The original documents are located in Box 6, folder "Intelligence - Decision Book (4)" of the Richard B. Cheney Files at the Gerald R. Ford Presidential Library.

NATIONAL ARCHIVES AND RECORDS SERVICE

WITHDRAWAL SHEET (PRESIDENTIAL LIBRARIES)

FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
1. Book	Intelligence Community Decision Book (~~247~~ 250 pp.)	12/22/75	A
	page count for each chapter and appendix on pink sheet in closed file.		
	opened in sanitized form except for. CIA letter 1/6/99 Lit 4/2000		
	1a. Letter, Albert Hall (OSD) to James Lynn 3pp.	12/18/75	A
	1b. memo, Stephen Gardner (Treasury) to James Lynn re: Study of the Organization and Management of the Foreign Intelligence Community 6pp.	12/18/75	A

FILE LOCATION

Cheney Files
General Subject File
Intelligence Community Decision Paper (1)-(4) Box 6

RESTRICTION CODES

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WHM, 5/24/85

Recommendation (5)

a. The functions of the President's Foreign Intelligence Advisory Board should be expanded to include oversight of the CIA. This expanded oversight board should be composed of distinguished citizens with varying backgrounds and experience. It should be headed by a full-time chairman and should have a full-time staff appropriate to its role. Its functions related to the CIA should include:

1. Assessing compliance, by the CIA with its statutory authority.
2. Assessing the quality of foreign intelligence collection.
3. Assessing the quality of foreign intelligence estimates.
4. Assessing the quality of the organization of the CIA.
5. Assessing the quality of the management of the CIA.
6. Making recommendations with respect to the above subjects to the President and the Director of Central Intelligence, and, where appropriate, the Attorney General.

b. The Board should have access to all information in the CIA. It should be authorized to audit and investigate CIA expenditures and activities on its own initiative.

c. The Inspector General of the CIA should be authorized to report directly to the Board, after having notified the Director of Central Intelligence, in cases he deems appropriate.

V

TREASURY COMMENTS ON RECOMMENDATION (5)

I think that it is very important that the President's Foreign Intelligence Advisory Board be strengthened by increasing its responsibilities and assuring that its membership has a broad base of public representation. An Advisory Board consisting of citizens of great distinction and leaders of demonstrated integrity can be very effective in assuring the President, the Congress, and the public of the integrity, as well as the quality, of our intelligence operations.

It is important that all of the members of the Advisory Board have the personal trust and confidence of the President. The Chairman of the Board should be a person of publicly demonstrated leadership and integrity who should have free and direct access to the President to discuss the Board's work. A man who best exemplifies the qualities I would like to see in a Chairman is George Shultz, who is already a member of the Board. I recommend that you appoint him Chairman of the Advisory Board.

The Board is already carrying out certain of the responsibilities noted in the Commission report (e.g., assessing the quality of foreign intelligence estimates). In view of the additional responsibilities proposed, particularly with respect to FIAB's role in "assessing compliance by the CIA with statutory authority", we would suggest that it would be appropriate for the Board to meet more frequently than it has in the past.

More importantly, I believe that it is essential that the Board's oversight responsibilities be perceived by the public as an ongoing and regular review process. This can best be accomplished, in my view, by going a step further than is proposed in the Commission's recommendation. Section "C" proposes that the Inspector General of the CIA be authorized to report directly to the FIAB after notifying the Director of Central Intelligence in cases he deems appropriate. I suggest that the reporting relation between the Inspector General and the Board be strengthened and formalized. I also believe that an important working relationship should be developed between the FIAB and the CIA General Counsel, as the latter position is proposed to be restructured (see Recommendation 10).

The General Counsel and Inspector General would each appear personally, outside of the presence of other CIA officials, before the FIAB to report on the sufficiency of the agency's compliance efforts any CIA activities that either official viewed as beyond the agency's charter. Of course, the Board would conduct such other inquiries as it deemed appropriate to satisfy itself of the propriety and effectiveness of CIA operations.

If, after its review, the Board had no reason to believe that the agency had violated its statutory authority, the Board would make public a written finding to that effect. Any shortcomings would be reported promptly to the President and the officials responsible for remedial

action. The Board should also establish procedures for effective follow-up on the implementation of its recommendations.

A procedure such as that outlined above would serve to assure the public that adequate independent oversight of CIA activities was taking place, while limiting the risk that the agency's mission would be compromised through release of information about sensitive operations. Having the two senior CIA officials responsible for monitoring the agency's activities report to the FIAB would provide a useful external check on Agency conduct that is not now available. The fact that CIA operations would be subject to review by distinguished citizens who would be giving their public assurance that they were satisfied as to the propriety of CIA activities would provide a significant degree of accountability that is now absent.

In addition to providing an assurance to the American people that the CIA was operating within the bounds of its authority, the Board would maintain its important role in reporting to the President how effectively the CIA was carrying out its mission to render an assessment of the quality of the CIA's performance.

As well as working through the Inspector General and General Counsel at CIA, the Board will have the resources of other CIA components available to it and will continue to draw on the views of other departments and agencies concerned with intelligence activities. The Board will also have the benefit of reports and recommendations made by the

Joint Congressional Committee. Thus, it would be unnecessarily duplicative to build up a large staff to perform investigatory functions, although a small permanent staff or secretariat definitely would be essential.

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

December 18, 1975

MEMORANDUM FOR THE PRESIDENT

Re: Options for the President on Organization and Management of the Foreign Intelligence Community

I am limiting my comments to those portions of the options paper which are of principal concern to the Justice Department, namely, those relating to executive branch oversight of intelligence operations and means of assuring compliance with law. I may note, however, that in deciding upon organizational issues affecting the intelligence community, you should bear in mind that the FBI, while engaged primarily in counterintelligence and law enforcement activities, does conduct certain foreign intelligence activities (e.g., wiretapping within the United States) when specifically tasked to do so by other agencies. I believe that all standardized wiretapping and other forms of electronic surveillance within the United States which regularly require factual determinations bearing upon lawfulness under the Fourth Amendment should continue to be performed by the FBI, under the immediate supervision of the Attorney General, and that, as new techniques are developed, those that require similar factual determinations should be treated in the same fashion.

I, of course, support the proposal for detailed guidelines governing intelligence-gathering activities here and abroad, and governing the conduct of covert operations. I presume that the Attorney General would have a major part in the development of those guidelines. He can only be assured, however, that they reach all aspects of activity which should be covered if the Department is proximately involved in the continuing oversight of the intelligence community, as discussed below. For example, I think it important that the guidelines address each individual type of electronic surveillance now conducted and that they forbid the use of any new types until they are reviewed and included. But there may be other issues and practices which should be looked at.

