Central Intelligence Agency</u> in its efforts to assist local law enforcement agencies.	Passed Congress 2 August and became law (P. L. 93-83)
H. R. 9286 Rep. Reuss Amend. to Military Authorization Bill	No funds under this authori- zation could be used by CIA other than to collect and evaluate information pertinent to the <u>external security</u> of the United States.	Reuss withdrew his amendment when Nedzi assured him on the floor that his sub- committee was under- taking an extensive review of the Agency' role and that revision of the National Security Act will be made.
S. 1443 Sen. Fulbright	Military Assistance Act. Provides that no funds appro- priated by Congress under any law may be used to con- duct any police training or related program for a foreign country. In committee report this is intended to cover training both in U. S. and abroad.	Passed Senate June 26 Passed House amended July 26. Will go to conference or back to Senate.
S. 2335 Sen. Humphrey	Foreign Assistance Act of 1961. Same language as in S. 1443 above, except that Committee report notes that the restric- tive language is not intended to impair narcotics programs.	Reported favorably to Senate on 2 August and then referred to Senate Finance Com.

Justice Memo

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17 January 1962

COPY

Memorandum Re:

Constitutional and Legal Basis for So-Called
Covert Activities of the Central Intelligence Agency.

This memorandum will discuss the constitutional and legal authority for the Central Intelligence Agency to engage in covert activities directed towards the imposition of a particular line of political thought on a foreign country. It is understood that certain cold-war activities of a covert nature, such as "black" propaganda, commando-type raids, sabotage, and support of guerrilla activities, have been engaged in by CIA almost from its inception, pursuant to an express directive of the National Security Council, and that the Congress has repeatedly appropriated funds for the support of such activities.

I. Constitutional Powers of the President.

"As a nation with all the attributes of sovereignty, the United States is vested with all the powers of government necessary to maintain an effective control of international relations." Burnet v. Brooks, 288 U.S. 378, 396. These powers do not "depend upon the affirmative grants of the Constitution," but are "necessary concomitants of nationality." United States v. Curtiss-Wright Corp., 299 U.S. 304, 318.

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"In the preservation of the safety and integrity of the United States and the protection of its responsibilities and obligations as a sovereignty" the constitutional powers of the President are broad. 30 O.A.G. 291, 292. "The very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations . . . does not require as a basis for its exercise an act of Congress", although, like all governmental powers, it must be exercised in subordination to any applicable provisions of the Constitution. United States v. Curtiss-Wright Corp., supra, at p. 320. His duty to take care that the laws be faithfully executed extends not merely to express acts of Congress, but to the enforcement of "the rights, duties, and obligations growing out of the Constitution itself, our international relations, and all of the protection implied by the nature of the government under the Constitution." In Re Neagle, 135 U.S. 1, 64. (1890).

Examples of the exercise of these broad powers are numerous and varied. Their scope may be illustrated by the following: The President may take such action as may, in his judgment, be appropriate, including the use of force, to protect American citizens and property abroad. Durand v. Hollins, Fed. Cas. No. 4186 (C. C. S. D. N. Y. (1860)); In Re Neagle, Supra,

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135 U. S. at 64; Hamilton v. M'Cloughry, 136 Fed. 445, 449-50 (D. Kansas, 1905); II Hackworth, Digest of International Law, 327-334; VI Id., 464-5. Notwithstanding the exclusive power of Congress to declare war, the President may repel armed attack and "meet force with force." Prize Cases, 2 Black 635, 668 (1862). He may impose restrictions on the operation of domestic radio stations which he deems necessary to prevent unneutral acts which may endanger our relations with foreign countries. 30 O. A. G. 291.

Congress' grants of powers to executive agencies in areas relating to the conduct of foreign relations and preservation of the national security from external threats are generally couched in terms which neither limit the powers of the President nor restrict his discretion in the choice of the agency through which he will exercise these powers. Thus, in establishing a Department of State in 1799, Congress directed that the Secretary should perform duties relating to "such . . . matters respecting foreign affairs as the President of the United States shall assign to the Department", and should "conduct the business of the department in such manner as the President shall direct." 1 Stat. 28; R. S. § 202, 5 U. S. C. 156.

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More recently, in establishing the National Security Council, Congress gave it the function of advising the President "with respect to the integration of domestic, foreign, and military policies relating to the national security." 50 U.S.C. 402 (a).

