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COMMISSION ON CIA ACTIVITIES WITHIN THE UNITED STATES

Washington, DC 20500

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178-10002-10083

March 17, 1975

TO
FOR
COMMENT

178-10002-10095

MEMORANDUM

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To: File
From: Timothy Hardy
Subject: INTERVIEW WITH JOHN WARNER,
GENERAL COUNSEL OF THE CIA

Mr. Warner was interviewed between 2 p.m. and 3:30 p.m. on March 13, 1975, in his office at the CIA.

I. THE OFFICE OF GENERAL COUNSEL (OGC)

The Office of General Counsel has 14 lawyers. All the lawyers except for one had been recruited from within the rest of the CIA organization. There are a few other persons in the Agency who handled legal functions outside the Office of General Counsel: one OGC lawyer is detailed to logistics, three work in project MUTUAL, and a lawyer works within the personnel office. Once a man is assigned to the OGC, he normally stays there for the rest of his CIA experience. Mr. Warner and one other lawyer are the only men in the office who have been detailed elsewhere in the Agency. The OGC is not divided along directorate lines. Some lawyers have specialties, but they are functional specialties.

The OGC is required to be consulted in a number of areas: (1) it is consulted on all Section 7 alien immigration cases; (2) it reviews all procurement contracts; (3) it approves all administrative plans; (4) it approves all liquidation plans; and (5) all regulations must be approved by the OGC. Within recent years, it has reviewed NSCID's and DCID's, but there are no requirements for such reviews.

The OGC has been consulted more regularly on management decisions within the past couple of years than was true under previous DCI's. Mr. Colby consulted the OGC for guidance on all the directions that went out after

TH:clb

cc: Mr. Belin
Mr. Gray
Mr. Gellhorn

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collection of the Family Jewels. Mr. Colby has an understanding of law because he went to law school, but he has told Warner a number of times not to let him practice law. There is no OGC regulation which requires operational units to consult it on propriety of planned activities. Mr. Warner now feels such a regulation might be superfluous because he is so often questioned in the current climate. This was not the case five years ago. Mr. Warner is of the opinion that an official regulation saying what sort of activities should be cleared through OGC might lead to less checking, rather than more.

The OGC maintains bound copies of all its legal opinions back through OSS days. They have been indexed since 1966.

The OGC staff is now collecting all relevant legal opinions for the Commission. The Commission should receive them next week. The OGC staff is not finding much on activities that had questionable propriety.

II. THE LEGISLATIVE HISTORY OF THE CIA ACTIONS

Mr. Warner was in the Office of General Counsel in OSS. He stayed on to work with the CIG and then on the legal staff of the CIA. He and Mr. Houston were in separate offices. Warner worked on the 1949 Act; Houston, on the 1947 Act.

Originally, Mr. Warner was involved in the drafting of a comprehensive bill to be presented to Congress in 1947. This bill would have included the provisions which were eventually included in both the 1947 and 1949 Acts. The detailed bill was dropped out of the 1947 National Security Act because White House officials felt that it would interfere with the more important objective of unifying the armed forces.

Mr. Warner suggests that the Commission talk to Walter Pforzheimer. He was the legislative liaison for the CIG. He is retired and now lives in Washington.

Mr. Warner would guess that the original Donovan plan for the CIA to conduct "subversive operations" was not included in the statute because officials were reluctant to use such words in law in that era. They were similarly

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reluctant to use words such as espionage. However, Mr. Warner says that he doubts that Congress ever contemplated that the CIA would ever conduct covert activities. He says that a 1947 OGC legal opinion agrees that Congress did not contemplate such activities. When such activities were begun by the Agency, reliance was placed on the President's inherent power to conduct such activities. Congress has ratified this authority by appropriating money over the years. A 1962 CIA legal opinion expresses this view. It was written in conjunction with the Department of Justice, which also wrote a legal opinion at the time.

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Mr. Warner says the 1949 CIA act was not intended to expand the functions of the Agency in any way. He said there were rumblings at that time about the need to conduct clandestine activities, but those were not taken into account in drafting the bill.

Mr. Warner is not sure why the word "collect" was not included as one of the duties of the CIA. He says that perhaps collection of data from other sources was not considered as collection of intelligence. The original concept of the Agency was that it was to be primarily a coordinator with some espionage responsibilities. He doubts that any of the drafters of the legislation had any clear concept of what the Agency would be doing 10 or 15 years later. For many years, the other intelligence agencies thought of the CIA as merely one person among equals. They resisted allowing the CIA to have direction over their activities.

III. ALLEGATIONS AGAINST THE CIA

A. Mail Intercepts

Mr. Warner was not aware of the mail intercept programs until the Family Jewels episode.

B. The Ober Group

Mr. Warner was generally aware of the Ober activities. He was consulted only when it was decided to end the activity.

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C. Surveillance of Dissidents

Mr. Warner was not consulted on any surveillance projects. He was aware that informants had been put in a construction crew building the Langley headquarters.

D. Loan of Equipment to Local Police Forces

Mr. Warner was never asked whether it was proper for the Agency to loan equipment or personnel to local police forces. He was generally aware of good relations maintained by the Agency with local forces.

The Office of General Counsel was asked at the time of the May Day demonstration to be the focal point for coordinating actions with the Department of Justice. They consulted with the Department of Justice about getting marshals to protect the Agency. They had agreed that the CIA would pay travel expenses if marshals were brought in from out of town. At the same time, the OGC was asked whether it would be proper for the Office of Security to lend 50 hardhats to the Fairfax police should they need to be used to protect the headquarters building. The OGC said yes.

E. Assassinations

Mr. Warner has no knowledge of any assassination attempts.

F. Allegations in General

Mr. Warner has answered the above questions in light of his personal acquaintance with the projects and his acquaintance with general OGC knowledge. He says that many projects may have been discussed by Mr. Houston with the DCI without his ever being aware of their discussions.

IV. MISCELLANEOUS

At the time of the Patty Hearst kidnap, the FBI asked the CIA to prepare profiles of the Symbionese Liberation Army (SLA). The request was denied. Mr. Warner would guess that there is no paper on the request, but that it was handled in a morning staff meeting.

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Mr. Warner said that Mr. Colby discusses a great many issues in his morning staff meetings. He said he is much more open than were previous DCI's.

Mr. Warner said the Office of General Counsel has never given any general guidance to the rest of the Agency on proper classification procedures. He says the component offices rely strictly on the Executive Order. He doubts that it is possible for more detailed classification policy guidance to be given. The OGC is currently working on better means to legally protect sources and methods. They have drafted criminal statutes which would create strict liability for disclosure of sources and methods information.

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