Concerning oversight arrangements: On the basis of our experience and practice within the Department of Justice, I believe it would be desirable to establish both agency inspector generals and a similar official for the entire community. The latter would be responsible for reviewing practices of the agency-inspecting units, thereby assuring development of community-wide standards and practices without the necessity of creating a massive office. The community-wide inspector general would also conduct specific investigations when it is believed an agency unit is unable to act forcefully. I think it important that inspector generals at every level be required to consult with the Attorney General whenever they have information concerning impropriety which may rise to the level of criminal violations and whenever they have reason to believe that the guidelines for the conduct of intelligence gathering and covert action programs have been violated.

As for oversight from outside the intelligence community: I think the concept of a special counsel to the President concerning intelligence community abuses is radically unsound. Both the Attorney General and the President would be placed in intolerable positions if action approved by the special counsel were subsequently found by the Attorney General to be in violation of law. A government-wide inspector general raises the same problem to a certain degree, and a special Justice Department staff unit seems to me unnecessary and unrealistic. If the guidelines are developed as discussed above, and a community inspector general system which reports violations to the Attorney General is established, it seems to me no more is needed than the cross-check of Attorney General membership on the National Security Council and Justice Department participation in the appropriate NSC committees, including the Forty Committee.

The Attorney General ought to be in a position to ~~so that he can~~ raise a question ~~alert~~ about practices which those intimately engaged may not think to raise or which the inspector general might not raise. Thus, while there are obvious arguments in favor of protecting the Attorney General, I think it is important that the Attorney General be a member of the relevant committees which will indicate the policy decisions and practices. A fairly good example would be the use of United States corporations in such a way as to raise problems with domestic law where it may be important to find appropriate legal solutions. This was something which should have been alerted. (Hindsight is easy, of course.) But there are other circumstances recounted in the Rockefeller Commission report.

in intelligence collection

SIR

Disregard, included

Dick, the

President's copy

and Brent's copy

have an insert

containing agency

views of DoD, CIA,

Justice, et al. at this

point.

APPENDIX 2 - INDEX

- Six Summary Legal Issue Papers
- Draft Executive Order Imposing Restrictions
- Draft Restrictions Order Fact Sheet
- Summary of Agency Comments on Restrictions Order

LEGAL ISSUES

Attached are summaries of six legal issue papers relating to intelligence activities. These papers do not represent the official views of the Justice Department nor of any other department. Should you desire more authoritative views on any of these issues, opinions of the Attorney General on desired subjects will be obtained. The topics covered in these papers include:

1. Intelligence Activities and Individual Rights
2. Statutory Charters for Intelligence Organizations and Functions
3. Separation of Powers and Congressional Oversight over Foreign Intelligence Functions
4. The Constitutional, Statutory and Legal Basis for Covert Action
5. Secrecy and Protection of Intelligence Sources and Methods
6. Legal Issues Related to Classified Intelligence Budgets

INTELLIGENCE ACTIVITIES AND INDIVIDUAL RIGHTS -- SUMMARY

1. Constitutional and legal problems presented by intelligence-gathering activities.

A. Electronic surveillance - Title III of the Omnibus Crime Control and Safe Streets Act establishes a detailed procedure for interception of wire and oral communications within the United States, including a judicial warrant requirement applicable, in general, to criminal investigations. The Title contains a proviso, however, stating that it was not intended to limit the President's power in the national security and foreign intelligence area. Thus surveillance in this area is governed only by constitutional restriction. The present state of the law is as follows:

1. Under the Supreme Court's 1972 Keith decision, domestic security surveillances not involving the activities of foreign powers and their agents, require a judicial warrant.

2. Under two court of appeals decisions -- Brown and Butenko, electronic surveillance for foreign intelligence and counterintelligence purposes is lawful under the Fourth Amendment, even in the absence of

a warrant, at least where the target of the surveillance is an agent or collaborator of a foreign power.

Under a December 1974, Presidential memorandum, the Attorney General is vested with authority to approve warrantless electronic surveillance within the United States for foreign intelligence and counter-intelligence purposes. Both the Department of Defense and the CIA conduct electronic surveillance for such purposes abroad. The surveillance operations of the NSA present some problems under the Brown and Butenko decisions because it may be practically impossible to limit intercepts to foreign intelligence information. Broadly speaking, all of these operations are probably legal under current law, but the special NSA problems are now, at the President's direction, the subject of study by the Justice Department.

B. Surreptitious Entry. Surreptitious entries are presumably subject to the same 4th amendment rules as electronic surveillance, including the Brown-Butenko exception to the warrant requirement.

The Attorney General presently has authority, under Presidential directive, to authorize surreptitious entry to install electronic surveillance for foreign intelligence purposes; no Presidential directive authorizes surreptitious entry for any reason other than electronic surveillance.

C. Mail Covers and Openings. Mail covers -- the recording of information on the outside of mail -- is not subject to Fourth Amendment restrictions. It is, however, governed by postal regulations that do not clearly specify which agencies may request covers and for what purposes. Mail opening is impermissible under the Fourth Amendment without warrant, but again this is probably subject to the Brown/Butenko exception for foreign intelligence and counterintelligence. Statutes, however, prohibit mail openings without warrant, and violations are subject to criminal penalty.

D. Other investigative techniques, such as use of informers, secret agents, physical surveillance and interrogations do not violate the Fourth Amendment or any statute. It is conceivable, however, that if they are not justified by legitimate governmental purposes they may, in some circumstances, violate First Amendment rights.

2. Constitutional and legal problems relating to information dissemination and use.

Dissemination of information obtained through intelligence investigations for partisan or otherwise illegitimate purposes could violate First Amendment or due process rights. The recently enacted Privacy Act precludes all disclosure of agency records without consent except under certain limited circumstances.

Statutory Charters for Intelligence Organizations and Functions

I. Identification of Issues

The major organizations, responsibilities, and functions of the Intelligence Community - with few exceptions - are not derived from statute; they are largely based on broad executive authority of the President for the conduct of foreign affairs and the command of the armed services, and - to some extent - on the broad authorities of the Director of Central Intelligence (DCI) and the Secretary of Defense to conduct the operation of their agencies.

Only the correlation/evaluation (or production) and coordination functions of the DCI/CIA are specifically recognized in statute; there are no similar statutory provisions for the conduct of overhead reconnaissance, clandestine human source collection, courterintelligence, electronic intercept, or covert action. In terms of organization, only CIA has a specific statutory basis. There are no specific statutes establishing the National Security Agency (NSA), the Defense Intelligence Agency (DIA), the National Reconnaissance Office (NRO), the FBI, the Service Cryptologic Agencies (SCAs), or other Service military intelligence entities. Some of the functional and organizational arrangements are recognized in NSC intelligence directives, other Presidential directives, DCI directives, DOD directives, or Service or JCS directives; some - the

NRO, for example - rest on no formal directive, but on informal, written interagency agreements. Almost all of these directives/memoranda are, of course, classified.

The absence of statutory or administrative documents regarding these organizations, their functions, and the responsibilities gives rise to three major legal/policy issues:

(1) Would specific or more explicit public recognition - in statute, executive order, or other document - of the functions and organizations improve their activities or at least make them more respectable in the public eye?