From the beginning of our history as a nation, it has been recognized and accepted that the conduct of foreign affairs on occasion requires the use of covert activities, which might be of a quasi-military nature. See, e.g., the acts of July 1, 1790, 1 Stat. 128, and Mar 1, 1810, sec. 3, 2 Stat. 609. In a message to the House of Representatives declining to furnish an account of payments made for contingent expenses of foreign intercourse, President Polk reviewed that practice and stated:

"The experience of every nation on earth has demonstrated that emergencies may arise in which it becomes absolutely necessary for the public safety or the public good to make expenditures the very object of which would be defeated by publicity." 1/

1/ President Polk continued:

"Some governments have very large amounts at their disposal, and have made vastly greater expenditures than the small amounts which have from time to time been accounted for on President's certificates. In no nation is the application of such sums ever made

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Footnote 1 / continued:

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public. In time of war or impending danger the situation of the country may make it necessary to employ individuals for the purpose of obtaining information or rendering other important services who could never be prevailed upon to act if they entertained the least apprehension that their names or their agency would in any contingency be divulged. So it may often become necessary to incur an expenditure for an object highly useful to the country; for example, the conclusion of a treaty with a barbarian power whose customs require on such occasions the use of presents. But this object might be altogether defeated by the intrigues of other powers if our purposes were to be made known by the exhibition of the original papers and vouchers to the accounting officers of the Treasury. It would be easy to specify other cases other cases (sic) which may occur in the history of a great nation, in its intercourse with other nations, wherein it might become absolutely necessary to incur expenditures for objects which could never be accomplished if it were suspected in advance that the items of expenditure and the agencies employed would be made public." 4 Richardson, Messages and Papers of Presidents, 431, 435 (April 20, 1846)

Compare also Stuart, American Diplomatic and Consular Practice (1952) p. 196, (commenting on prevailing diplomatic practice of all countries), "actual cases of interference in the internal affairs of states to which the envoys are accredited are very numerous."

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An early example of such a secret operation is afforded by the Lewis and Clark expedition of 1803. That expedition was authorized prior to the Louisiana Purchase by a statute providing

"That the sum of two thousand five hundred dollars be, and the same is hereby appropriated for the purpose of extending the external commerce of the United States (2 Stat. 206)."

Congress used this cryptic language at the request of President Jefferson because, in the words of a present-day judge, the "expedition, military in character, would enter into lands owned by a foreign nation with which the United States was at peace and . . . the utmost secrecy had to be observed."^{2/} First Trust Co. of St. Paul v. Minnesota Historical Soc., 146 F. Supp. 652, 656 (D. C. Minn. (1956)), aff'd sub. nom. United States v. First Trust Co. of St. Paul, 251 F. 2d 686 (C. A. 8).

^{2/}In his message to the Congress, President Jefferson stated: "* * * The appropriation of \$2,500 ' for the purpose of extending the external commerce of the United States, ' while understood and considered by the Executive as giving the legislative sanction, would cover the undertaking from notice and prevent the obstructions which interested individuals might otherwise previously prepare in its way." (1 Richardson, Message and Papers of the Presidents, 352 at 354.)

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Under modern conditions of "cold war", the President can properly regard the conduct of covert activities such as are described at the opening of this memorandum as necessary to the effective and successful conduct of foreign relations and the protection of the national security. When the United States is attacked from without or within, the President may "meet force with force", Prize Cases, supra. In waging a world wide contest to strengthen the free nations and contain the Communist nations, and thereby to preserve the existence of the United States, the President should be deemed to have comparable authority to meet covert activities with covert activities if he deems such action necessary and consistent with our national objectives. As Charles Evans Hughes said in another context, "Self-preservation is the first law of national life and the constitution itself provides the necessary powers in order to defend and preserve the United States." War Powers Under the Constitution, 42 A. B. A. Rep. 232 (1917). Just as "the power to wage war is the power to wage war successfully," id. 238, so the power of the President to conduct foreign relations should be deemed to be the power to conduct foreign relations successfully, by any means necessary to combat the measures taken by the Communist bloc, including both open and covert measures.