(2) Should this official and public recognition include prohibitions or limitations on the activities of these organizations that would provide a greater degree of public confidence in their lawfulness?

(3) Would a variety of critical functions now performed by the Intelligence Community (such as covert action, electronic intercept, counterintelligence, protection of sources and methods, etc.) be more defensible legally and politically, arouse less suspicion, and be more effectively performed if officially and publicly recognized?

Since the more specific functions mentioned in # 3 above are addressed in separate papers in detail, no specific effort is made to cover them further in this paper.

II. Factual Background and Legal Discussion

A. Present System of Organizational and Functional Assignments and Limitations

The specific statutes dealing with the organization and the functions of the Intelligence Community are the National Security Act of 1947 and the Central Intelligence Agency Act of 1949. These statutes serve as the organic acts by which the CIA was established and is currently administered. There are no similar statutes for any other intelligence agency, and the basis for their creation and current operations is heavily dependent on the broad executive responsibility of (1) the President, for the conduct of foreign affairs, as head of the National Security Council, and as Commander in Chief; (2) the DCI, in his role as coordinator of intelligence activities; (3) the Secretary of Defense as head of the Department of Defense; and (4) the separate Military Departments, the Attorney General , and other department or agency heads.

The major current organizational/functional assignments and their legal bases are as follows:

(1) DCI/CIA - The statutes noted above provide specifically for the CIA functions of advising the NSC on intelligence matters, coordinating intelligence activities, and correlating and evaluating intelligence; in addition, these statutes provide that CIA will perform "such additional services of common concern" and "such other functions and duties related to intelligence" as the NSC directs. In a series of specific classified issuances (NSC intelligence directives), the NSC has directed DCI/CIA to assume, among other duties, certain responsibilities for coordinating production, establishing requirements, conducting clandestine human source collection, interpreting photography, and accomplishing some overt collection both overseas and in the U.S. Certain other current CIA functions - for example, satellite collection, communication support operations, and covert action - are not specifically covered in this series of directives, but have been established and conducted by CIA under less formal Presidential/NSC issuances and the broad authorities implicit in the 1947 and 1949 acts.

The 1947 statute also provides specific limitation on the intelligence activities of CIA, namely that CIA has "no police, subpoena, law enforcement, or internal security functions."

(2) NSA - NSA's current intelligence functions - intercept and processing of foreign communications - were assigned by Presidential memorandum in 1952 and reflected in an NSC intelligence directive at that time. Although the use of NSC intelligence directives (NSCIDs) had previously been used primarily to assign functions to an existing organization (CIA), this NSCID directed the Secretary of Defense to act as executive agent of the government for the conduct of these activities and to establish NSA as a separate agency to conduct these functions. The existence of NSA and the legitimacy of its activities have apparently been recognized by Congress in certain statutes relating to the protection of communication intelligence information, the Constitutional power of the President to conduct electronic surveillance for foreign intelligence purposes, and the need to provide special administrative powers to NSA relating to employment.

(3) National Programs (NRO) - The function of this program (satellite reconnaissance) and the existence of the NRO organization are officially classified; as a result, neither the function nor the organization has a specific statutory basis. The NRO was established as a separate Defense agency reporting to the Secretary of Defense by DOD-CIA agreement in 1965. The Secretary of Defense, of course, has broad authority under the National Security Act of 1947 and the Defense Reorganization Act of 1958 to control and reorganize Defense activities.

(4) DIA - DIA was established in 1961 by direction of the Secretary of Defense under the reorganization authority granted by the Defense Reorganization Act of 1958. The Secretary's plan was reported to the Armed Services Committee as required by statute and DIA was subsequently established.

(5) FBI - There is no statute establishing the FBI. Under provision of 28 U.S.C. 533, the Attorney General may appoint officials "(1) to detect and prosecute crimes against the United States, (2) to assist in the protection of the President, and (3) to conduct such investigations regarding official matters under the control of the Department of Justice and the Department of State as may be directed

by the Attorney General." Other statutes, such as the Congressional Assassination, Kidnapping and Assault Act, vest in the Bureau special responsibilities, but its principal investigatory authorities appear to rest upon Executive Order and Presidential statements or directives placing these responsibilities on the Bureau.

(6) Service Cryptologic Agencies (SCAs)/Military Intelligence Agencies - The SCAs predated the establishment of NSA and now operate under the direction of NSA for their communications intercept missions. All were established by the service chiefs of staff pursuant to the broad functions and duties assigned to the services by statute. The various military intelligence agencies, which perform a wide variety of intelligence functions, also were established pursuant to broad Service responsibilities.

B. Present State of the Law

(1) Statutory Basis: Except for the DCI/CIA, there is a notable absence of specific statutory bases for the organization of and functions performed by the Intelligence Community. Almost all are derivative of broad executive authorities entrusted in the

President, the DCI, the Secretary of Defense, and the military services. In almost all cases, these authorities have been exercised through classified directives and memoranda. Nonetheless, a small group of senior Congressmen was privy to the basic organization and functions such that a budget process could be conducted.

It is clear that the Congress did not envision, either in the establishment of CIA or in any specific subsequent legislation, the large, complex, and expensive organizational and functional arrangement that has come to pass. More specifically, the development of CIA as a major element in intelligence collection and covert action operations - as it now is - does not appear to have been contemplated by existing statutes. Similarly, the importance and growth of both communications intercept and satellite reconnaissance are reflected poorly or not at all in statute and have been treated so secretively that there is a substantial question that these organizations and functions are appropriately conducted.

(2) Other Authorities: There appears to be sufficient authority derivative from the constitutional duties of the President and the statutory responsibilities of the DCI, the Secretary of Defense, other department heads, and the Services to provide for a reasonable basis for the current organizational and functional assignments. Clearly, the Congress - both by specific legislation and through the annual appropriations process - has recognized at least the major outlines of current Intelligence Community organizations and functions. (Only the NRO is devoid of any specific congressional recognition.) However, while certainly some key members of Congress were familiar with these aspects of intelligence activities, no continuing and explicit recognition is provided by an objective reading of congressional activities.

(3) Limitations: With the exception of specific limitations on CIA's internal security role contained in the National Security Act, there are no statutory restrictions or limitations specifically applicable to the intelligence organizations and

their functions. This largely is the result of the absence of specific legislation covering these organizations and their functions. Non-statutory limitations and restrictions are almost nonexistent except in the form of internal agency guidelines.

(4) Exceptions from Administrative Requirements: Many statutes - the CIA Act of 1949, the Classification Act, the CIA Retirement Act, and the previously mentioned acts applicable to NSA, for example - provide for specific examptions for intelligence agencies from otherwise standard administration procedures.

III. Options for Dealing with Intelligence Charters and Limitations

The options available for dealing with the absence of statutory charters for intelligence organizations and functions and of limitations

on their activities are heavily dependent on political and policy considerations as opposed to purely legal considerations.

A. Options for Charters/Functions

1. Statute providing basic outline of intelligence agencies' organization, functions, and activities.
2. Revised statute for CIA with or without specific statutes for, at least, NSA and NRO.
3. Specific, detailed statutes for all major elements - CIA, NSA, NRO, DIA, SCAs, FBI, and some Service entities.
4. Generic statute for basic functions and providing broad authority to President (or DCI or Secretary of Defense) to allocate functions subject to procedural approval.
5. Executive order(s), rather than statutes, covering any of the above alternatives.
6. Status quo.

B. Options for Limitations

1. Generic statute providing for broad limitations on foreign intelligence activities.
2. Specific statutes covering more sensitive aspects - electronic intercept, domestic activities, covert action, etc.
3. Executive order(s), rather than statutes, providing for limitations as above.
4. Repealing some or all of existing statutory and/or administrative exemptions.

SEPARATION OF POWERS AND CONGRESSIONAL OVERSIGHT OVER FOREIGN INTELLIGENCE FUNCTIONS

The problem with legal analysis in this area is that the Constitutional text is not explicit, the court cases are few and far between, and the issues arise usually in a political rather than legal context. The most that legal analysis can hope for is to place p rameters around those areas within which political battles may be fought.

"Although the power of [Congress] to investigate is broad, it is not unlimited," Eastland v. United States Servicemen's Fund, 421 US 491, 504 n.15 (1975). As a practical matter, however, Congress can constitutionally investigate intelligence agencies and activities on a variety of bases. Pursuant to such an investigation Congress may request or subpoena a variety of classified material. While Congress may in its investigative role have a constitutional right to such material, the Executive may equally have a constitutional right to withhold it. Military and foreign affairs secrets have traditionally been among the materials for which executive privilege has been claimed, and substantial historical precedent supports the constitutionality of withholding such information. In Senate Select Committee v. Nixon, 498 F. 2d 729 (D.C. Cir. 1974), a congressional demand for claimed executive material was denied by the court, but its decision cannot be read as much of a victory for

executive privilege. This is apparently the only court case to deal with a withholding from Congress by the Executive. Thus, while executive privilege may be constitutionally based, it is unclear what the content of that privilege is when confronted with another constitutional prerogative -- that of Congress to investigate. Traditionally such constitutional conflicts between the Congress and the Executive have been politically resolved, but the increasing use of the courts by Congress to enforce its perceived rights suggests that future confrontations over executive privilege may be put before the courts. The resolution of such a court test is uncertain, but will undoubtedly depend on the particular facts in the cases.

If a Congressional demand for information is denied by the Executive and/or the courts, Congress still retains an extremely powerful lever for gaining that information -- namely the threat not to legislate or appropriate as desired by the Executive. This, of course, is totally a political weapon.

Beyond the question of merely gathering information is the substantial question of the limits, if any, to Congress' power to restrict foreign intelligence procedures on activities by legislation. At the present time legislation only requires various reporting procedures, and does not otherwise limit foreign intelligence activities outside the United States. To an uncertain extent the President has inherent constitutional

powers to gather foreign intelligence which cannot be limited by Congress. This would at the least include the President's and Ambassadors' personal gathering of information. Generally, however, intelligence gathering is done by agencies either created or funded by Congress or both. Where Congress creates the agency, e.g., the CIA, there is little constitutional basis for limiting Congress' ability to restrict the mission, functions, or procedures of that agency. Of course, Congress cannot act by unconstitutional means in making such restrictions, e.g., a one-house veto. Presumably, in the absence of statutory prohibitions, the President may delegate to subordinate officers of the Executive Branch his inherent powers to gather foreign intelligence. Because these officers will usually have to operate through employees, however, whose existence arises through Congressional act rather than through Presidential appointment, limitations on the agency would probably apply to those employees and bar activities inconsistent with those limitations notwithstanding Presidential delegation.

Where Congress has not created an agency or place limitations on it, but rather only funds the agency, e.g., NSA, Congress may limit appropriations which have the effect of restricting intelligence activities. In this area there is no constitutional requirement for Congress to appropriate at all, hence Congress may constitutionally limit its appropriations only to certain activities and not to others.

Congress may, however, instead of limiting appropriations, condition their expenditure, e.g., the Hughes Amendment, 22 USC §2422(a). Such a tactic might be able to expand Congressional power beyond what could be achieved by positive legislation. For instance, a statute requiring the President to turn over executive privileged material to Congress would, in our estimation, be unconstitutional. It is not so clear, however, that Congress could not condition the expenditure of certain funds upon being informed about why and how those funds were being expended, including any privileged material. Here rather than requiring Presidential compliance, the choice is left to the President whether to spend and disclose or not to spend and not to disclose. Nevertheless, there are limits, albeit uncertain on what Congress can condition. See, e.g., United States v. Lovett, 328 US 303 (1946).

To summarize, while the President may be the Nation's "sole organ in its external relations," implying certain inherent powers in foreign intelligence activities, when the Executive requires Congressional action -- particularly appropriations, Congress has a concurrent power, and pursuant to this power may impose various and substantial limitations on those foreign intelligence activities which require Congressional funding. What Congress probably cannot do, however, consistently with the constitutional separation of powers, is to require affirmative congressional or committee approval before the Executive can take an action that is

within the bounds of its constitutional and statutory authority, and involves expenditure of funds already appropriated. Such an affirmative approval would amount to congressional invasion of Executive functions; especially since it would allow one House or committee to veto executive action, it is inconsistent with the Constitution's division of executive and legislative functions.

THE CONSTITUTIONAL, STATUTORY, AND LEGAL BASIS FOR COVERT ACTION

Legal authority for "covert" action in support of foreign policy objectives is found in three sources:

1. The constitutional authority of the President as the repository of "executive" power, primarily as it involves his responsibilities for foreign affairs and as Commander-in-Chief.

2. The National Security Act of 1947.

3. In the ratification by Congress of the CIA's authority.

I. Constitutional Power of the President

"Executive" power involves the responsibility and authority in matters of foreign relations. Presidential power in foreign affairs decision-making is variously described as "exclusive," "plenary" or as "sole organ." Historical practice, accepted as customary law, and the courts have confirmed in broad language the scope of Presidential power, which includes the authority to send troops, or agents, abroad. Even the War Powers Resolution states that it was "not intended to alter the constitutional authority of the President."

The practice of appointing agents to conduct covert actions abroad is deeply rooted in United States history.

II. National Security Act of 1947

This statute is rooted in, and was intended to embody, the experience learned under earlier Presidential directives. Specifically, the CIA was intended to have the same broad authority as previously held by the Central Intelligence Group.

CIA's responsibilities, in more detail, were to be specified by the National Security Council, and Congress recognized that the CIA would necessarily have a broad range of operational assignments.

III. Congressional Ratification of CIA Authority to Plan and Conduct Covert Actions

Since its beginning, the CIA has reported on its covert action programs to appropriate members of the oversight committees of both House and Senate. Furthermore, the legislative history of the CIA Act of 1949 reveals that the Director told the House Armed Services Committee of the types of covert actions contemplated by the agency.