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The exclusive power of Congress to declare war has been held not to prevent use by the President of force short of war to protect American citizens and property abroad. A fortiori, it does not prevent his use of force short of war for other purposes which he deems necessary to our national survival. In either case the magnitude and possible grave international consequences of a particular action may be such as to render it desirable for the President to consult with, or obtain the approval or ratification of, the Congress if circumstances permit such action. But the necessity for obtaining such approval does not depend on whether the action is overt or covert.

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II. Statutory Authority

There is no specific statutory authorization to any agency to conduct covert cold war activities. Nor is there any statutory prohibition, except to the extent, if any, that the prohibitions of the Neutrality Acts, 18 U.S.C. Chapter 45, against performance of certain acts by persons within the United States might be deemed applicable to such activities in particular circumstances. Hence the President is not restricted by act of Congress in authorizing such acts, or in assigning responsibility for them to such agency as he may designate.

Congress has authorized the Central Intelligence Agency, "for the purpose of coordinating the intelligence activities of the several government departments and agencies in the interest of the national security," to perform, inter alia,

"such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct." 50 U.S.C. 403(d)

As previously noted, the National Security Council, which includes in its membership the President, the Vice President, the Secretary of State and the Secretary of Defense, has overall responsibility for advice to the President respecting all matters "relating to the national security."

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We understand that in 1947, Secretary of Defense Forrestal asked the Director of Central Intelligence if CIA would be able to conduct covert cold-war activities, such as black propaganda, commando-type raids, sabotage, and support of guerrilla warfare. CIA advised at that time that it would conduct such activities if the National Security Council developed a policy that the United States would engage in such covert activities and assigned their conduct to CIA, and if the Congress appropriated funds to carry them out. In the latter part of 1947 the National Security Council developed a directive (NSC 10/2) setting forth a program of covert cold-war activities and assigned that program to the Office of Policy Coordination under the Director of Central Intelligence, with policy guidance from the Department of State. The Congress was asked for and did appropriate funds to support this program, although, of course, only a small number of congressmen in the Appropriations Committees knew the amount and purpose of the appropriation. The Office of Policy Coordination was subsequently combined with the clandestine intelligence activities in the Office of the Deputy (Plans) of CIA and the cold-war charter was assigned

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to CIA in coordination with the Department of State and Defense by NSC Directive 5412.

A significant part of the strictly intelligence and counter-intelligence functions of CIA are clandestine in nature. It could perhaps be argued that many if not all of the covert activities assigned to CIA by the directives referred to above are at least "related" to intelligence affecting the national security within the scope of 50 U.S.C. 403 (d) (5) in the sense that their performance may need to be intimately dovetailed with clandestine intelligence operations, may involve use of the same or similar contacts, operatives and methods, and may yield important intelligence results.^{3/} Alternatively, it would appear that the executive branch, under the direction of the President, has been exercising without express statutory authorization a function which is within the constitutional powers of the President, and that the CIA was the agent selected by the President to carry out these functions.

^{3/} The historic relationship between the two types of activity is indicated by the fact that the Office of Strategic Services, CIA's predecessor during World War II, engaged both in intelligence work, and in assistance to and coordination of local resistance activities. See Alsop and Braden, Sub Rosa, The O.S.S. and American Espionage (1946) p. 7.

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Congress has continued over the years since 1947 to appropriate funds for the conduct of such covert activities. We understand that the existence of such covert activities has been reported on a number of occasions to the leadership of both houses, and to members of the subcommittees of the Armed Services and Appropriations Committees of both houses.^{4/} It can be said that Congress as a whole knows that money is appropriated to CIA and knows generally that a portion of it goes for clandestine activities, although knowledge of specific activities is restricted to the group specified above and occasional other members of Congress briefed for specific purposes. In effect, therefore, CIA has for many years had general funds approval from the Congress to carry

^{4/} See letter dated May 2, 1957, from Mr. Allen W. Dulles, Director, CIA to Senator Hennings, Freedom of Information and Secrecy in Government, Hearing before the Subcommittee on Constitutional Rights of the Senate Committee of the Judiciary, 85th Cong., 2d Sess., p. 376 at 377:

"The Director of the Central Intelligence Agency appears regularly before established subcommittees of the Armed Services and Appropriation Committees of the Senate and of the House, and makes available to these subcommittees complete information on Agency activities, personnel and expenditures. No information has ever been denied to their subcommittees."