With this kind of information and knowledge distributed in ways understood by Congress, appropriations were consistently authorized and approved. Such appropriations constitute ratification by Congress under the rule of Brooks vs Dewar which held that administrative practices could be ratified by Congress through the appropriations practice.

SECRECY AND PROTECTION OF INTELLIGENCE SOURCES AND METHODS

I. Secrecy and National Security

Secrecy in intelligence activities is needed for two purposes. One, intelligence and the intelligence function are necessary to the conduct of defense and foreign relations, that is, for reasons of national security. In addition, in order to develop, maintain and use sources and methods for gathering intelligence it is necessary that they be protected from disclosure.

Pursuant to his constitutional and inherent authority in defense and foreign affairs, the President may provide for necessary secrecy and protection of national security information, which would include information in the intelligence area, and has done so by Executive Order 11652. Congress also has authority and interests concerning national security for which it needs information. Pursuant to his authority, the President may opt to provide information to Congress under such conditions as to secrecy and protection as he may impose. Congress, of course, may resort to the courts to resolve any disagreements. The recent agreement worked out with the Pike Committee, along those lines, would seem the workable and desirable basis for meeting the needs of both the President and the Congress.

II. Secrecy and Sources and Methods Information

In view of the exclusive authority of the President to conduct the intelligence activities of the government, the President's authority to withhold sources and methods information would seem beyond question. The responsibility of the Director of Central Intelligence to protect such information from disclosure, as provided by the National Security Act of 1947, indeed recognizes and buttresses that principle.

III. Conclusion.

There is constitutional and statutory authority for necessary secrecy for the intelligence function of the government. Unauthorized disclosure of sources and methods information should be prohibited by criminal law. Additionally, a statutory basis for enjoining disclosure is needed. The desired legislation is well advanced and is expected to be agreed among the Executive Branch agencies - CIA, Justice and OMB -- in the near future.

LEGAL ISSUES RELATED TO CLASSIFIED INTELLIGENCE BUDGETS

I. Identification of Issues

A. Article I, Section 9, Clause 7 of the Constitution provides:

> "No money shall be drawn from the Treasury but in consequence of appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public money shall be published from time to time."

The budgets of CIA, DIA, NSA, and some other defense and military service intelligence programs are not identified in published federal budget documents. Therefore, a question has been raised as to whether this current practice is consistent with the second half of the above quoted constitutional provision.

B. A second relevant question relates to the methods whereby appropriations are made for certain intelligence agencies. Under the CIA Act of 1949, funds overtly appropriated to other agencies are secretly transferred to CIA. Appropriations for DIA, NSA, and certain service and defense intelligence programs are included in DOD appropriations, but are generally not identified explicitly. The issue arises as to whether such indirect funding authorizations constitute "appropriations made by law".

II. Factual Background and Legal Discussion

A. Present System of Funding and Extent of Public Disclosure

Published government documents now reveal almost no significant information on the funding of United States intelligence activities.

B. Present State of the Law

(1) Statutory Background

The CIA Act of 1949 provides the basic authority for the Agency's unusual funding procedures. One provision allows CIA to receive funds transferred from any appropriation with the approval of OMB. CIA is also authorized to transfer funds to other agencies.

Another provision of the 1949 Act allows the CIA to depart from normal budget and accounting procedures in making confidential expenditures to be accounted for solely on the DCI's certificate.

The Economy Act of 1932 (31 U.S.C. 686) authorizes government agencies to provide services and equipment to each other (on a reimbursable basis) where that course would be in the best interest of the government.

(2) Constitutional Requirement for a "regular statement and account of receipts and expenditures"

The history of this provision, although certainly not ambiguous, indicates that at least some supporters of the "from time to time"

language may have felt that the details of some expenditures should not be publicly disclosed, at least for some period of time.

A good argument can be made that the budget presentations of the intelligence agencies other than CIA are consistent with the clause, in that their funds are included in appropriation accounts whose titles would reasonably be expected to include intelligence activities of the types actually funded. However, the practice for funding CIA pursuant to the 1949 Act seems more difficult to defend under clause 7. The public has (or had?) no reason to associate the CIA with the appropriation account in which its funds are included. Also, none of its budgets for past years have been revealed.

(3) Constitutional Requirement for "appropriations made by law"

The first half of clause 7 represents Congress' "power of the purse".

The procedures for funding the intelligence agencies other than CIA do not seem to raise serious questions of compliance with this provision. As pointed out above, each agency other than CIA is really a part of a larger cabinet department to which its funds are appropriated.

Even below this level, the intelligence agency funds are included in sub-accounts whose titles may be broad, but such that the intelligence activities could reasonably be seen as a part of them.

The constitutionality of the section of the 1949 CIA Act authorizing unlimited transfers of funds to CIA from other agencies seems open to question. A good argument can be made that Congress violated the intent of the constitutional appropriation requirement by, in effect, giving the Executive a blank check to fund the CIA out of any appropriation available to any other agency.

(4) Standing

Whatever the merits of the constitutional issues discussed above, it seems unlikely that any constitutional requirements in this area will be enforced by the courts. The Supreme Court recently held (5-4) that a plaintiff lacked standing as a taxpayer to bring an action to force publication of the CIA's expenditures.

III. Options for Dealing with Constitutional Ambiguity

In view of the fact that the exact requirements of clause 7 are far from clear and the apparent lack of standing for judicial enforcement of these requirements, the question of to what extent intelligence budgets should be revealed and the present system of transferring funds to the CIA changed, cannot be answered by purely legal considerations.

A. Options for Public Budget Disclosure

1. Reveal total budget figure for the intelligence community.
2. Reveal community total plus some additional details, such as DOD and CIA totals, totals by broad function and object classification.
3. Reveal community total plus normal detail on non-sensitive aspects only.
4. Reveal total budget of CIA only; no additional disclosure of non-CIA budgets.
5. Reveal details of CIA budget; no additional disclosure with respect to other agencies.

6. Reveal expenditures by intelligence agencies, in any one of the levels described above, but only some years after the fiscal year involved.

B. Options for Normalizing CIA Appropriation Process

Because of the substantial constitutional doubts about the present statutory scheme whereby funds are channeled to CIA, and Congressional desire for greater control over CIA funds, the Administration should consider possible changes in the current practice. Options include:

1. A single, overt appropriation for the CIA.
2. A single, overt appropriation for the entire intelligence community.
3. A single, overt appropriation account, part of DOD appropriation bill, to fund NSA, DIA and CIA.

EXECUTIVE ORDER

ESTABLISHING RESTRICTIONS ON FOREIGN INTELLIGENCE ACTIVITIES

Previous guidance on the relationship between the intelligence agencies and United States citizens was unclear. This order clarifies that relationship by detailing those activities which are prohibited. Without setting forth all restrictions under which foreign intelligence agencies are obliged to operate, nor derogating from any other laws, rules, regulations, or directives further restricting the activities of these agencies, it is hereby ordered as follows:

SECTION I. Definitions. As used in this Order the following terms shall have the meanings ascribed to them below:

(a) "Collection" means the gathering and storage, or the gathering and forwarding, of information.

(b) "Domestic activities" means activities within the United States.

(c) "Foreign intelligence" means information, other than foreign counterintelligence, on the capabilities, intentions, and activities of foreign powers, organizations or their agents.

(d) "United States citizens" means United States citizens and permanent resident aliens.

(e) "Foreign counterintelligence" means activities conducted to protect the United States and United States citizens from foreign espionage, sabotage, subversion, assassination, or terrorism.

(f) "Incidental reception" means the receipt of information, collection of which by an agency is otherwise prohibited by this order and which is collected in the course of an agency's authorized foreign intelligence or counterintelligence activities.

(g) "Foreign intelligence agency" means any department or agency of the United States government, or component thereof, which is primarily engaged in foreign intelligence or foreign counterintelligence activities.

SECTION II. The following activities shall not be conducted either by any foreign intelligence agency or by any other department or agency in pursuit of foreign intelligence or foreign counterintelligence:

(a) Physical surveillance of United States citizens within the United States except to the extent that such surveillance is in accordance with law and is:

(1) Upon written approval by the head of the foreign intelligence department or agency; and is surveillance of individuals currently or formerly employed

by that agency, its present or former contractors, or such contractors' employees, for the purpose of protecting foreign intelligence sources and methods from unauthorized disclosure; or

(2) Of a person having contact with any persons described under subparagraph (1), or with foreign nationals in the United States in connection with foreign intelligence or counterintelligence operations, but only to the extent necessary to identify such person.

(b) Electronic surveillance of United States citizens except in accordance with law and under procedures approved by the Attorney General, and in no instance shall the Central Intelligence Agency engage within the United States in the electronic surveillance of United States citizens.

(c) Testing of electronic surveillance equipment within the United States except in accordance with law and under procedures approved by the Attorney General.

(d) Any opening of United States mail or examination of envelopes except in accordance with the provisions of United States postal laws and regulations.

(e) Access to Federal income tax returns information except in accordance with statutes and regulations.

(f) Infiltration or secret participation in any organization composed primarily of United States citizens for the purpose of reporting on its activities or membership.

(g) Experimentation with drugs on human subjects, except with the informed consent of each such human subject and in accordance with the guidelines of the National Commission for the Protection of Human Subjects for Biomedical and Behavorial Research.

(h) Operation of a proprietary company on a commercially competitive basis with United States businesses except to the minimum extent necessary to establish commercial credibility. No investments by a proprietary company shall be made on the basis of any substantive intelligence not available to the public.

(i) Collection, evaluation, correlation or analysis, of information other than information from public sources or given voluntarily by its subject concerning the domestic activities of United States citizens except:

(1) Information about a United States citizen who is reasonably believed to be involved in international terrorist or narcotics activities or working in collaboration with a foreign nation or organization, but only if the information is collected abroad or from foreign sources in the United States in the course of an authorized foreign intelligence or foreign counterintelligence activity.

(2) Information related to the performance of agency contractors or prospective bidders, for purposes of contract administration.

(3) Information concerning criminal activities received through incidental reception, provided it is only transmitted to law enforcement agencies with appropriate jurisdiction.

SECTION III. Any federal agency seeking foreign intelligence within the United States from United States citizens shall disclose to such citizens its true identity. When collection of foreign intelligence within the United States results in the incidental reception of information from unknowing United States citizens, however, the receiving agency shall be permitted to make appropriate use of such information.

SECTION IV. No information on the domestic activities of United States citizens shall be transmitted to a foreign intelligence agency (or to any other federal agency to aid it in engaging in foreign intelligence or foreign counter-intelligence) from any other federal agency unless:

(a) The information had been lawfully compiled by the transmitting agency in furtherance of its authorized mission;

(b) The information is of a type which the receiving agency would itself have been permitted to collect under the provisions of this order;

(c) The information is provided in furtherance of the authorized mission and responsibilities of the receiving agency;

(d) The information is provided in good faith under a reasonable belief that the information is relevant to the receiving agency; and

(e) The information is provided under guidelines and procedures issued by the Attorney General designed to ensure the protection of the constitutional and statutory rights of United States citizens.

SECTION V. Nothing in this Order prohibits an agency from retaining information when retention is required by law, such as retention required to preserve evidence or other information for possible court action.

SECTION VI. No foreign intelligence agency shall:

(a) Provide services, equipment, personnel or facilities to the Law Enforcement Assistance Administration or state or local police organizations of the United States except as expressly authorized by law; or

(b) Participate in or fund any law enforcement activity within the United States except as may be authorized by law.

Provided, that this prohibition shall not preclude:

(1) Cooperation between a foreign intelligence agency and appropriate law enforcement agencies for the purpose of protecting the personnel and facilities of the foreign intelligency agency or preventing espionage or other criminal activity related to foreign intelligence or foreign counterintelligence; or

(2) Provision of specialized equipment or technical knowledge for use by any other Federal department or agency.

SECTION VII. Foreign intelligence agency personnel may not be detailed elsewhere within the Federal government except as consistent with law. Employees so detailed shall be responsible to the host agency and shall not report to their parent agency on the affairs of the host agency except as may be directed by the host agency. The head of the host agency and any subsequent successor shall be informed of the detailee's association with the parent agency.

SECTION VIII. Nothing in this Order shall prohibit any agency having law enforcement responsibilities from discharging such responsibilities pursuant to law. Nor shall this Order apply to any activities of the Federal Bureau of Investigation.

SECTION IX. Nothing in this Order shall prohibit any agency from engaging in the collection, evaluation, correlation and analysis of information on current or former employees (including military personnel and employees of other Federal departments or agencies detailed for service with the foreign intelligence agency); applicants for employment with such agency; voluntary sources or contacts or individuals who in good faith are reasonably believed to be potential sources or contacts; current and former contractors and current or former employees or applicants for employment by such contractors; and all persons not included above who must be given access to classified information which could disclose foreign intelligence or foreign counterintelligence sources and methods; provided, however, that collection of such information is done only in accordance with law and by written authority from the head of such agency to determine the fitness of such persons to become or remain associated with such agency or to have such access, or in the case of a former employee to investigate matters related to his period of employment, or in the case of a voluntary source or contact, to determine suitability or credibility.

FACT SHEET

EXECUTIVE ORDER IMPOSING RESTRICTIONS
ON FOREIGN INTELLIGENCE ACTIVITIES

Today the President issued an executive order setting forth certain restrictions on the activities of foreign intelligence agencies and other agencies which may engage in intelligence activities. It prohibits or severely restricts the following activities:

- Collection and analysis of information on the domestic activities of United States citizens and permanent resident aliens.

- Physical or electronic surveillance of United States citizens and permanent resident aliens within the United States.