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on covert cold-war activities, which the Executive Branch has the authority and responsibility to direct.

It is well-established that appropriations for administrative action of which Congress has been informed amount to a ratification of or acquiescence in such action. Brooks v. Dewar, 313 U.S. 354, 361; Fleming v. Mohawk Co., 331 U.S. 111, 116; see also Ivanhoe Irrig. Dist. v. McCracken, 357 U.S. 275, 293-294; Power Reactor Co. v. Electricians, 367 U.S. 396, 409. Since the circumstances effectively prevent the Congress from making an express and detailed appropriation for the activities of the CIA, the general knowledge of the Congress, and specific knowledge of responsible committee members,^{5/} outlined above, are sufficient to render this principle applicable.

Prepared by Office of Legislative Counsel,
Department of Justice

^{5/} Compare the cases of veiled, or contingent fund, appropriations referred to in Part I. And note the importance placed on the close contact between an agency and "its" committees. E.g., Panama Canal Co. v. Grace Line Inc., 356 U.S. 309, 319.

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1947 Act Amendments

PROPOSED AMENDMENT

Changes in existing law are shown as follows: existing law proposed to be omitted is enclosed in brackets; new matter is underscored.

NATIONAL SECURITY ACT OF 1947,
as amended

* * *

CENTRAL INTELLIGENCE AGENCY

SEC. 102.

* * *

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

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

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

(3) to correlate and evaluate foreign intelligence relating to the national security, and provide for the appropriate dissemination

of such intelligence within the Government using where appropriate existing agencies and facilities: PROVIDED, That the Agency shall have no police, subpoena, law-enforcement powers, or internal-security functions: PROVIDED FURTHER, That the departments and other agencies of the Government shall continue to collect, evaluate, correlate, and disseminate departmental intelligence: AND PROVIDED FURTHER, That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure and pursuant to that responsibility he shall develop appropriate plans, policies, and regulations and report to the Department of Justice for appropriate action any violation of such plans, policies and regulations;

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

(5) to perform such other functions and duties [[related to intelligence]] affecting the national security [[as]] related to the field of foreign intelligence as may be specifically directed by

the National Security Council [[may from time to time direct]]

and reported to the Congress in the manner the Congress

prescribes. *

*Note: If possible, it would be preferable to have the issue of reporting to the Congress covered in the legislative history and committee reports.

McClellan Letter

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DCI/IC-73-0799/1

27 JUL 1973

Honorable John L. McClellan
Chairman, Committee on Appropriations
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

You asked for my views on the disclosure in the Committee's report of budget figures for the National Intelligence Program which I presented to the Committee on 11 July 1973. Disclosure of the total figure in the Committee's report would not in my view present a security problem at this time. It would, however, set a precedent for disclosure of this figure annually. If this were to occur, the annual fluctuations in our total intelligence effort would be revealed. I do not believe it would be in the national interest to disclose this kind of information to foreign nations.

The public disclosure of budget totals for DIA and State/INR have not presented security problems. Public disclosure of total figures for all the programs, however, would reveal a good deal about the distribution of our intelligence resources among different types of intelligence activity, such as clandestine collection, signals intercept, and overhead reconnaissance. More importantly, an annual up-date of such figures would provide insights into the changes and trends in our intelligence programs which could be damaging to intelligence sources and methods.

In a more general sense, I am concerned that public disclosure of total intelligence figures will lead to pressures for further public explanations of the programs for which the monies were appropriated. Any scrutiny of the substance of the programs by other than those authorized could, in my view, be damaging to intelligence sources and methods.

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I understand, however, your wish that selected members of the Senate not now privy to such information be advised of the breakdown of figures for national intelligence activities into CIA, DIA, NSA, Army, Navy, Air Force and State Department. I have no objection on security grounds to the disclosure of this breakdown orally to such members on a classified basis.

I am aware, Mr. Chairman, that there are many considerations in determining the optimum position on the public disclosure of intelligence budget figures. The views I have expressed above address only those considerations for which I am primarily responsible under the National Security Act of 1947 -- the protection of intelligence sources and methods. The final determination of what should or should not be publicly disclosed is, in my view, the proper function of the Congress.

Sincerely,

~~W. E. Colby~~

W. E. Colby

DCI/IC/CCG/JHLeavitt:ls (8/3/73)

~~SECRET~~