- Opening of United States mail in violation of law.

- Illegally obtaining federal income tax returns or information.

- Infiltration of domestic groups for the purpose of reporting on them.

- Experimentation with drugs on humans without the subject's informed consent.

- Operation of a proprietary company which competes with United States businesses more than the minimum amount necessary to establish commercial credibility.

- Collection of intelligence from United States citizens and permanent resident aliens within the United States without disclosing the true identity of the collecting agency.

- Sharing among agencies information on the domestic activities of United States citizens or permanent resident aliens except in compliance with stringent safeguards.

- Providing assistance to law-enforcement agencies in violation of law.

Certain limited exceptions are included to the general prohibition of collection of information on the domestic activities of United States citizens. These exceptions seek to recognize all legitimate needs of foreign intelligence agencies to collect information on the domestic activities of United States citizens.

In order to protect classified information, intelligence agencies must run security checks on applicants for employment and employees. Like any Government agency, these agencies must also check out employee backgrounds to ascertain their job suitability. Even after a person has left an intelligence agency, it has a legitimate need to maintain its records on that person should a security breach stemming from his employment occur. Similarly, each intelligence agency has an interest

in the suitability and security worthiness of persons who contract with it or are employees of its contractors working on its projects and requiring access to classified information.

Each intelligence agency must also maintain records on persons who, without necessarily being employed by it, are given access to its classified information. Such persons would include employees of other Government agencies who require access to its classified information and private citizens who voluntarily agree to be cleared to receive classified information in order to aid in their voluntary reporting of foreign intelligence information to the agency.

Foreign intelligence agencies or other foreign groups spend many resources seeking to penetrate (i.e., obtain information from) United States intelligence agencies. The United States agencies need to protect themselves from such activities. Such activities may involve domestic activities of United States citizens. Because United States intelligence agencies have a need to understand the operating modes of foreign intelligence agencies, there is a legitimate need for it to collect and use such information. However, the intelligence agencies are permitted to collect this type of information only abroad or from foreign sources, since the FBI is fully capable of collecting such information from purely domestic sources. Also, because of the unique contacts of our foreign

intelligence agencies with information sources abroad and foreign sources within the United States, these agencies are also permitted to collect, but only from these special sources, information on United States citizens reasonably believed to be involved in international terrorist or narcotics activities.

In normal day-to-day business, many Americans work with intelligence agencies and tell its employees about their domestic activities; i.e., other Government employees meet with intelligence agency employees; academics share information with them; Americans who travel talk to them. In order to allow these agencies to maintain records of such day-to-day transactions, the order makes an appropriate exception. Americans who enter into such contact with intelligence agencies, however, should not therefore be subjected to security investigations or other scrutiny merely because they came into contact with an employee of an intelligence agency. Therefore, this exception only allows use of that information voluntarily supplied by the persons themselves.

The order requires that the information collected or stored under these exceptions be confined to a type appropriate to the purpose for which the corresponding exception was created. For example, an agency may not collect or store information on

the political views of a United States citizen merely because he is a contractor employee working on an agency project.

The order also allows intelligence agencies to transmit to law-enforcement agencies information relating to criminal domestic activities of United States citizens which it happens to obtain incidentally to its proper foreign intelligence activities. All citizens and Government agencies have an obligation to turn information related to criminal activity over to appropriate authorities.

SUMMARY OF AGENCY COMMENTS ON MAJOR SUBSTANTIVE ISSUES RELATING TO EXECUTIVE ORDER IMPOSING RESTRICTIONS ON INTELLIGENCE

I. Department of Defense

Basically, DoD would prefer a fundamentally different version of this Order, which it has drafted. DoD feels its draft "presents ...a more straightforward approach as compared with the somewhat complex and eleborate assembly of caveats in the current version." The primary substantive difference between the DoD version and the current draft is that the DoD Order prohibits only the collection of the "lawful domestic activities" of U.S. citizens. With respect to the two issues covered in the body of this paper, DoD's position is as follows:

A. Exception to allow collection, analysis, and dissemination of information on the domestic activities of U.S. citizens reasonably believed to be involved in international terrorist or narcotics activities or working in collaboration with a foreign nation or organization, but only if collected abroad, or from foreign sources. (Section II(i)(2)) DoD supports this exception and would eliminate the requirement that the information be collected abroad or from foreign sources here.

B. Exception which would permit sharing of information on the domestic activities of U.S. citizens among intelligence and other federal agencies, under guidelines of the Attorney

General, even if the receiving agency would not otherwise be permitted to collect such a type of information under this Order (Section IV). DoD supports modified version under which sharing is permitted only for information which the receiving agency would otherwise be permitted to collect.

C. DoD proposes certain other modifications related to NSA's activities. They would remove NSA's communications security activities from the Order's restrictions and also distinguish between signal intelligence and other forms of electronic surveillance.

D. DoD would allow infiltration of organizations of U.S. citizens abroad. It claims to need such an exception to allow gathering information on U.S. groups seeking to subvert U.S. military personnel abroad.

II. CIA

A. As to the exception for information on citizens engaged in terrorist or narcotics activities, or working in collaboration with foreign organizations, the CIA proposes to add the word "secretly" before the words "in collaboration with a foreign nation or organization". This would exclude such persons as registered foreign lobbyists or those openly dealing with foreign corporations.

B. The CIA would expand the exception to the prohibition against competition by proprietary companies with U.S. businesses (Section II(h)). After the CIA amendment, the pro vision would read to prohibit:

"Operation of a proprietary company on a commercially competitive basis except to the minimum extent necessary to establish commercial credibility or to achieve clearly defined foreign intelligence objectives." (CIA language underlined.)

This is intended to recognize that in rare and exceptional instances a specific foreign intelligence objective may be achieved only through a successful venture.

III. Department of Justice

Justice has no major problems with the current draft.

IV. Department of State

Comments not yet received.

V. OMB

Comments not yet received.

VI. NSC

Comments not yet received.

AGENCY POSITIONS ON TWO ISSUES DISCUSSED
IN BODY OF PAPER RELATING TO
RESTRICTIONS EXECUTIVE ORDER

Issue	AGENCY		
	DoD	CIA	Justice
Exception to allow the collection, analysis, and information on the domestic activities of U.S. citizens reasonably believed involved in international terrorist or narcotics activities or working in collaboration with a foreign nation or organization but only if collected abroad or from foreign sources. (Section II (i)(1))	Supports exception and would eliminate requirement that the information be collected abroad or from foreign sources.	Supports exception with the addition of the word "secretly" before the words "in collaboration with a foreign nation or organization".	Supports exception.
Exception to permit sharing of information on domestic activities of U.S. citizens even if receiving agency would not have been permitted to collect the information for itself under the terms of this Order. (Section IV)	Supports modified version permitting sharing only when receiving agency would have been permitted to collect information for itself.	Supports same modified version.	Supports same modified version.

APPENDIX 3
OUTSIDE EXPERTS

SUMMARY OF VIEWS
PRESENTED BY
SELECTED OUTSIDE EXPERTS

The following are major points from discussions over the past several days with McGeorge Bundy, John McCone, Admiral Moorer, Paul Nitze, David Packard and Ted Sorensen.

McGeorge Bundy

- The President, as Commander in Chief, should take the lead in reforming the Intelligence Community; there is political merit in beating the Congressional committees to the punch. A good opportunity for Presidential action will be during the Congressional recess.

- More intelligence of an open nature should be made available to Congress. This will help Congress in its oversight role, although oversight will always be a difficult problem, particularly if Congress attempts to deal with prospective programs.

- The 40 Committee has never been effective. A "President's man" is required to monitor seriously activities in this area. Moving clandestine operations to State would change the character of the department and pose difficulties for the conduct of its normal operations.

- PFIAB has been a free-wheeling body that has been helpful from time to time, but it has never had an adequate staff and would probably be overburdened if given an oversight role. On the other hand, the ACDA Advisory Committee, for example, has had substantial impact and given the President access to the ADA that he would not otherwise have had.

- A two-hatted DCI will probably never work. Allocating budgets is a management problem and seems more appropriate for OMB, the instrument created for these purposes.

- The national estimate process has never worked very well. Reports tend to be done on given situations at times when one could care less. The national estimate is an extremely important product and it is necessary to improve its quality.

- DIA has not provided the oversight to DOD intelligence activities which was intended.

- Time spent in insuring "plausible deniability" was almost uniformly wasted. The President can take responsibility for actions of his Administration. The distinction between diplomatically-necessary deniability in such cases as the U-2 or the Glomar Explorer, and domestic accountability, was drawn.

John McCone

- The President must make up his mind how the Intelligence Community should be organized, do what he can to accomplish this by Executive Order, and propose legislation for the remainder. Congress will do nothing without Presidential initiative.

- CIA has been tarnished and should be done away with. A new agency should be establish as part of the National Security Council. The director of the agency would be responsible for all existing CIA operations, would coordinate all intelligence agencies budget responsibility for all intelligence activities. He would be Chairman of USIB and have direct access to the President. There should be two deputy directors, one for intelligence matters and one for community affairs.

- A permanent subcommittee of the NSC should be established to have oversight responsibility for the new intelligence agency. It would also review 40 Committee actions.

- If CIA continues to exist, three steps should be taken: (1) The General Counsel should be made a Deputy Director with access to the entire agency; (2) The Inspector General position should be given more status and strengthened; (3) There must be a regular program of review of ongoing activities.

- A Joint Congressional Committee on Intelligence should be formed along the lines of the Atomic Energy Committee. The Atomic Energy Committee has never had a problem with secrecy.

- Legislation is necessary to impose penalties on government employees who disclose secrets during or after their period of service in government.

- There have been problems with DIA's production, partly because it has been staffed by the Joint Services and the services keep the best officers for themselves. Further, intelligence is not a high priority within the Services.

Admiral Moorer

- Radical change in the Intelligence Community should be avoided. The primary problem is not the organizational structure but people.

- It would be a mistake to centralize intelligence gathering under one person. The DCI cannot control or schedule, for example, the real time activities of submarines or other military collection agents, nor can he defend them when they run into trouble. In addition, there is a need for duplication and competition in intelligence as there is in R&D matters.

- NSA is a valuable instrument, but individual combat units should have their own intercept teams. Wartime activities cannot be centralized and run from Washington.

- The open hearings in the House and Senate are a "national disaster". They are exposing secrets and telling the Soviets a great deal about the effectiveness of our intelligence activities, thus permitting the Soviets to develop countermeasures.

- A Congressional oversight committee will pose severe operational problems. Leaks will occur and intelligence information will be used for political purposes. The President needs to take action to deal with the pressure from Congress, but it should not be drastic.

Paul Nitze

- To some degree, the problems the Intelligence Community now faces are cosmetic and any changes must be cosmetic as well. There is a danger, however, that we will not do what needs doing.

- The NRO works well under EXCOM as far as Defense and CIA are concerned but not, perhaps, from OMB's point of view. A perennial problem is the allocation of costs to various programs, and making

decisions based on the allocations will always have a highly judgmental character. The equipment is very expensive in certain intelligence gathering systems and new tasks require new "beasts". Decisions on new equipment require a great deal of familiarity with the programs and the technologies.

- As organizational changes are considered for the Intelligence Community, there is no point in further downgrading CIA. Nor should covert activities be separated from the rest of its operations. The DCI should have the National Estimating Staff. The old Board of National Estimates worked better than the present NIO system, where the National Intelligence Officers farm out estimates to the departments for writing.

- Crisis management is better institutionalized than it was a decade ago. There are differences between mini crises which need not come to the President and can be handled on a coordinated basis by the appropriate government agencies, and the maxi crises which will probably always be handled on an ad hoc basis, depending on the needs and predilections of the President.

- There was much more systematic handling of 40 Committee matters 10 years ago than there is today.

- The government has never adequately dealt with the problem of a "net assessments". At one time the initiative existed in State in the Policy Planning Staff under Acheson to perform net assessments, and under Eisenhower the NSC had the role. The CIA is not and should not be in the net assessment business, nor should the NSC; State is his candidate.

David Packard

- Consideration should be given to having the Attorney General participate in 40 Committee meetings to focus on the legality of proposals. Attorneys General who have participated in the past did so as the President's personal representative and did not get into legal or moral issues.

- Both national and tactical intelligence are necessary so that (1) we know what might happen and (2) what to do if it happens. The military must know all about Soviet radars, not just where they are.

- DIA's analysis has tended to be influenced by the military services' interests. Perhaps DIA should report directly to the new Deputy Secretary of Defense for Intelligence, and not the Joint Chiefs.

Ted Sorensen

- The key issue for the President to focus on is clandestine operations, including covert action. Because of the great risk of exposure, covert action is in the national interest only in very rare instances. One good measuring stick is whether an activity is still worth it if it becomes known publicly. Covert activity, however, should not be banned by law. Some flexibility is required. If covert actions were banned, the vacuum might be filled in a totally uncontrolled manner.

- On the question of Congress' right to know, the Executive Branch should try to work out something with Congress: The voluntary arrangement worked out with Chairman Pike on the publication of classified materials was a good one, and might be the basis for a permanent arrangement.

- There should not be criminal statutes governing misuse of classified information by non-government (or contractual) employees. If there is a broadening of the criminal statutes, there must be concurrent reform of the classification system.

- There is great potential for abuse in the relationship between the Intelligence Community and private enterprise. Contact between CIA and private companies should be restricted; if there is contact, a neutral observer should sit in, such as somebody from the State Department.

- Congress must increase its oversight capability, but not in such a way that it encroaches on Executive Branch powers. Congress cannot run CIA, nor can it decide on specific covert operations.

- CIA must be more accountable to policy-makers, including the Secretary of State and ambassadors in countries where the CIA has operations.